

made, it is not necessary to repeat it in every plea. Moreover, I think the *fourth* count in the declaration is bad. The cause of action is not sufficiently set out, and can only be ascertained by reference to the preceding counts, which reference shows that it is for the same sums of money mentioned in the other counts, and in fact blends the three preceding counts into one; whereas every count in a declaration should be distinct, and should set out a separate cause of action. I am therefore of opinion that the judgment ought to be reversed.

1810.

Roche
vs
Pendergast

JUDGMENT AFFIRMED.

ROACHE VS. PENDERGAST.

JUNE.

APPEAL from *Baltimore* county court. *Assumpsit* by the appellee against the appellant. The declaration contained two counts, one for *money had and received*, and the other for *money lent*. The defendant, in the court below, pleaded *non assumpsit*, and *an account in bar*, which he filed and offered to set off, &c. General replication thereto, and issues joined. At the trial the plaintiff produced as a witness one *Garrett Rice*, who proved that the plaintiff advanced to the defendant \$150, to be employed as a capital in trade, \$50 whereof to be considered as the plaintiff's share, another \$50 to be considered as the defendant's share, and the remaining \$50 to be considered as the witness's share. That three persons were to share in the profits arising in the course of their joint trade, which was to continue for an indefinite period; and that on the dissolution of the partnership, the plaintiff was to be entitled to receive his \$150, \$50 from the defendant, and \$50 from the witness, exclusively of his one third of the profits which might be made by the partnership, and also whether there should be a profit or loss in their business. The witness also proved that he was present when the plaintiff applied to the defendant for an account of the profits, which the defendant refused, alleging that the plaintiff was not entitled to any part of the profits, but paid the plaintiff a sum of money, the amount whereof he did not know, it being in

In *assumpsit* for money had and received, and for money lent, a witness proved that the plaintiff advanced to the defendant \$150, to be employed as a capital in trade, \$50 to be considered as the plaintiff's share, another \$50 as the defendant's share, and the remaining \$50 as the witness's share. Those three persons were to share in the profits arising in the course of their joint trade, which was to continue for an indefinite period; and on the dissolution of the partnership the plaintiff was to be entitled to receive his 150 dollars, 50 dollars from the defendant, and 50 dollars from the witness, exclusively of his one third of the profits which might be made by the partnership. The plaintiff applied to the defendant for an account of the profits, which the defendant refused, alleging that the plaintiff was not entitled to any part of the profits, but paid

the plaintiff a sum of money in part, but less than the sum originally advanced by him. The county court directed the jury, that these facts amounted to a dissolution of the partnership; but on appeal — Held that it ought to have been left to the jury to decide, whether from the facts and circumstances proved, the partnership was dissolved.

Held also, that the witness testified to an undertaking distinct from the partnership, which might be enforced in a court of law by an action of *general indebitatus assumpsit*, and that the witness was competent to prove such an undertaking.