

the partnership the sum of \$2,500, wrongly received by him. This will enable the respondent to proceed under Con. 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 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 realize 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 the ultimate taking of the partnership accounts. If Dr. Smith agrees to be added and to be bound by the judgment the usual partnership judgment for dissolution and winding up may issue with the declarations as stated herein.

HON. SIR WM. MEREDITH, C.J.O., HON. MR. JUSTICE
MACLAREN and HON. MR. JUSTICE MAGEE:—We agree.