

stances under which should be admitted to state the operation between the parties discussed.

ews v. Holmes, 1.
fic Performance," 1.

this court would for the purpose of a writ to convey property an execution; but the execution debtor has been sold must

m v. Smith, 203.
Conveyance."

partners carried on the broker on his own at capacity received several sums of money and proceeds of plaintiff, as the price of many notes, and the broker paid into partnership funds. It was discovered that all the joint effects had been all forged by absconded, and the executed a deed in all the joint effects benefit of all their a bill filed for that held that the plaintiff paid his claim out of assets. [*Spragge*,

v. James, 163.

partners, engaged in wheat and flour, interest to a third the other partner, all the funds used

in the transactions of the firm, assented, and a loss having occurred upon a re-sale, he filed a bill against the original co-partner, and his vendee for an account and payment by them of one half of the loss sustained on such resale. *Held*, that the vendee was not, by what had taken place, constituted a partner of the plaintiff, and the court dismissed the bill as against him with costs: but directed an account as against the other defendant with costs to the hearing.

Mair v. Bacon, 338.

PAYMENTS.

(APPLICATION OF.)

The debtor of a mercantile firm being desirous of extending his transactions with his creditors, executed to them a mortgage to secure the sum of £2000: Subsequent transactions between the parties to a large amount took place, and during one year alone the sums charged to the debtor, including the sum due on the mortgage, amounted to £30,000; and after four years' dealing between the parties, from the time of executing the mortgage, an account was delivered to the debtor, showing a balance of £1641 against him. Upon a bill filed to foreclose the mortgage for this amount, the court held that the transactions which had taken place discharged the mortgage debt.

Buchanan v. Kirby, 332.

The ruling in *Re Brown* reported ante vol. 2, page 590, affirmed. *Id.*

PRACTICE.

1. A married woman had been served with an office copy bill as well as her husband, but no joint answer was put in, and an order was obtained and served upon her directing her to answer separately and apart from her husband; no answer having been put in after the expiration of a month from the service of that order, a motion was

made for an order *pro confesso* against her. The court refused to make the order, and directed a second office copy of the bill, together with an order to be served upon her directing her to answer separately from her husband within a time limited after service of that order.

Miller v. Gordon, 145.

2. A defendant having allowed the plaintiff to proceed with his suit in this court as well as at law for the same object, afterwards applied for an order on the plaintiff to elect in which court he would proceed; the court granted the order, but directed the defendant to pay so much of the costs at law as had been incurred after defendant became aware that the relief sought in both suits was the same.

Ausman v. Montgomery, 175.

3. Where a cause was brought on to be heard at the suit of *The Attorney General* for the repeal of a grant of land alleged to have been issued in mistake, and the evidence adduced did not sufficiently establish the mistake, the court directed the cause to stand over for the purpose of adducing further evidence.

Attorney General v. Garbutt, 181.

4. Where a plaintiff in a redemption suit moves for a summary reference, and seeks to deprive the mortgagee of his costs, a case should be made for that relief upon the pleadings, and the question of costs should be included in the reference to the Master.

Long v. Glenn, 208.

5. Where a case has been referred to arbitration and an award made, such award must in all cases be made an order of the Court, before any other order in the cause can be made.

Wadsworth v. McDougall, 290.

6. Where a mortgage was created by husband and wife upon lands of