

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of John Colclough v. Richard Johnson and others, from the Supreme Court of Victoria; to be delivered April 7, 1876.

Present :

SIR JAMES W. COLVILLE.
SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

THE Bill in this case was filed by the Respondents, Richard Johnson and Mary Ann, his wife, and Ellen Colclough against John Colclough (the Appellant), Richard Colclough, Henry Hayward, and Catherine, his wife. The principal allegations in it which relate to the disputed questions of partnership are, that in 1852 the three sisters, Mary Ann, Ellen, and Catherine emigrated from Ireland to the Colony of Victoria, and acquired there some little property as laundresses and seamstresses; that in December, 1854, their brothers John and Richard came out to join them; that shortly afterwards, viz., in February, 1855, these five persons set up a partnership business as grocers and tea-dealers, which was carried on under the style of John Colclough and Co. at first, in premises erected upon a piece of land purchased in the names of the three sisters, and known as No. 165, Clarendon-street, Emerald-hill; and after 1859, partly upon those premises and partly and principally upon premises acquired by the partnership in that year, and known as No. 167, Clarendon-street; that on the 10th October, 1861, Mary Ann intermarried with Richard Johnson, and

on that occasion drew the sum of 50*l.* out of the partnership business, and subsequently received a further sum of 50*l.* from John Colclough, but save the said sums, and save that the said Plaintiff Mary Ann was maintained until her marriage out of the said business, she never received any portion of the profits of the said business which were allowed to accumulate in the said business for the benefit of all the parties therein; that in February, 1862, Catherine intermarried with the Defendant, Richard Hayward, and on that occasion drew the sum of 300*l.* out of the business; that Ellen had always been, and still was, assisting in carrying on the business, and had always been maintained out of it, but save as in the Bill mentioned had received no portion of the profits; that in December, 1868, Richard, with the consent of all the other partners, retired from the partnership, and received the sum of 2,500*l.* out of the partnership assets in full satisfaction of all his claims as partner. The Bill further alleged that, at the commencement of the partnership in 1855, it was verbally agreed that the three sisters should allow the shop and premises, No. 165, Clarendon-street, to be used for the purposes of the business, but that the same should remain the property of the three sisters, and form no part of the partnership assets; that the financial business of the partnership had been principally managed and the accounts kept by John Colclough, and that he had made considerable purchases of real estate and other investments out of the partnership assets; and claimed the benefit of those purchases and investments for the partnership. And, finally, after stating that John Colclough had recently repudiated the partnership, and claimed to be duly entitled to all the assets and property of the said business, and had refused to account—the Bill prayed for a declaration that a partnership had subsisted between the Plaintiffs Mary Ann and Ellen, and the Defendants John and Richard Colclough, and Catherine, from the month of February, 1855, until the retirement of Richard Colclough, and thenceforward between all the parties except Richard; that the partnership thus subsisting might be dissolved, and the accounts taken; and that John Colclough might be declared to be a trustee for the partnership of all the real estates

and mortgage securities purchased and acquired by him as before stated in his own name.

The case, therefore, made by the Bill touching the partnership, was that it had continued without break or intermission, except by the retirement of Richard; and that Ellen up to that event was entitled to only a fifth, and afterwards to only a fourth share therein.

The joint answer of all the Defendants set up, in effect, the following defence. It stated that a few months after the arrival of the brothers in the Colony, it was arranged between them and their sisters that they should purchase a piece of land at Emerald Hill, and erect upon it a shop and dwelling-house, and that John Colclough, who had had previous experience of business in Ireland, should open a grocery business in the shop so to be built; that all the brothers and sisters should live together, and that Richard and the three sisters should render such assistance in the business, or in household matters, as they could; that the three sisters contributed their savings, amounting to 175*l.*, and the two brothers the sum of 50*l.*; that a piece of land was purchased in Clarendon-street, Emerald Hill, and paid for partly out of the money so contributed, and partly out of the subsequent takings of the business, and the rest of the money employed in erecting a shop and dwelling-house (being the premises No. 165) and in starting the business; that the purchase of the land was made in the names of the three sisters, and conveyed to them as tenants in common, in order to secure them from loss; that John Colclough, after the erection of the premises, commenced business with the assistance of the three sisters, Catherine assisting actively in the shop, and the other two attending almost entirely to the household duties; that after a short time John was joined by his brother Richard, who had taken a situation for a few months to learn the business, and thereupon the two brothers continued to carry on the business with the assistance of the three sisters; that the style of "John Colclough & Co." was not adopted until shortly before the marriage of Catherine Hayward, when the three sisters had ceased to have any interest in the business—if they ever had any real interest; that it was intended, when the piece of land was bought, and the shop and dwelling-house erected thereon, that it should be the property

of the three sisters, and that the shop should be used for the business; and that there never was in terms, or otherwise than as aforesaid, any agreement or proposal for a partnership between the brothers and sisters. And the answer submitted to the judgment of the Court, whether, under the circumstances stated, any such partnership ever existed? It then stated that the premises at No. 167, Clarendon-street, were purchased in 1859 by John Colclough for his own benefit out of the profits of the business, with the consent of Richard and the three sisters; that on the occasion of Mary Ann's marriage it was agreed between John and her that she should receive the sum of 250*l.* for her share in No. 165, Clarendon-street, and for her assistance in the business and housekeeping; that she had since, with her husband's concurrence, conveyed to John in fee all her individual third part and share in those premises; and submitted that if she ever was a partner in the business, she ceased to be so on her marriage.

It then stated a similar arrangement with Catherine Hayward on her marriage; and as to Ellen, that it was agreed between her and John, about the time of Catherine's marriage, that she also should receive the sum of 300*l.* for her share in the land and premises, and for her assistance as aforesaid; that she was accordingly made a party to the deed of conveyance of No. 165 from the three sisters to John, but had recently refused to execute the same, or to receive the 300*l.* and interest thereon; and submitted that if she ever was a partner in the business, she ceased to be so or to have any longer an interest therein at the time of the marriage of Catherine. The answer then admitted that, after the marriage of Catherine, John and Richard continued to carry on the business in partnership, but stated that the partnership was dissolved by the mutual consent of the two brothers—none of the Plaintiffs being consulted about the dissolution, or the payment of the 2,500*l.*; or even either consenting or objecting to the terms on which the dissolution took place. The rest of the answer was principally addressed to that part of the Bill which related to the purchases and investments made by John, and is not now material.

The facts proved, which will be afterwards considered, do not altogether support the case made by

the Plaintiffs or that made by the Defendants. But it is, in their Lordships' opinion, desirable thus to state the substance of the pleadings, because they show what each party at the commencement of the litigation considered to be his or her legal rights.

The cause was first heard by Mr. Justice Mollesworth. His Decree declared that a partnership subsisted between the three sisters and the two brothers, in equal shares, from the establishment of the business in 1855 until the 10th day of November, 1861, when it was determined by the marriage of Mary Anne Johnson. It further declared that Mary Anne Johnson had before her marriage agreed to take the sum of 250*l.* for all her claims against the Defendant John Colclough, including her interest in the partnership premises, and business; that the Defendant had afterwards agreed to increase that sum to 300*l.*; and that he was then liable to pay her the sum of 200*l.* balance of that sum, and interest thereon at the rate of 8 per cent. per annum from the date of her marriage, in lieu and discharge of her claim upon him and the property of the partnership; and it dismissed the Bill, so far as regarded Johnson and his wife, without costs, and without prejudice to the rights of the Plaintiff Mary Anne, as before declared. As regarded Ellen, it declared that she was entitled to a one-fifth share or part of the said partnership property as it was on the 10th of October, 1861, and directed an account accordingly. It declared that the three sisters were each entitled to an undivided third part or share in the premises No. 165 in Clarendon-street, but were not entitled to charge the partnership, whilst it subsisted, for the use and occupation thereof. It, however, directed the Master to inquire and report what was a fair occupation rent to be charged to John Colclough for the use of these premises since the 10th of October, 1861, up to the date of the Decree. And it further declared that the premises No. 167 in Clarendon-street were to be deemed and taken to be part of the partnership assets; but that any other purchases or loans made by John Colclough should be deemed to have been made on his separate account, he being chargeable in account with all such sums as he might have drawn from the partnership property for such purchases or loans.

John Colclough submitted to this Decree, but the Plaintiffs appealed against it to the full Court of the Colony sitting *in banco*. The Decree of the Appellate Court declared that a partnership in the business in the Bill mentioned subsisted between the three sisters and two brothers in equal shares, from May, 1855 to the 10th of October, 1861, the date of Mary Anne's marriage; that thenceforward a partnership in the said business subsisted between Ellen, John, Richard, and Catherine, in equal shares, until the marriage of Catherine in February, 1862; that thenceforward a partnership in the said business subsisted between Ellen, John, and Richard, until the 8th of November, 1868, when Richard retired from the business; and that thereupon a partnership in the said business had continued to subsist between Ellen and John, in equal shares, which ought to stand and be dissolved as from the date of the Order. It further declared that the premises, Nos. 165 and 167 Clarendon-street were both to be deemed to have been purchased on the partnership account, and to form part of the assets of the partnership between Ellen and John; that all the partners were to be deemed to have been equally interested in the said premises in Clarendon-street, and in all the property embarked in the trade and business, and in the credits thereof during the said partnerships respectively, without regard to the inequality of their contributions to the original capital thereof, but that any other purchases made by the Defendant John Colclough should be deemed to be on his separate account, charging him with such sums as he might have drawn from the partnership property for the same, with interest at the rate of 8 per cent. per annum; and giving him credit for all sums (if any) brought by him into the business since the 10th of October, 1861, whether consisting of rent of property purchased by the said Defendant, or by him and Richard, on his or their separate account, or of the proceeds of sale of any such property afterwards sold by him, or by him and Richard, with interest at the like rate.

It further declared that the sums advanced to Richard Johnson for the purchase of a farm or otherwise by John were to be treated as paid on partnership account; that Mary Ann Johnson had agreed to take 300% for all her interest in the

partnership, premises, and business; that John was liable to pay to her 200*l.*, being the balance unpaid of that sum, with interest at 8 per cent. per annum from the date of her marriage, in discharge of all her claims upon him or upon the partnership property. It ordered John to pay this sum to her, with liberty to charge the amount so paid against the partnership subsisting between him and Ellen, and without prejudice to the claims of him or of the partnership against Richard Johnson. It further directed that he was to have credit for the 300*l.* paid to Catherine and the 2,500*l.* paid to Richard, as payments out of the property of the partnership, and declared that the respective purchases of the interest of Mary Anne, Catherine, and Richard were made on behalf of the respective succeeding partnerships. And it directed the Master to take an account of the said several partnerships up to the date of the Decree, according to the above declarations, and to strike a balance as of that date between Ellen and John.

The contest between the parties on the first argument of this Appeal was in effect which of these Decrees ought to stand; and inasmuch as both Decrees concur in treating the purchases and investments made by John, other than the purchase of No. 167, in Clarendon Street, as made on his separate account; and the sums paid or payable to Mary Anne, Catherine, and Richard as paid or payable in satisfaction of their respective interests; the principal, if not the only, substantial question raised was whether the interest of Ellen as a partner ceased on the 10th of October, 1861, or continued up to the date of the last Decree; and, if it so continued, what was the extent of her share.

It appeared to their Lordships, having regard to the pleadings and evidence in the cause, that a third view of the rights of the parties might be taken; which was in effect that, according to the course of dealing between the members of this family, Ellen had been allowed to retain an interest in the business to the extent of her original one-fifth share, all the remaining interest in the business and its assets having become vested in John. They accordingly directed a further argument on this point; and, having heard that, now proceed to dispose of the whole case.

In dealing with the evidence in the cause, their Lordships fully appreciate the truth of Mr. Justice Molesworth's observation that it is not easy to decide upon the relations between people who themselves had no distinct view of them.

The proper course for a court of justice in such a case is, they think, to determine those relations according to the intention and understanding of the parties, in so far as these can be ascertained, and when that is not the case, by the general law.

The facts of the case as they are to be collected from the evidence have been very fairly summarized by Mr. Justice Molesworth; and it is unnecessary to recapitulate them. It seems to have been admitted by the Counsel who argued the Defendants' case before him, that the only legal inference that could be drawn from those facts was that the three sisters, Mary Anne, Catherine, and Ellen, and the two brothers, John and Richard, were partners in the grocery business in equal shares, from 1855 to the date of Mary Anne's marriage with Johnson. What then was the legal consequence of that event? The learned Counsel for the Respondents do not now dispute that it was in law a dissolution of the partnership; not merely effecting the retirement of Mary Anne, but operating as a dissolution of the contract of partnership between all the members of the firm. The consequence of that, of course, is, that in order to constitute a partnership between the other four there must have been a new contract either express or implied.

The Judgment of the Appellate Court upon this point is, to say the least, ambiguous. It speaks of the partnership as dissolved *as to Mary Anne* by her marriage; and says "that there was not sufficient evidence to support the assertion that any special agreement altering the terms of the original partnership was entered into on that dissolution." It is, therefore, consistent with the supposition that the learned judges in finding that the successive partnerships subsisted as declared in their Decree proceeded on the assumption that the marriage did no more than bring about the retirement of Mary Anne; and that in the absence of some further act or agreement dissolving or modifying the partnership as between the other partners it would continue by operation of law. Such an assumption, if made,

was erroneous. To support the Decree it is necessary to establish a contract for a new partnership between the four. It is true that such a contract, though not express, may be implied from the conduct of the parties. The question is whether the evidence in this cause affords grounds for such an implication. A contract necessarily involves the consent of the contracting parties. But what is the evidence here that Ellen, herself, ever entered, or thought she entered, into an agreement in or after October, 1861, that she, Catherine, John, and Richard should form a new partnership, in which each should be entitled to a one-fourth share.

By her Bill she insists that Mary Anne never ceased to be a partner. Both Courts have found that Mary Anne did agree to take the 250*l.* or the 300*l.* in full satisfaction of all her claims upon John or the partnership. The Appellate Court treats this arrangement as one made by or on behalf of the new or continuing partnership. But Ellen in her evidence treats it as a fraud upon her sister perpetrated by John. (p. 26, line 40.)

Again, what evidence is there that John was ever an assenting party to the supposed contract. Mr. Justice Molesworth says of John's evidence (p. 48, l. 14) that, on the whole, he adopts it as true against the others. It certainly appears to be more trustworthy than that of Ellen, who has supported the case of Mary Anne. But from the whole evidence it may be collected that John, very early in the history of the partnership, if not at its very beginning, assumed the position of head of the family; and a dominion to which, at least before 1861, he had probably no legal title. It would seem that it was to him that the members of the family who subsequently came out from Ireland, and who admittedly had no interest in the business, looked for support and assistance. The evidence certainly preponderates in favour of the conclusion that, on the occasion of the treaty with Catherine as to the amount to be paid to her on her marriage, Ellen spoke of her sister's claim as unreasonable, seeing the number for whom John had to provide. John again was, to the outer world at least, the manager of the business. It was to him that the banks gave credit. His whole conduct is consistent

with the hypothesis that, if at any time he recognized his sisters as possessing the full rights of ordinary partners (and this is doubtful), he from the time of Catherine's, if not from that of Mary Anne's marriage treated them not as partners, but as persons with whom he was to settle for their pre-existing rights on terms the most favourable to himself. His whole conduct goes to negative rather than to establish the proposition that in 1861 he entered into a new contract of partnership with Ellen, of which the effect was to increase her share or interest in the business. Their Lordships are therefore of opinion that the Decree of the Appellate Court is inconsistent with the proved relations of the parties, and with the understanding of Ellen herself, as shown by the case made in her Bill.

Of that Decree their Lordships desire further to observe that it seems to be rather one which the Appellate Court thought to be a fair settlement between the parties than one warranted by the facts proved or admitted in the cause. An instance of this may be found in the declaration touching the premises No. 165 in Clarendon Street. Mr. Justice Molesworth treats these (subject probably to the conveyance executed by Mary Anne and Catherine), as the property of the three sisters. The Decree of the Appellate Court treats them as having been from the first partnership property. That conclusion might be proper if the evidence had shown merely an agreement for a partnership, and the purchase in the names of some of the partners of the premises used for the purposes of the business. But in this case the conclusion is opposed to the statement of both parties, to the effect that it was expressly agreed that these premises should be the property of the three sisters, and form no part of the partnership assets. This circumstance is not immaterial, since it shows that the sisters did not, in fact, bring into the partnership business the whole of their savings. Again, the Appellate Court, with the view, apparently, of making a final settlement between the parties, has treated the advances from John to Richard Johnson for the purchase of his farm as partnership transactions. For this conclusion there seems to be no foundation in the evidence.

Their Lordships, however, are not satisfied upon the evidence that Mr. Justice Molesworth was right in concluding that the relation of partners finally and altogether ceased to subsist between Ellen and John from and after the 10th of October, 1861. John himself submits in his answer (that if Ellen ever was a partner (a fact found against him) she ceased to be so, or to have any longer any interest in the business at the time, not of Mary Ann's, but of Catherine's marriage, when he settled with Catherine, and, as he alleges, agreed to settle with Ellen.

This submission, therefore, involves an admission that, to the extent at least of her original share, Ellen's interest in the business continued after the marriage of Mary Ann.

The real effect of the evidence seems to be that, upon the legal dissolution of the original partnership by the marriage of Mary Ann, John assumed, in even a higher degree than before, the dominion over the business and its assets; that from that time he proposed to himself to buy up the interest of all the sisters in the business, whatever that might be, for the benefit of himself, or of himself and Richard, with whom he unquestionably afterwards formed a new partnership. For the purposes of this suit, however, his dealings with his sisters may be taken to have been for his own benefit, since his relations with Richard are hardly in question, and may be left out of consideration. The arrangement with Mary Ann was effected on her marriage; that with Catherine, and the attempted arrangement with Ellen, were delayed until Catherine's marriage; and up to that event both the two last-named sisters may be taken to have been allowed to retain their original interest in the business. It was, however, upon the basis of their having no more than that original interest that all the negotiations for settlement appear to have proceeded. John, in fact, settled with Catherine on that footing, and he seems to have considered that he had made a bargain with Ellen for a similar settlement. He has, indeed, failed to show that she conclusively accepted it, and appears to have allowed her to continue in the house, and to take such slight part in the business as she had taken before.

It appears to their Lordships that the only new

contracts of partnership, so far as Ellen is concerned, subsequent to the dissolution of the original partnership in November, 1861, which can be legitimately implied from this state of things, are to the effect that she was to retain her original share in the business, viz., one-fifth, until a settlement with her could be effected.

This view of the case is consistent with her continuance in the house, with what little she did in the house and shop, with her occasional receipt of money, and with the somewhat loose evidence of William as to the conversation between him and John in 1863. It is also more consistent than the Decree of the Appellate Court with the case, made by Ellen herself in the Bill.

There is, no doubt, a presumption, upon which the Appellate Court has acted, that if A. and B. carry on business as partners without a specification of shares, they are equally interested in the business. But that presumption may be rebutted by circumstances; and in a case in which there is no express contract, in which the fact of partnership is disputed, and the contract and relation are to be inferred from the ambiguous conduct and acts of the parties, their whole conduct must be looked at; and that, if it affords an inference that a partnership existed, may also justify the further inference that the partnership was one involving inequality of shares.

The conclusion, then, which their Lordships have formed in this very peculiar case is that Ellen has properly been found entitled to a partner's share in the business up to the date of the Decree of the Appellate Court; but that that share should be limited to one-fifth; all the remaining interest in the business and its assets being taken to have been vested in John, by virtue of the several settlements with his sisters and brother. It follows that if for the purpose of effecting those settlements he has made payments out of the funds of the partnership, he must, in taking the accounts, be charged with the sums so paid in the same manner as the Decrees of the Colonial Courts have made him chargeable with the moneys drawn out by him for the purchases and investments which they treat as made on his own account.

If such a Decree is not altogether consistent with the real relations of the parties, the responsibility of

such a result lies on the parties themselves. John may, with a somewhat high hand, have assumed to exercise a dominion over the business and its assets which he did not rightfully possess. But if Ellen objected to that she should, in the first instance, have taken proceedings to assert her rights; for it cannot be doubted that if she had claimed an equal share in the business as it was carried on after 1861, John, upon whose credit and exertions it mainly depended, would have resisted that claim, and adopted the requisite measures to have the question between him and his sister judicially determined.

As regards the Plaintiff Mary Ann Johnson, their Lordships are of opinion that no greater relief can be given to her upon this record than that given by the Decree of Mr. Justice Molesworth.

Their Lordships will, therefore, humbly advise Her Majesty to vary the Decree under appeal in accordance with this Judgment. And it seems to them that the most convenient mode of doing so will be to reverse that Decree, and to draw up a new Decretal Order, the Minutes of which they have prepared, and will now read.

Their Lordships are of opinion that each party should bear his or her own costs, both in the Appellate Court of the Colony and of this Appeal, as well as in the Court of First Instance; and that the present Appellant should receive back or have credit for any costs which he may have paid under the Order of the Appellate Court.

They would, finally, impress, so far as they can, upon both parties the expediency of coming to an amicable settlement as to the balance to be paid to Ellen, rather than waste time and money in taking complicated accounts.

Minute of Order.

Declare that a partnership in the business in the Bill mentioned subsisted between the Plaintiffs, Mary Ann Johnson, formerly Mary Ann Colclough, and Ellen Colclough, and the Defendants, John Colclough, Richard Colclough, and Catherine Hayward, formerly Catherine Colclough, in equal shares, from the month of May 1855 to the 10th of October,

1861, when the same became dissolved by the marriage of the said Plaintiff Mary Ann Johnson with the Plaintiff Richard Johnson.

Declare that the said Plaintiff Mary Ann Johnson before her marriage agreed to take the sum of 250*l.* for all her claims against the Defendant John Colclough, including her interest in the premises on which the said business was carried on, and in the said partnership business, and that the said Defendant afterwards agreed to increase that sum of 250*l.* to the sum of 300*l.* and that the said Defendant is liable to pay her the sum of 200*l.*, balance of that sum, and interest thereon at the rate of 8 per centum per annum from the date of her marriage, in lieu and discharge of her claim upon him and the property of the said partnership; and that, by virtue of the said arrangement, all the interest of the said Plaintiff Mary Ann Johnson in the said partnership and the assets thereof, became and is now vested in the Defendant John Colclough.

Declare that, by virtue of the subsequent arrangements between the Plaintiff Ellen Colclough and the Defendants John Colclough, Catherine Hayward, formerly Catherine Colclough, and Richard Colclough, or some of them, the said Ellen Colclough became entitled to a one-fifth share in the business as the same was carried on subsequently to the 10th of October, 1861; and all the interest of the Defendants Catherine Hayward and Richard Colclough in such business became and is now vested in the Defendant John Colclough.

Declare that, after the 8th day of November, 1868, when the said Richard Colclough retired from the said business, a partnership in the said business subsisted between the Plaintiff Ellen Colclough and the Defendant John Colclough, wherein the said Ellen Colclough was entitled to a one-fifth share, and the said John Colclough to the remaining four-fifths shares; and that such partnership ought to stand and be dissolved from the 4th day of October, 1873, the date of the decretal order of the Appellate Court, and decree accordingly.

Declare that the Plaintiffs Mary Ann Johnson and Ellen Colclough, and the Defendant Catherine Hayward, were entitled each to an undivided third part or share in the premises No. 165 in Clarendon-street in the pleadings mentioned, and that the said

Plaintiff Ellen Colclough is still entitled to her one-third share in the said premises, but that the said Plaintiffs and Defendant were not entitled to charge the partnerships, using the same for the use and occupation thereof.

Declare that the premises No. 167, Clarendon-street, in the pleadings also mentioned, are to be deemed to have been purchased on the partnership account, and to form part of the assets of the before-mentioned partnership between the Plaintiff Ellen Colclough and the Defendant John Colclough.

Declare that all the other purchases or investments in the pleadings mentioned to have been made by the Defendant John Colclough shall be deemed to have been made, and to be on his separate account.

Declare that, in taking the partnership accounts hereinafter directed, the Defendant John Colclough ought to be debited with all sums drawn by him out of the partnership funds, either for the purpose of making the last-mentioned purchases or investments, or of making the payments to the Plaintiff Mary Ann Johnson and the Defendants Catherine Hayward and Richard Colclough respectively, by virtue whereof he has become entitled to their respective interests in the said business, with interest on each of such sums, at the rate of 8 per centum per annum, from the date at which it was so drawn out. Declare that, in taking the said partnership account, the Defendant John Colclough ought to be credited with all sums (if any) brought by him into the said business since the 10th day of October, 1861, whether consisting of rent of property purchased by him, or by him and the said Richard Colclough on his or their separate account; or of the proceeds of sale of any such property afterwards sold by the said Defendant, or by him and the said Richard Colclough, or otherwise, with interest on each such sum, at the rate of 8 per centum per annum, from the date of its being brought in. Declare that the personal expenses of the said parties for their support, maintenance and clothing, as well as those of their mother, brothers and sisters whilst living at the partnership premises, ought to be defrayed up to the said 4th of October, 1873, out of the partnership property.

Refer it to the Master in Equity to take an ac-

count of the said several partnerships up to the 4th of October, 1873, according to the above declarations, and to strike a balance between the Plaintiff Ellen Colclough and the Defendant John Colclough as on that day.

Declare that the several parties do respectively abide their own costs of the cause up to the date of Her Majesty's Order in Council, including the costs of this Appeal, and direct that any costs of the proceedings in the Appellate Court that may have been paid by the Defendant John Colclough, under the order of that Court, be refunded to him.

Reserve the consideration of all further directions, and of the future costs of the cause, with liberty to the parties to apply as there shall be occasion.