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*March 4.

CHARLES L. HIGGINS (DEFENDANT) .. APPELLANT ;

AND

GEORGE W. STEPHENS, JUNIOR }
(PLAINTIFF) { RESPONDENTON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL
SIDE, PROVINCE OF QUEBEC.*Partnership—Account—Action pro socio—Procedure—Art. 1898 C. C.*

The judgment appealed from held that in an action *pro socio*, it was sufficient for the plaintiff in his statement of claim to allege facts that would justify an inquiry into all the affairs of the partnership and for the liquidation of the same, without producing full and regular accounts of the partnership affairs.

Held, that the appeal involved merely a question of procedure in a matter where the appellant had suffered no wrong and, therefore, that the appeal should be dismissed.

*PRESENT :—Sir Henry Strong C.J. and Sedgewick, Girouard, Davies and Mills JJ.

APPEAL from the judgment of the Court of King's Bench, appeal side, Province of Quebec, reversing the judgment of the Court of Review and restoring the judgment of the Superior Court, District of Montreal, maintaining the plaintiff's action with costs.

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The questions at issue upon this appeal sufficiently appear from the judgment reported.

Martin and *Demers* for the appellant.

Atwater K.C. and *Stephens K.C.* for the respondent, were not called upon for any argument.

The judgment of the court was delivered by :

GIROUARD J. — This appeal involves only a point of procedure. The question is whether a partner can sue his co-partner for an account in an action *pro socio*, without alleging and producing a full and regular account according to the practice followed in the Province of Quebec.

Article 1898 of the Civil Code says :

Upon the dissolution of the partnership, each partner or his legal representative may demand of his co-partners an account and partition of the property of the partnership, such partition to be made according to the rules relating to the partition of successions, in so far as they can be made to apply.

Nevertheless, in commercial partnership these rules are to be applied only when they are consistent with the laws and usages specially applicable in commercial matters.

This article leaves a great deal of discretion with the court.

The Superior Court held that the production of such regular and complete account was not necessary, and that, especially under the latter part of article 1898, it was sufficient for the plaintiff to lay statements sufficient to open an inquiry into all the affairs and business of the partnership and liquidate the same. For that reason the court referred the whole case to a

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skilful accountant, to whose competency no exception or objection was taken by either of the parties. This accountant opened a full inquiry, looked into the books of the firm, examined the partners and their witnesses, and finally made a report which deals fully with the whole case. No serious defect, in fact, no defect whatever is alleged against this report. No injustice is shown. The court adopted it, and entered judgment according to its conclusions. In review, the action was dismissed, because no regular account had been offered by the plaintiff before returning his action. In appeal this judgment was reversed by the majority of the court who held that sufficient statements had been produced to do justice to all the parties, and, for that reason, reversed the judgment of the Court of Review and restored the judgment of the Superior Court

This appeal involves only a question of procedure in an action where no wrong or injustice has been suffered by the party appealing.

The appeal is, therefore, dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellant: *Demers & Demers.*

Solicitors for the respondent: *Stephens & Hutchins.*