plaintiff by the defendant subsequent to the advance of the $50, which is proved not to have been the fact. The *first* objection to the opinion of the court below is, that no witness is competent to prove a partnership establishing *his interest therein*, because of the fraud which might be practised by the admission of such evidence; and the *second objection* is, that the plaintiff misconceived his remedy, the same being only in a court of chancery; because *no settlement* ever was had, or *account stated*. The plaintiff might have received, out of the copartnership, *more* than his capital and profits, and now may be indebted to the partnership, which facts only can be established in chancery. *Smith vs Barrow*, 2 *T. R.* 476. *Esp. N. P.* 96, and *Index*, tit. *Partnership*. The express promise to pay the $50 loaned, is but what the law would have implied, and does not change the *mode* of discovery. The refusal to account, though it may amount to a *dissolution* of the partnership, cannot rescind the original contract, the same having been *partly executed*. *Huntt vs Silk*, 5 *East*, 452. It is not known but the partnership has lost instead of having made profit, and that the defendant, being the acting partner, may have paid the amount of the claims against the firm to ten times the amount of the capital advanced. By the mode of proceeding resorted to, the defendant was precluded from making every defence allowed a copartner in equity, and has applied to a court which, from its organization, cannot do complete justice to the parties. It may also be observed, that on the final liquidation of the partnership accounts, the plaintiff may appear to have not only received his proportion of the profits, but his capital, and the capital advanced to the defendant, and more, and instead of being a creditor may be a debtor of the defendant. If it should be contended that here is a special promise varying the general rights of partnership, then it is a *special contract*, and ought to have been declared on as such, and there ought to have been a *special averment* that the partnership was dissolved, whereby an action had accrued to recover the above sum of $50, and a general *indebitatus assumpsit* will not lie. Wherever a duty is to arise, on the *happening* of a particular event, and it is uncertain *at what* time the event may take place, or that it may ever take place, this amounts to a *special agreement*; and before that duty can be enforced in a court of justice,