1849. Partridge v. McIntosh.

At an early period of the difficulties between these parties, the defendants seem to have conceived that, although proceeding under a judgment against *Phillips* alone, they were still entitled to regard this debt, not as the separate debt of *Phillips*, but as a joint debt; and that this fact, by some mode of reasoning which we do not quite apprehend, entitled them under the writ to sell a moiety of the tangible effects of the firm, without reference to the state of the partnership accounts. Unfortunately for the interests of all concerned, this notion seems to have been persisted in down to a very late period, for we find it insisted upon by the answer. The point was, however, given up by the learned counsel, who opened the case for the defendant; and in our opinion rightly. For if it be clear law, as has been conceded on all hands, that *Phillips* could not bind his co-partner by the confession of judgment which he executed, then the conclusion would seem undeniable, that the defendants must be treated in all their dealings, under that judgment, as the separate creditors of *Phillips* (*a*). Were it competent to *Phillips* to confer upon the defendants, by executing such an instrument, any right, other than that of being regarded as his separate judgment creditors (and what is here contended for, viz.: the right to seize one moiety of the partnership effects, without reference to the partnership accounts, would be a most important benefit,) then could *Phillips*, to that extent, bind his co-partner. As a sale under this writ could not confer an unqualified title to the *entire* tangible effects of the firm, neither can it confer such a property in the *moiety*; the one claim is as contrary to principle as the other. Judgment.

Apart from the question just stated, there would appear to be no difficulty in the way of defining accurately the rights of all concerned. Had this case assumed a somewhat different form, questions might have been raised which would seem as yet undetermined either here or in England. Has this court any jurisdiction to restrain a sale by the sheriff under the circumstances existing in this case? How are the proceeds in the hands of the sheriff to be dis-

(*a*) Hambridge v. De La Crouée, 3 C. B. 742.