

# Supreme Court---Second Grand Division.

JANUARY TERM, 1861.

## ABSTRACT.

JAMES BAILEY,  
*vs.*  
ROBERT MOORE. }

### DEFENDANT'S BRIEF.

The bill, on its face, shows that on the first day of August, 1856, the partnership was ended by an agreement between the parties that the defendant should have all the partnership property and pay all the debts of the firm, and pay the plaintiff \$3,200 out of the goods then on hand. *This* agreement was, in effect, a contract of sale.

This agreement (it is submitted) renders a discovery, accounting and settlement, (and consequently Chancery Jurisdiction,) *unnecessary*, and if it is not complied with, the proper remedy would be *a suit at law* on it for damages, and not a bill in chancery to settle the partnership. *Stout vs. Whitney*, 12 Ill., 227; *Gaw on Partnership*. 75 (bottom.)

WHEAT & GROVER,  
*Attorneys for Defendant.*

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Depts Bus

Pailey

or

Moore

Filed June 18/61  
L. Leland  
clerk

Filed Jan 14 67  
Wm. L. Curney  
cl

THOMAS R. MOORE  
27 JAN 1867

DEPARTMENT OF THE INTERIOR

of the Department of the Interior. All persons who wish to secure a certificate of title to the land in the name of the United States, and who are entitled to the same, are required to file a petition with the proper authorities, and to pay the fee thereon.

The petition should be filed with the proper authorities, and should contain a statement of the facts of the case, and of the grounds on which the petition is based. The petition should also contain a statement of the names of the persons who are interested in the land, and of the names of the persons who are entitled to the same.

AMERICAN LAND OFFICE  
WASHINGTON, D. C.

# SUPREME COURT.

SECOND DIVISION—JANUARY TERM, A. D. 1861.

JAMES BAILEY, *Plaintiff in Error*,  
vs. } Error to Adams.  
ROBERT MOORE, *Defendant in Error*.

- p. 1 On the 4th of June, 1858, plaintiff in error filed his Bill in Chancery, in the Circuit Court of Adams County, against defendant, alleging :
- p. 1. That on or about the 1st day of December, 1855, a verbal agreement of partnership was entered into between them, by which they were as equal partners to buy and sell goods, under the name and style of Moore & Baily, as long as they should agree.
- p. 2. That they carried on said business until about the 1st of August, 1856, since which time the business has been discontinued.
- p. 2. That about the first of August, 1856, propositions were made for the settlement of said business.
- p. 2. It was proposed and assented to at that time, that the plaintiff should receive from said firm the sum of \$2560, that being the amount of stock he had originally put into the concern—and 25 per cent. added—and to take in payment of said sum such goods and accounts of said firm as he might select; In case plaintiff took more in amount than said sum, then he was to pay debts of said firm equal to such excess.
- p. 3. Defendant to retain all the partnership property, and to pay all the debts of the firm.
- p. 3. That said proposed settlement has never been carried out, and that there has been no settlement of said partnership business.
- p. 3. That said Moore has wholly failed and refused to carry out said proposition, or settle up said business, although said plaintiff has ever been willing and ready to settle the same.
- p. 3. That since the said 1st day of August, plaintiff has been compelled to pay, and has paid, a large amount of debts of said concern amounting to \$950.
- p. 3. That said Moore since said time has collected debts of said firm amounting to a large sum, the amount of which is not known to plaintiff.
- p. 3. That said defendant wrongfully retained in his hands a large amount of notes and accounts belonging to said firm.
- p. 3. That during the existance of said partnership business, said defendant collected a large sum, the amount not known to plaintiff, of the debts due said firm, which he appropriated to his own use, and never did account for the same to said firm.
- p. 4. That upon a just settlement there is a large amount, (the precise sum not known,) due to plaintiff.
- p. 4. That plaintiff has frequently applied to defendant for settlement, and for an exhibit of said partnership matters, and that defendant refuses to make any settlement, but still continues to collect said effects, and to apply the same to his own use.
- p. 4. Prays answer discovery that an account may be taken, and partnership settled &c. *(oath waived)*  
Defendant filed demurrer to bill, June 5th, 1858, alleging want of equity.  
On the 24th of June Court rendered a decree sustaining the demurrer, and dismissing said bill at the cost of plaintiff.

## ERRORS ASSIGNED.

1. The Court erred in sustaining said demurrer.
2. The Court erred in dismissing said bill.

BUCKLEY & DELANO, *Attorneys for Plaintiff in Error*.

## BRIEF OF POINTS ~~RETURNED~~

1. The bill shows a partnership formed, partnership transactions and accounts, that no account has ever been taken or ballance struck, and that no settlement of the partnership transactions has ever been made. Equity has exclusive jurisdiction—a suit at law could not be maintained.
  - Davenport vs. Gear, 24 Scam. 498.
  - Chadsey vs. Harrison, 11 Ill. 153.
  - Gow on Part. 74.
  - Collyer on Part. 152, 153.
  - 1 Story on Equity, 615, 616. *(pages)*
  - Westerlo vs. Evertson, 532, *12 Wend 532*
  - Foster vs. Allenson, 2 Durn. & East. 480.
  - Philips vs. Lockhart, 1 Alabama 524.
  - Rogers vs. Rogers, 1 Hall 391.
  - Atwater vs. Fowler, 1 Hall 180.
  - Haskell vs. Adams, 7 Pick. 59.

2. But even if assumpsit would lie, the remedy is doubtful and difficult; nor can adequate relief be obtained except by discovery from the defendant, and through the peculiar powers of a Court of Equity.

In all such cases Courts of Chancery will entertain full concurrent jurisdiction and give adequate relief.

Bracken vs. Kennedy, 3 Scam. 563.

1 Story's Equity, sec. 443 663, 683.

Gow on Partnership, 93.

~~Collyer on Partnership, 93.~~

Peck et. al. vs. Bramin et al. 2 Blackf. 142.

Cummins vs. White et. al. 4 Blackf. 359.

Am. Ins. Co. vs. Fisk, 1 Paige 90.

~~Teague vs. Stewart, 2 Stewart 120.~~

~~Reithorn vs. Johnson, 10 Johns. 587.~~

King vs. Baldwin, 17 Johns. 384.

Gallet vs. Hall, 13 Conn.

Kickman vs. Stout, 2 Leigh 63

Equity will give relief unless the remedy at law be as complete and effectual as in equity.—Mitf. Pl. 146.

Frazer vs. Miller, 16 Ill. 51.

Morris vs. Thomas, 17 Ill. 115.

3. In all matters of account, where discovery is sought, the jurisdiction for discovery will carry jurisdiction for relief and Courts of Equity will retain bill and give relief.

1 Story's Equity, sec. 67, 71.

Aldrich vs. Sharp, 3 Scam. 264.

Mason vs. Piggot, 11 Ill. 89

Armstrong vs. Gilchrist, 2 Johns. Cas. 424.

King vs. Baldwin, 17 Johns. R. 384.

~~Leroy vs. Reeder, 1 Johns. Cas. 417~~

~~Hebbum vs. Dundas, 1 Wheat's R. 197.~~

Ludlow vs. Simmond, 2 Cain Err. 38, 51.

Russell vs. Clarke's Executors, Cranch 69.

Corp. Carlisle vs. Wilson, 13 Vesey 278.

*Power v Reeder 9 Dana 9  
Sunviddie v Kerley 6 J. J. Marshall 501  
Cor. Carlisle v Wilson 13 Ves 278*

Bailey  
 m<sup>3</sup> Err to Adams  
 Moore

Abstract of

Filed June 18-186

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Filed Aug 8/61

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