JOHNSON v. KING.

NASHVILLE, DECEMBER, 1845.

GARNISHMENT BY INDIVIDUAL CREDITOR AGAINST PARTNERSHIP DEBTOR. An execution creditor of one member of a partnership is not entitled, in a garnishment proceeding, to a judgment against a debtor to the partnership. (Cited in Pennington v. Bell, 4 Sneed, 202.)
[Cited in: 1 Pickle, 719.]

Johnson recovered a judgment against King, for $260, and *fieri facias* was returned nothing found, and Scott served with garnishment to answer what she owed King; she stated that she owed King nothing, but that she owed King & Donoho, partners, $100 by promissory note.

At the July term, 1845, of the circuit court of Montgomery county, M. A. Martin, J., presiding discharged the garnishment. Johnson appealed.

Johnson, for plaintiff in error.

Kimble, for defendant in error.

Reese, J., delivered the opinion of the court.

The question in this case is whether an execution-creditor of one member of a partnership is entitled to a judgment, in a garnishment proceeding, against a debtor to such partnership. This question we decide in the negative. Such debt belongs to, and is assets of, the partnership, primarily liable to the satisfaction of partnership debts.

If a judgment were given at law upon the garnishment [234] proceeding against the debtor to the partnership, to satisfy the separate liability of one of the partners, it would unjustly abstract a portion of the fund primarily belonging to the objects and purposes and creditors of the concern. And in such garnishment nothing can be done but to give or to refuse the judgment. The court has no power to impound the debt until, by the adjustment of all the partnership affairs, it shall appear whether the separate debtor or the execution-creditor has any, and what interest in the general surplus, or in the partic-

ular debt so impounded. Such proceedings can not take place at law.

Let the judgment of the circuit court be affirmed.

NOTE. The general rule would seem to be, in equity, that the joint creditors have a priority of right to payment out of the joint estate, and the separate creditors a like right of priority to payment out of the separate estate, and the surplus, if any, is divisible among the other class of creditors. Story on Part. 516; 3 Kent, 65; 5 John., 66; 22 Pick., 450; 8 Ves. 118. See 2 Humph., 459; M. & Y.

MARSHALL v. HILL.

NASHVILLE, DECEMBER, 1845.

CHANCERY JURISDICTION—VOLUNTARY BOND. Equity will not relieve after judgment at law, against a bond of indemnity, voluntarily given by a father to the late employer of his son, for supposed losses occasioned by the latter, without misrepresentation, fraud or circumvention.

This bill was filed in the chancery court at Carthage, by Marshall against Hill. It was heard on bill, answer, replication, and proof, at the August term, 1845, by Chancellor Ridley. He dismissed the bill, and the complainant appealed.

Caruthers, for complainant.

Fite, for defendant.

He cited 4 Yerg. 68; 3 P. W. 223; 1 Story's Eq. Jur., sec. 251.

Reese, J., delivered the opinion of the court.

[235] The complainant made to the defendant his bond for the payment of the sum of $1,500. The defendant sued the complainant at law upon this bond, and recovered judgment. The complainant filed in the chancery court his bill to enjoin perpetually the collection of the amount so recovered at law. It appears from the bill, answer, and proofs that the son of complainant was for the term of two years a clerk in the mercantile establishment for the defendant, in the city of Nashville, at a salary of $300 per annum. After this period he went into the employment, as clerk, of another establishment in the same city. In this latter establishment he was soon detected in the daily abstraction and embezzlement of small sums of money amounting in the aggregate, as he confess-