circumstances to return it; and at all events he must be allowed to exercise his discretion whether he will take out the money or not, looking at the condition upon which it has been paid in. The bailiff had no right to settle the point for him.

It was an error in the attorney to act in a double capacity, as he did.

But on more general grounds, it has been decided in several cases in England under the Statute, (1 & 2 Vic., chap. 110) which permits money belonging to a defendant to be seized in execution—which Statute is precisely like ours in it language, —that the Sheriff, or officer, can only seize money which is in the hands of the defendant, and not money which is in the hands of a third party, and held by such third party to his use, still less money in the custody of the Court upon a payment which the party has not yet even accepted.

Watts v. Jefferyes, 15 Jurist, 435, referring to *Wood v. Wood*, 4 Q.B., 397, and *Robinson v. Peace*, 7 Dowl. P. C., 93; *Masters v. Stanley*, 8 Dowl. P. C. 169; *France v. Campbell*, 9 Dowl. P. C. 914.

If the money is still in the hands of the attorney, he ought to replace it; but at any rate the officer should not have suffered it to be taken away, and this Summons must be made absolute. Summons absolute.

CAMPBELL v. PEDEN ET AL.

Garnishee—Partners—C. L. P. Act, 1856, section 194.

An unsettled balance due by one partner to another cannot be attached; but if the balance has been fully ascertained by a settlement of accounts, it may be attached.

(Jan. 26, 1857.)

Freeland, for plaintiff, had obtained a summons calling on one Peden to show cause why he should not pay over to the judgment creditor (Campbell) a certain debt due by him to the judgment debtors, (Peden and others.)

Jackson, for garnishee, showed cause. The defendants and the garnishee had formerly been partners, and the alleged debt was a matter of account between them as such.

ROBINSON, C.J.—This case does not come within the meaning of the C. L. P. Act, it being an account between partners, and therefore only cognizable by a Court of Equity. Had there been a settlement between the partners, resulting in a balance in favour of the garnishee, then that balance being the ascertained amount of garnishee's indebtedness, might have been attached, and the garnishee ordered to pay it over. Summons discharged.

(Reported for the Law Journal and Harrison's Common Law Procedure Act, by CHARLES WAY, Esquire.)

HUNTER v. KEIGHTLEY ET AL.

Ejectment—Collision between tenants and a stranger.

(Feb. 16, 1857.)

Action of Ejectment by plaintiff Edward Hunter, against defendants, J. Keightley and Edward Jackson.

It appeared from affidavits that one James John Hunter (agent for plaintiff) was formerly owner of certain land and premises, for the recovery of which this action was brought, and that whilst he was such owner he demised the said lands by Indenture of Lease, dated 18th of April, 1854, unto said defendants for seven years. Defendants occupied under said lease until the assignment after mentioned.

In December, 1855, one A. N. Vrooman, commenced an action of Ejectment against defendants, in which said James J. Hunter, by leave of the Judge, appeared as landlord, and issue was joined between said Vrooman and said J. J. Hunter in December 1855, since which time Vrooman had not proceeded with the action.

On 7th May 1856 said J. J. Hunter conveyed said premises and assigned the said lease and the reversion unto the plaintiff in this action. In June 1856, Vrooman commenced another action against defendants in the name of one Rachel Russell, in which defendants colluded to keep the service of summons secret from said plaintiff, and judgment was fraudulently signed against defendants, and they agreed to become Vrooman's tenants.

In consequence of such fraud said judgment was set aside by Judge's order in July 1856, and the plaintiff in this action was allowed to appear, since which no further proceedings had been taken in said action.

In consequence of said fraud and collusion defendants had been brought up upon a forfeiture of the tenancy, and on 30th December last the following order was made by McLEAN, J.:

"Upon reading the affidavit filed, I do order that A. N. "Vrooman be allowed to appear and defend this action as "landlord."

Which order was made *ex parte* upon affidavit of Vrooman that he was in possession, which was wholly untrue. Summons was taken out by plaintiff, calling upon defendant to show cause why the said order of the 30th December should not be set aside with costs, or why said order should not be amended by restraining Vrooman from disputing plaintiff's title or setting up an adverse title on trial of said cause, and why plaintiff should not have leave to sign judgment in this cause.

Eccles, for plaintiff, moved summons absolute.

RICHARDS, J., granted an order setting aside the said order of 30th December, no cause being shown against it.

WRIGHT v. HULL.

Order for writ of Supersedeas.

(Feb. 17, 1857.)

Summons to show cause taken out on 14th instant by defendant's attorney.

This cause was tried at the Assizes on the 9th September last, and verdict taken for plaintiff.

The affidavits showed that the action was commenced against defendant as endorser of certain promissory notes declared on in this cause; that defendant had been arrested and was in close custody, and that plaintiff had not entered judgment upon the said verdict, and had not caused defendant to be charged in execution, although more than a term had elapsed since the trial.

Summons moved absolute by defendant's attorney, and unopposed.

RICHARDS, J., granted an order for writ of *Supersedeas* to issue.(a)

(a) N. R., 99.