1849. Partridge v. McIntosh.

side without doing equity to others, and has already asserted a right to have the winding up of the partnership affairs.

The plaintiff has been absent from the country ever since the formation of the partnership, leaving *Phillips* the sole and exclusive management of the business, and *Moffatts* and *Company* were unable to obtain any security, other than what *Phillips* alone was able to give them.

We submit, that it makes a material difference as to the rights of the partners, when the execution, although only against one, is for a partnership debt, contracted *bona fide* in the business of the partnership.

One partner can sell all the partnership goods, if done *bona fide;* so also, we contend, can he give security on them for the debts of the partnership.

The prayer ought to have been, to take an account of the partnership affairs and wind up the concern.—*Garbett* v. *Veale*, (*a*) and *Johnson* v. *Evans* (*b*) were referred to.

Mr. *Gwynne* in reply—

Argument.

The defendants, by their answer, admit that they had notice of the joint estate being insufficient to pay the partnership debts, and yet they insisted that they were entitled to hold one half the goods against all the other creditors; such a claim being inequitable, they must pay costs.

November 23.—The judgment of the court was pronounced by—

The Chancellor.—The plaintiff is one of the partners of the late firm of *Partridge* and *Phillips*. The defendants claim under an assignment from the sheriff of this district, made in virtue of a writ of *fieri facias* issued upon a judgment entered up against *Phillips* alone, upon a cognovit executed by him. The plaintiff asks from this court a declaration that the seizure of the partnership effects under this judgment against *Phillips*, had effected a dissolution of the partnership; he prays an injunction to restrain the defendants from intermeddling with the joint assets, until the affairs shall have been wound up, and the joint liabilities liquidated; *and he claims a right to act in the winding up of this concern, by converting the assets and liquidating the liabilities, and asks the assistance of this court to give effect to that right.*

(*a*) 5 Q. B. R. 408. (*b*) As reported in 7 Scott N. S. 1035.