

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Andrew Gibson Corbett v. David Munro,
from the Supreme Court of the colony of
Victoria; delivered Tuesday, 12th June 1877.*

Present :

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

THEIR Lordships see no reason for reversing the judgment of Mr. Justice Molesworth, which was given in this case.

The suit was brought for the purpose of dissolving a partnership in a machinery business which the Plaintiff alleged had been carried on by him and the Defendant. The Plaintiff stated in his bill that ever since the month of March 1871 the business had been carried on "upon part of
" certain land and premises purchased on
" account of the said partnership, but con-
" veyed to the Defendant, situated in Franklin
" Street, in the city of Melbourne." He also said in the 11th paragraph, "The Defendant
" now alleges that the premises in Franklin
" Street herein-before mentioned were pur-
" chased by him on his own behalf; but in
" the accounts kept by the Defendant, and in
" the statements rendered by him, he debited
" the partnership with interest at 12½ per cent.
" on the purchase money of the said premises,
" and credited the partnership with the rent
" received by him from part of the said premises
" which was let to tenants." He then prays that the partnership between the Plaintiff and

Defendant may be dissolved by the decree of the Court, and that it may be declared that the land and premises in Franklin Street formed part of the partnership assets.

The Defendant, in his answer, denied upon oath each and every of the allegations contained in the first paragraph of the bill, (the one alleging that there was a partnership between the parties,) and said "no partnership or agreement for partnership has ever existed or been entered into between the Plaintiff and myself, and we never were and are not now partners as alleged in the said bill. In the month of March 1870 the Plaintiff entered my employ as clerk and salesman, at a salary of 3*l.* per week, which said salary was increased by me in the month of April 1871 to 4*l.* per week, and in the month of January 1874 to the sum of 5*l.* per week, and in order to stimulate the Plaintiff to use his best exertions, I promised to allow him such sums of money by way of bonus as I should think proper from time to time, reserving to myself, however, the power to withhold entirely any such bonus." Then in the 11th paragraph of his answer he says,— "I do allege, as the fact is, that the premises in Franklin Street in the said bill mentioned were purchased by me on my own behalf; but save as aforesaid, I deny each and every of the allegations in the 11th paragraph of the said bill." Upon these statements the learned Judge directed the following questions of fact to be tried by a jury, that is to say, "whether the Plaintiff was, as between him and the Defendant, a partner in the machinery business in the bill in this cause mentioned." Both parties were examined, and the jury found as a fact that a partnership did exist. That finding of the jury decided the question of partnership, and is not disputed. The only ques-

tion that then remained for the Judge was whether the Franklin Street property had been bought for the purpose of the partnership or on the sole account of the Defendant. He decided as a fact that the property had been purchased for the benefit of the partnership, and at page 70 of the Record his reasons are stated. He says:—

“ In this case, as to the fact of partnership
“ between Plaintiff and Defendant, there was a
“ direct conflict in their evidence, which I sent
“ for trial by jury; the matter of the Franklin
“ Street property being purchased for the
“ partnership was referred to in the prayer of
“ the bill, and was a subject of conflict in
“ pleadings and evidence; when I directed the
“ issue I was not asked to send a separate issue
“ as to it. The jury have decided upon the
“ issue of partnership that the Plaintiff should
“ be believed against the Defendant. That
“ finding has not been controverted by the
“ Defendant; and taking that opinion as true
“ of their relative credibility, and weighing
“ their evidence of the circumstances of the
“ purchase by it, the Plaintiff’s evidence as to it
“ should be relied upon.”

It appears to their Lordships that there is no objection to that part of the learned Judge’s statement. The Plaintiff had made an allegation that there was a partnership; the Defendant in his answer had sworn that there was no partnership, and that the Plaintiff had been merely employed as a salesman at a certain salary. The issue went down to be tried by a jury which of those statements was correct, and upon the evidence of the Plaintiff and of the Defendant the jury came to the conclusion that the Plaintiff’s account was correct, and that the Defendant’s account was not correct. Upon that finding the Judge says, with reference to the other statements in the Bill and in the

answer, I am inclined to give greater weight to the evidence of the Plaintiff than to the evidence of the Defendant who has sworn to a fact which the jury did not believe. Then he goes on,—“The general presumption is, that “property used by a partnership belongs to it.” This may be too broadly expressed, considering the counter presumption arising in this case from the fact that the purchase was made with the money of the Defendant; but if that statement were omitted it would not affect the rest of the judgment, which, in their Lordships’ opinion, would still contain grounds sufficient to support the general conclusions.

The property in Franklin Street consisted of a yard which was used for the purpose of the machinery business, some workshops which were let out, and it also included a dwelling-house which was occupied by the Plaintiff, and for which the Plaintiff paid rent. The rent paid by the Plaintiff and the rent paid by the occupiers of the workshops would have been rent paid for the benefit of the Defendant, if he was the sole purchaser on his own account or for the benefit of the firm, if the Defendant purchased on account of the firm.

These rents appear in the accounts, D, X, Y, and Z. It is said by the Defendant that these were accounts which he kept for his own purpose, to enable him to know how much rent he was to charge to the firm, because he was to charge the firm rent calculated at the rate of $12\frac{1}{2}$ per cent. on the purchase money. The question is, did he charge the firm for rent calculated at that rate, or did he, as the Plaintiff says, charge $12\frac{1}{2}$ per cent. for the use of the capital with which he purchased the property for the benefit of the firm. If he purchased it for the firm, the firm would have to pay him interest for the use of his capital. The exhibit

"D" is headed merely "Franklin Street property in account. Interest till 30th June 1871." That might be either an account of the Defendant for the purpose of ascertaining how much rent he was to charge calculated at the rate of $12\frac{1}{2}$ per cent. on his outlay, or it might be an account kept for the purpose of knowing how much interest was to be charged to the firm. Exhibit "X" is headed "Franklin Street till 31st December 1871." Then the next account, "Y," is headed "Franklin Street property in account with A. G. Corbett;" and account "Z" is headed in the same manner, "Franklin Street property in account with A. G. Corbett. Interest at $12\frac{1}{2}$ per cent. till 31st December 1872." The Defendant says, "This heading shows that it was an account which I was keeping between the Franklin Street property and myself only," but then it turns out that the business was carried on in the name of "A. G. Corbett," and notwithstanding the heading it might be an account kept for the purpose of showing how much interest the firm were to pay, or an account which was kept by the Defendant personally for the purpose of ascertaining how much he was to charge for rent calculated at the rate of $12\frac{1}{2}$ per cent. on his outlay. But it is the Plaintiff who produces these accounts. The Defendant says he never rendered them; but there is no evidence to show how, if he kept them as his own private accounts, the Plaintiff got possession of them. The Plaintiff produces them as part of his evidence, and says that the accounts were delivered. On the other hand, the Defendant says they were my own private accounts. I never rendered them to the Plaintiff, and I never knew he had possession of them till they were produced in Court. Then there was the profit and loss account, in which, if the Defendants case

were true, the amount would have been charged to the firm as rent and not as interest; but in the profit and loss account, that is the machinery account, which shows how much profit or loss was made by the firm, it is charged not as rent due from the firm at the rate of $12\frac{1}{2}$ per cent. on the Defendant's outlay, but as interest. The learned Judge,—looking at the conflict of evidence between the Plaintiff and the Defendant; looking to the fact that the jury believed the Plaintiff's account of the transaction in preference to that of the Defendant; looking also to the general manner in which the accounts delivered by the Defendant, (and the Judge finds that they were delivered,) dealt with the interest upon the purchase money of the Franklin Street property, and the manner in which the Plaintiff was charged with the rent of the dwelling occupied by him,—was led to the conclusion that the property was purchased for the firm. It appears to their Lordships that, for the reasons given by the Judge, excluding the remark that “The general presumption is, “that property used by a partnership belongs “to it,”—he was fully warranted in coming to the conclusion at which he arrived upon the question of fact. They therefore see no reason to dissent from the finding of the learned Judge that the property was purchased for the firm. Their Lordships think that the Judge was right in expressing at that stage of the cause an opinion on that point, which was a point at issue between the parties in the cause, and which, although not sent down to a jury, had to be decided by himself.

Under these circumstances their Lordships will humbly recommend Her Majesty to affirm the decision of the lower Court, with the costs of this Appeal.