

WILKINSON, ASSIGNEE, ETC., v. TILDEN.*

Circuit Court, S. D. New York. November 3, 1881.

1. PARTNERSHIP—ACCOUNTING.

An accounting between partners cannot be had on affidavits on an interlocutory motion, but must be had in the orderly progress of a suit.

2. SAME—INJUNCTION.

A temporary injunction may be granted, pending a suit for an accounting, to prevent one partner by a sale of the partnership property from changing the *status* of the other partners in respect to it, where the injury resulting from such sale could not be remedied.

U. S. v. Duluth, 1 Dill. 469, 474, cited and approved.

In Equity.

G. Bliss and *R. M. Sherman*, for plaintiff.

F. N. Bangs and *F. E. Smith*, for defendant.

BLATCHFORD, C. J. On all the papers before me I do not think it can be said that there was not a partnership between Wetmore and the defendant which continued until the interest of Wetmore passed to the plaintiff, or that there is not a subsisting relation between the 684 plaintiff and the defendant, on the basis of which partnership and which relation the plaintiff can maintain this suit to obtain an accounting by the defendant as to his dealings and transactions respecting the property in question from the commencement. The bill prays for such an accounting. It cannot be had on affidavits, on an interlocutory motion. It must be had in the orderly progress of a suit. I am not prepared to hold now that the suit is barred by the two years statute of limitations. On the foregoing basis, the case made by the bill is not satisfactorily refuted by the defendant. If the threatened sale of stock takes place, the injury to result to the plaintiff from the sale cannot be remedied. In such a case a temporary injunction is granted. *U. S. v. Duluth*, 1 Dillon, 469, 474. The defendant has in his

hands the mine and all the property, and the effect of the injunction is only to prevent him from changing the *status* of the plaintiff in respect to the property while the suit is pending. The injunction contained in the order of May 31, 1881, will be continued.

* Reported by S. Nelson White, Esq., of the New York bar.

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