

1810.

Roache
vs
Pendergast

part of the sum originally advanced by the plaintiff, but he believed it to be less than the \$150 advanced as aforesaid. The witness also proved, that in a conversation between him and the defendant, the defendant stated that he would raise an account against the plaintiff, which would more than extinguish the \$150 advanced by the plaintiff at the commencement of the partnership, provided the witness would swear to it. The witness also proved, that after the commencement of the partnership, and previous to the defendant's refusal to account, he continued to live with the defendant, who had the management of the business, and that while living with the defendant he, as a partner, collected sundry debts owing to the concern. The defendant then prayed the court to direct the jury, that *Rice*, the witness produced on the part of the plaintiff, was not a competent witness; and also, that if the jury should believe the foregoing facts to be true, that in point of law they constitute a partnership, and that it is not competent for the plaintiff, in the present form of action, to recover against the defendant. Both of these directions the county court, (*Nicholson*, Ch. J.) refused to give; but directed the jury, that the refusal by the defendant to exhibit an account of the profits, alleging that the plaintiff was entitled to no part thereof, and the payment by him to the plaintiff of a part of the original sum advanced amounted to a dissolution of the partnership, and that upon its dissolution the plaintiff had a right of action in his individual capacity against each of the other copartners in their individual capacity, for the sum of \$50 loaned them originally, or for so much thereof as remained unpaid at the time of the institution of the suit. The defendant excepted. Verdict and judgment for the plaintiff for \$103 damages, and costs. The defendant appealed to this court.

The cause was argued before CHASE, Ch. J. BUCHANAN, GANTT, and EARLE, J.

Boyd, for the Appellant. The claim in this case was for \$50, and the verdict, and judgment thereon rendered were for \$103, a sum recovered beyond the amount which was due, except upon the principle of *profits* made in a partnership transaction; because allowing legal interest upon the sum advanced, the verdict could not exceed \$65, even supposing not a cent of money had been paid to the