

to that date plaintiff Greig and defendant were co-partners carrying on the business which was subsequently carried on by plaintiffs Greig and Stewart.

It appears from the statement of claim that all the items of alleged indebtedness in respect of which judgment has been given in favour of plaintiffs were items incurred before 12th February, 1902, and could not in any sense be said to be liabilities incurred to the present partnership. Plaintiffs therefore do not shew on the face of their statement of claim that there is a cause of action by them as partners against defendant in respect of these items. It seems equally plain upon the evidence that plaintiff Greig could not maintain the claim individually, for, when these items of alleged indebtedness were incurred, plaintiff Greig and defendant were in partnership, and the moneys which were paid out, and in respect of which defendant was chargeable in the partnership accounts, would properly form part of the accounting between plaintiff Greig and defendant upon the adjustment of the partnership accounts between them. But on 12th February, 1902, and as preliminary to plaintiffs Greig and Stewart forming their co-partnership, defendant sold his interest in the partnership business and the assets to plaintiff Stewart. Thereupon plaintiff Greig and defendant dissolved partnership. The effect in law, therefore, was that the rights of plaintiff Greig and defendant respectively were to have the partnership accounts taken and the business wound up and adjusted.

But defendant having sold and transferred his interest to plaintiff Stewart, the latter was in law entitled to the same right as against plaintiff Greig. Instead, however, of plaintiffs exercising their rights in that regard, they agreed to form and did form their present co-partnership. The instrument of agreement under which defendant transferred his interest to plaintiff Stewart is dated 12th February, and shews upon its face that up to that date plaintiff Greig and defendant were partners, and that they had agreed upon a dissolution. It also shews that defendant had agreed to sell to plaintiff Stewart his interest in the business for . . . \$4,500 cash; and it also goes on to say that the present plaintiffs agreed to continue the business as partners and to assume the payment of all the debts and liabilities of the former firm and to indemnify defendant against the debts and liabilities. It is, in fine, an agreement taking effect, as