

might be declared entitled to a moiety of the profits of all goods sent by the plaintiff and defendant, or by the defendant separately, to Russia, consigned to A & Co., or to any other person; and that an account might be taken of all goods sent upon the joint account, or by the defendant upon his private account, to such consignees. The defendant put in an answer which admitted the agreement, but denied that its effect was to prohibit him from so trading on his separate account. A motion was subsequently made, calling upon the defendant to produce his books and papers in which the accounts were contained. Lord Eldon put the result of the case thus: The plaintiff contends that the meaning of the partners was that no trade should be carried on with Russia except on the joint account; alleging that the defendant did, in fraud of that agreement, and concealing the fact, carry on a separate trade with various persons, insisting that this conduct gave the plaintiff a right to a moiety of the profits. The course taken by the defendant was not to demur or plead, but to state by answer that, according to the true construction of the letters containing the terms of the agreement, he had full liberty to carry on this separate trade; that afterward, not choosing to rest upon that any longer, he carried it on with the leave of the plaintiff. His Lordship thought it was by no means clear as to the conclusion of fact that the defendant had any right to trade with other persons, but was of opinion that he had no right to trade separately with A. & Co. He mentioned, however, that if the answer had contained a clear, positive, unequivocal averment of the plaintiff's acquiescence and permission, the question whether the defendant was bound to make the discovery would fairly arise. This decision is useful only by reason of the side light which it throws upon the question under discussion.

*Burton v. Wookey* (Mad. & G. 367) is an authority for the proposition that a person who stands in a relation of trust or confidence to another shall not be permitted, in pursuance of his private advantage, to place himself in a situation which gives him a bias against the due discharge of that trust or confidence. The plaintiff and defendant, who keep a shop, were in partnership to deal in *lapis calaminaris*. Instead of paying ready money the defendant sup-

plied to the sellers goods from his shop, and in accounting to his partner charged as though he paid cash. "The defendant," said Vice-Chancellor Leach, "stood in a relation of trust or confidence toward the plaintiff, which made it his duty to purchase the *lapis calaminaris* at the lowest possible price; when in the place of purchasing the *lapis* he obtained it by barter of his own shop goods, he had a bias against a fair discharge of his duty to the plaintiff;" an account was decreed against the defendant, viz, an account of the profit made by the defendant in his barter of the goods. A temptation, however, to the abuse of partnership property is not sufficient to induce the Court to interfere by injunction. Thus when all the partners in a publication except one were also partners in a rival publication, an injunction, to restrain the using of the effects of the former partnership to assist the latter in consideration of an annual sum, was refused. But in this case there was an agreement permitting the use on those terms: *Glassington v. Thwaites*, 1 S. & S. 124.

The question with which we are concerned was definitely raised in *Russell v. Austwick* (1 Sim, 52). In that case A, B, C, and D, were common carriers carrying from L to F, a separate portion of the road being allotted to each. It was stipulated between them that no partnership should exist *inter se*. A for himself and the other partners agreed with the Mint to carry coin from L to F, and afterwards made another agreement with the Mint to carry other coin to places not on the road. B, C, and D, upon discovering this circumstance, claimed a share in the profits of the latter agreement. In carrying out this latter agreement it would be occasionally necessary to proceed for a short distance along the road from L to F. On behalf of the defendant it was argued that this was not a case of partnership as between the parties, though it might be as regards the public. The plaintiffs on the other hand admitted that the common concern had no connection with the provincial roads which were the occasion of the second agreement, and it was not upon that ground they claimed to participate in the profits. But they insisted that the second agreement was entered into by the officers of the Mint as connected with and a continuation of the first agreement, and in confidence of the responsibility of the parties to the first agree-