

of its date, upon the business, both as regards transfer of defendant's interest and as regards formation of the new partnership.

By a separate agreement plaintiffs agreed as to the terms of their partnership, and in that instrument, to which defendant was not a party, they assumed to make their partnership relate back to 1st February, 1902. That mode of dealing between themselves could not alter defendant's position as a partner from 1st to 12th February, nor could it operate to give to defendant Stewart any higher rights in respect of the late partnership than he had under his agreement with defendant.

Taking, therefore, the instruments and the items of the claim, it is apparent that plaintiffs could maintain no right to recover them in the way in which it is sought to recover them in this action. As already pointed out, plaintiffs could not recover them as debts due to their partnership; and plaintiff Greig could not recover them as an individual. And furthermore, the agreement between defendant and plaintiff Stewart operated as a sale by defendant to plaintiff Stewart of defendant's interest as it stood on 12th February, whatever that interest might be, and it is clear that that interest was subject, on the taking of the accounts, to the allowance of those items against defendant.

It is argued, however, and the Divisional Court has come to the conclusion, that the sale by defendant to plaintiff Stewart was a sale of his interest as of 1st February, and by reference to a balance sheet, prepared on that date, shewing the respective interests of plaintiff Greig and defendant in the partnership. But the evidence does not sustain that view, even if it could be received as against the instrument.

No case was made for reforming the instrument, nor does there appear to be any good reason why it should be reformed. It is, no doubt, correct to say that reference was made to the balance sheet of 1st February, but it was only with a view to plaintiff Stewart seeing in a general way what defendant's substantial interest in the partnership amounted to. The amount agreed to be paid was certainly not based upon the balance sheet, which shewed an interest worth a much larger sum than \$4,500. And if the amount paid had been intended to represent the exact value of the interest of the defendant, it would have been necessary to consider