

1849. posed of? These are questions upon which very able men have differed. But no such difficulties arise here. It is clear law, that the property which the partners in a trading concern have in the effects of the society is not an absolute property in any definite part, but a qualified property, subject to the lien of the co-partners, to have the joint assets applied first in liquidation of joint liabilities, and then in settlement of the legal and equitable claims of the partners themselves. No partner has an absolute right or property in any part of the assets, except as the result of a general account. (a) If the interest of the partner himself is so qualified and limited, can that of his creditor be more extensive? It is admitted that the levy and subsequent sale amounted to a dissolution, and that the plaintiff has a right against his co-partner *Phillips*, as well as against these defendants, to come here for the purpose of winding up the affairs of the firm, collecting the assets, and discharging the debts. Until that shall have been accomplished, it must be utterly impossible to ascertain the interest of *Phillips*, which and which alone the defendants can affect by means of this judgment. But it is equally clear that this court cannot administer the relief to which the plaintiff is entitled upon the record, as at present framed. The account to be directed is not an account as to the particular debt included in this judgment, or the particular chattels sought to be affected thereby; it is an account of the entire assets of the firm, and the discharge of all liabilities, as well as a settlement of all claims between the partners themselves. Can the court pronounce this partnership to have been dissolved, settle the share of *Phillips*, ascertain the debts due from the firm, and employ his funds in discharge of those liabilities in his absence? We are of opinion that the record must be amended; and we allow the cause to stand over for that purpose without costs, because the objection was not taken by the answer, nor indeed upon the hearing of the cause until suggested by the court.

Partridge
v.
McIntosh.

Judgment.

(a) Story on Partnership, 381; Garbett v. Veale, 2 Q. B. 408; Johnston v. Evans, 7 M. & G. 240.

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Mr. A