

Eng. Rep.]

HADLEY V. McDOUGALL—COMMONWEALTH V. W. R. LEEDS.

[U. S. Rep.]

farm, it was a gift of a limited interest only; that the widow was bound to keep up the stock so long as her interest continued, and in the event of any part having been sold, she was entitled to the income arising from the investments of the proceeds of sale.

HADLEY V. McDOUGALL.

Practice—Production of documents—Joint possession—Entries in partnership books of individual transactions of one partner.

A person who had carried on certain business transactions on his own account, and had made entries relating to them in the partnership books of a firm of which he was a member, was made defendant to a suit for an account of those transactions:

Held, (reversing the decision of *MALINS, V. C.*) that no order could be made for the production of the partnership books, as one of the joint owners of them was not a party to the suit; but that the plaintiff's proper course was to amend his bill so as to compel the defendant to set forth copies of the entries in question, and then to obtain production of the books themselves at the hearing by serving the defendant's partner with a *subpoena duces tecum*.

[20 L. T. N. S. 379, L. J.]

This was an appeal from a decision of *MALINS, V. C.* The bill, which was one for an account of transactions relating to a contract made with the defendant for the supply of saddlery to the French Government during the late war, alleged that the plaintiff was interested in the contract.

By his answer the defendant stated that he was in partnership with his father, and that the accounts relating to the contract in question were entered in the partnership books, although he (the defendant) was solely interested in the contract and it was not a partnership transaction.

The defendant having declined to produce the partnership books on the ground that his father refused to allow them to be produced, a summons was taken out to compel production, and an order to that effect was made in chambers, the defendant to be at liberty to seal up the parts of the books not relating to the transactions in question.

The Vice-Chancellor having confirmed this order the defendant appealed.

Glass, Q.C. and *W. Pearson*, in support of the appeal.—We contend that this order cannot be sustained. *Murray v. Walter, Cr. & Ph. 114*, and *Reid v. Langlois, 1 Mac. & G. 827*, show that where a document is not in the exclusive possession of the defendant, but in the possession of somebody jointly with him, the production cannot be ordered. In the latter case Lord Cottonham says that that "is a well established rule, and cannot be considered as now open to dispute." [Sir Roundell Palmer, Q.C., as *amicus curiæ*, referred to *Taylor v. Rundell, Cr. & Ph. 104*, as showing that a defendant who has not exclusive possession of documents may be ordered to give in *ipsisimis verbis* any entries relating to the subject matter of the suit.] The ground of the rule is that the court cannot order a man to do what he has not legal power to do. They also referred to *Warrick v. Queen's College, Oxford (No. 2) L. Rep. 4 Eq. 254*.

Cotton, Q.C. and *F. Harrison*, for the plaintiff. We contend that the appellants cannot be allowed to prevent the production of the parts of the partnership books containing entries relating to his son's private business transactions, after

having allowed his son to use the partnership books for such purposes. *Reid v. Langlois, (sup.)* is distinguishable from this case, for there the entries of which it was sought to compel production related to partnership matters; while here they only relate to the private accounts of one of the partners.

Without calling for a reply.

Lord Justice JAMES: The consequences would be very serious if we were to depart from the settled rules of the court. It is a settled rule that no order can be made for the production of documents which are in the possession of two or more persons, when one of the joint owners is not before the court. The plaintiff may amend his bill and compel the defendant to set out in his answer all the entries which he desires to see, and he can then require the books themselves to be produced at the hearing by means of a *subpoena duces tecum*. The order of the Vice-Chancellor must therefore be discharged. The costs of both sides will be costs in the cause.

Lord Justice MELLISH concurred.

UNITED STATES REPORTS.

QUARTER SESSIONS, PHILADELPHIA.

COMMONWEALTH EX REL. DENNIS SHEA ET AL. V. WM. R. LEEDS, SHERIFF.

It is a conspiracy for two or more parties to act in concert in unlawful measures to enforce the Sunday Liquor Law. As by inducing a tavern-keeper to furnish beer on Sunday, by artifice or persuasion.

The mere admission of visitors into a tavern on Sunday is not an infraction of the Sunday Law, unless liquor is actually sold.

[Opinion by PAXSON, J., May 4, 1872.]

This case was heard upon *habeas corpus*. The relators, Dennis Shea, Frank N. Tully and Charles Hoolika, were charged with conspiracy by one G. A. Bartholott. The latter keeps a drinking saloon, and it is alleged that the relators were engaged with others in a series of prosecutions against liquor dealers for violation of what is known as the Sunday Liquor Law. The facts of this case, as they appeared at the hearing upon the writ of *habeas corpus*, were substantially as follows:

On Sunday, the 24th of March last, the relators, Shea and Tully, called at the house of the prosecutor. The front door, window, and back entry were closed, but they obtained admission through a private entrance. There was no one in the bar-room when they entered but the prosecutor and one of his boarders. They asked the prosecutor for beer. He refused them, saying, "I don't sell beer on Sunday." After some persuasion, and being told by Shea that a friend of his (the prosecutor) had told them if they would call there they could get some beer, the prosecutor gave Shea and Tully two glasses of beer, repeating, however, his former declaration that he could not sell beer on Sunday. They then each took a piece of bread and wanted to pay for that; but this, also, was declined, and the prosecutor finally ordered them out of his place. Up to this point he did not know the relators.