

himself, and it is his turning the thing bought into the partnership, at an amount which he was not, as between him and his partner, entitled to insist on without full disclosure, that gives the latter cause for complaint. While it is not possible to do complete justice owing to Dr. Smith not being a party, enough may be adjudged to protect the respondent.

Dr. Smith at the trial admitted that he had been invited into a syndicate, and agreed to go into it, but paid no money, because he had no agreement, and does not think that he is interested in the property.

There is nothing to prevent a declaration that the appellant, respondent, and Dr. Smith became partners or were jointly interested in the venture in which the Pratt farm was acquired from the other defendants, in the proportion of one-fifth, three-fifths, and one-fifth respectively, and restraining the appellant from dealing with it in any way inconsistent with the other partnership interests. An order should also be made directing the appellant to pay into Court to the credit of this action, for the benefit of the partnership, the sum of \$2,500, wrongly received by him. This will enable the respondent to proceed under Rule 534. If the respondent so desires, he may also have a declaration that he has paid the sums agreed to be paid by him up to this time, and has a lien, for the excess already paid, or that he may hereafter pay to comply with the contract, upon the partnership assets, namely, the Pratt farm, and that the appellant has failed to pay what he had agreed to pay.

I do not think that the partnership can be dissolved or any further relief given in Dr. Smith's absence; but, if he agrees to be added as a party, a proper judgment may be pronounced for the dissolution of the partnership, the taking of the partnership accounts, and a sale of the lands. If Dr. Smith will not agree to be added, the respondent may take such steps as he may be advised by new action or otherwise. Pending this, the other defendants should not be restrained from taking steps to realise their claim; and, if they desire to proceed, there is nothing to prevent the respondent from making further payments to save the property until it can be properly brought to sale as partnership property.

The judgment in appeal should be varied in accordance with the above. The appellant partly succeeds, but fails as to his main contention, and should get no costs. The respondent may have his costs of action and appeal out of the partnership assets, without prejudice to Dr. Smith's right to object to the same in