Lockhart, Lucy Denning, Elizabeth Jacob, and Mary Russell, being co-heiresses of William Jacob, and John Jacob, and William Jacob, deriving title, by deed from Richard Wharffe, who derived title, by deed, from Phillip Meyers, the grantee of the Crown. The defendants set up no other title but by possession.

The case was tried at Cornwall, in October last, before Hagarty, J. The whole dispute at the trial (renewed in term) was on the sufficiency of the evidence as to two deeds, one dated the 7th February, 1803, purporting to be from Philip Meyers (to whom it was proved the Crown, by patent, dated the 16th July, 1797, had granted the whole lot named in the writ) to Richard Wharffe, for the whole lot; the other dated the 31st May, 1808, purporting to be a conveyance from Richard Wharffe to John Jacob, and William Jacob, of London, merchants. The question was, whether the deeds came out of the proper custody. A witness swore that he obtained the first deed from the Hon. G. S. Boulton, of Cobourg who was said to be, and who acted as agent for the Jacob family as to these lands. The second deed he received from the plaintiff's counsel, by the written authority of Mr. Boulton. It was admitted that the plaintiffs' counsel had charge of the papers of the late George Macdonell, Esquire, and had this deed among such papers, and that George Macdonell had, during his life, written to Mr. Boulton for information, and that, in reply, he had sent him the deed. Both these deeds on the face of them, being more than thirty years old, were shown to have come out of Mr. Boulton's hands. Wharffe, it was admitted, at one time resided in Cornwall. It was objected that the evidence did not shew that these deeds came out of the proper custody; that Mr. Boulton should have been called, and that there was not sufficient evidence of the identity of the parties. Leave was reserved to move for a nonsuit on these points, and the plaintiff had a verdict.

In Michælmas term, *McLennan* obtained a *rule nisi* to enter a nonsuit, on the leave reserved, because the deed to Wharffe, and the deed from him to John and William Jacob, were improperly received in evidence.

Richards, Q. C., shewed cause. He cited *Rees* v. *Walters*, 3 M. & W., 527; Doe *Doe Jocob* v. *Phillips*, 8 Q. B. 158; *Doe* v. *Keeling* 11, Q. B., 884.

McLennan supported the rule.

DRAPER, C. J.—I am of opinion this rule should be discharged. The deeds in question were produced on behalf of the plaintiff, who claimed the estate, and who was, therefore the proper person to have the custody of them; and they came from the hands of a person with regard to whom there was some evidence that he was agent for the former owners of the property, and parted with the deeds in affirmance of the title of the purchasers from them.

In *Jacob* v. *Phillips*, Coleridge, J. observed "Evidence of the custody from which a deed thirty years old comes is given, not as a ground for reading the instrument for or against a party, but only to afford the judge reasonable assurance of its authencity," and in *Rees* v. *Walters*, Baron Parke said he rather thought it was for the judge to say whether a deed was produced from the proper custody or not, and that the court could not interfere, unless they though him wrong. Under the circumstances proved, which I think are as strong as in *Doe Earl of Shewsbury* v. *Kneeling*, we could not properly grant a nonsuit, and I see no sufficient reason to grant a new trial, in order that Mr. Boulton might be called to establish facts of which there is some evidence, and the existence of which the defendant has not ventured to deny.

Per cur.—Rule discharged.

CHANCERY.

(*Reported by* THOMAS HODGINS, Esq., M.A., *Barrister-at Law.*)

STEVENSON v. BROWN.

Partner—Assignment for benefit of creditors—Power.

One partner of a mercantile firm has no power, either during the existence or after the dissolution of a partnership, to make an assignment of the property and effects of the firm, to a trustee for the benefit of creditors.

The bill in this case was filed by William Stevenson against James A. Brown, Hiram Capron, and Matthew Crooks Cameron, setting forth that the plaintiff and the defendant Brown were partners in the firm of J. A. Brown & Co.; that difficulties had occurred between them; that the defendant Brown had thereupon, and in consequence of the alleged inability of said firm to pay its debts, made an assignment of all the partnership stock and effects to the other defendants as trustees for the benefit of creditors; that plaintiff had protested against such assignment, but that, nevertheless, the said defendant had let said trustees into possession and had ousted the plaintiff. The bill prayed that the assignment might be declared void and the defendants restrained from acting under it, and that the partnership might be wound up and a Receiver appointed.

Hodgins, for the plaintiff, cited the cases referred to in the judgment of the Vice-Chancellor.

McMichael & Fitzgerald, for the defendants, relied upon *Fox* v. *Rose*, 10 U. C. Q. B., 16, and *Burchart* v. *Draper*, 10 Ha. 453.

SPRAGGE, V.C.—The question is, whether one of two co-partners in business can make an assignment of the whole effects of the partnership to trustees for the benefit of creditors.

No English authority has gone this length, and the existence of such a power in one partner is not, it appears to me, in accordance with the principles upon which one partner is held to have authority to bind his co-partner as well as himself. Such authority is, as was said by Lord Wensleydale in *Ernest* v. *Nichols*, 6 H. of L. C. 417, a branch of the law of agency, and it was concisely stated by him, (*Hawker* v. *Bourne*, 8 M. & W., 710,) "One partner by virtue of that relation is constituted a general agent for another as to all matters within the scope of the partnership dealings, and has communicated to him, by virtue of that relation, all authorities necessary for carrying on the partnership, and all such as are usually exercised by partners in that business in which they are engaged"

In the case of *Fraser* v *McLeod*, 8 Gr. 275, I referred to several cases where the dealings of one partner are held to be beyond his authority and his co-partner not affected thereby. The English authorities go this length, that one partner may sell partnership goods, or transfer them in payment of a debt, and in one case, *Fox* v. *Hanbury* (2 Cox, p. 445) the whole of the goods of a partnership were so transferred, and upon trover brought against the purchaser the judgment was for the defendant. The judgment was given by Lord Mansfield, who said, "Each (partner) has a power singly to dispose of the whole of the partnership effects." This case was decided chiefly upon the frame of the action.

In the American Courts, however, there has been a conflict of decision upon the point. The reasons of Chancellor Walworth against such a power residing in one partner are forcible and, I think, conclusive. After enumerating instances of what a partner may do he proceeds, *Haven* v. *Hussey* 5, Paige, 30, "All these instances of authority, as well as that to make negotiable paper, flow from the principle that each is the agent for the whole. But for what is he such agent? For the purposes of carrying on the business of the firm, and because the authority to do the act is implied from the nature of the business. Now a transfer of all the effects of the firm for payment of its debts is a virtual dissolution of the partnership. It supersedes all the business of the firm as such. It takes from the control of each all the property with which such business is conducted. The purposes of the business then clearly do not require that such a power should be implied. What other reason is there for holding that by the contract of partnership it should be inferred. I do not think that the principle insisted upon is a true one, namely, that such a transfer is only invalid when it operates as a fraud upon the other partner, when, for example, it is made against his wishes, and to give preferences which he is unwilling to give. It strikes me that the principle upon which the invalidity of the principle is established lies deeper. I consider that neither during the existence nor after the dissolution of a partnership can such a transfer be made, because of want of power in any one partner to make it. A direct payment of money, or a transfer of property to an acknowledged creditor is an admitted and a necessary power during the existence of the partnership. We probably are compelled by authorities to go so far as to say that it is a necessary surviving power after a dissolution in whatever way that is effected. All that is requisite to test the transfer is the amount of debt and the extent of the fund assigned. But upon the assignment of the property of a firm to a trustee a complication of duties and res-