1810.
Roache vs Pendergast

there must be an averment that the event has happened on which the duty arises. As for instance if a promise be made to pay a certain sum of money on A's going to *Rome*, or if money should be lent to be repaid on A's going to *Rome*, and returning therefrom; on these events happening, the money can only be recovered by a special action on the case, and not on a general *indebitatus assumpsit*. This form of action is only applicable to cases, where the contract is executed, and the debt is *immediately* due, or, what is the same thing, payable at a time *certain* and *specified*—as in the common cases of goods sold and delivered, payable immediately, or in *six months*. But if goods should be sold to A, and payable *when* a certain *event* should take place, then this agreement is special, and must be declared on as such, and not generally. These distinctions, it is conceived, are too obvious to require authorities. But the promise made and proved in this case is nothing more than what arises by implication of law; and therefore does not vary the relative situation of the parties, or give other remedies than are provided for in the ordinary cases of partnership by a suit in chancery. Because it is obvious, that where one partner advances to his active partner the *whole capital*, on a dissolution of the same he must be charged in the settlement of the concern for the money so loaned him, and this duty arises *immediately* on the dissolution of the partnership. The express promise therefore, raises no *other* obligation, nor can be enforced *in no* other *manner*, than is pointed out in all partnership cases. Besides, this doctrine would lead to this inconvenience, that the rights of the parties in *the same* transaction must be determined before two forums--First the $50 to be recovered in a court of law, and the partnership transaction in a court of chancery; and the common law abhors the *splitting* and multiplying of suits. And what is still more inconvenient and absurd is, that on the liquidation of the partnership, on a final account the plaintiff might be found to be a debtor, which would enable the defendant to obtain an injunction, thereby generating three suits, which the proper tribunal would settle in one—an absurdity in judicial proceedings which the court surely, by every reasonable construction, will endeavour to avoid. The court will also observe, that by the plaintiff's own showing, the jury must have taken into view the profits, because the proof adduc-