In the County Court of Yorkshire holden at Ripon

Between Joseph Webb (Plaintiff)

and John William Pearson (Defendant)

Brief for the Defendant

The Defendant John William Pearson is a respectable farmer and resides in Dallowgill near Ripon and his family is much respected in the district.

The Plaintiff Joseph Webb is a Publican and keeps the "Hope Inn" Laverton a hamlet about eight miles from Ripon
He is a Norfolk man and of rather superior education than his equals in this County. The antecendents of the Plaintiff are not of a very bright character and will not bear much looking into. He is much given to drink and is a most confirmed liar.
In the Autumn of 1889 or the Spring of 1890 the Plaintiff purchased from the Executors of the late George Almack of Kirkby Malzeard Cab Proprietor an entire horse called "Young Fireaway" for it is believed £21. Mr Almack worked the horse principally in his Cab Proprietors business and very little (if at all) as an entire horse. As can easily be imagined from the price given for the horse he was not of very great value, he had what is known as "capped hocks" besides other blemishes.

In the Spring of 1890 the plaintiff was in great pecuniary difficulty in fact he was insolvent.
The Sheriffs Officer seized the whole of plaintiffs effects under an execution

and the Landlord at the same time distrained for rent. The plaintiff knowing it would not be safe to keep the horse on his premises at this time, removed him a pig and some household furniture to some neighbours houses till the storm was weathered. The horse going to a farm house occupied by one Ball, and the plaintiff and Ball had a sort of bogus sale of the horse to defeat the claim of the Sheriffs Officer if he had followed and seized the horse.

On the 15th February 1890 the Sheriffs Officer sold by auction the whole of the furniture and effects which he had seized on the plaintiffs premises under the execution and the Landlords distraint for rent. The plaintiffs late wife (Ann Webb) purchased most of the furniture and necessary articles required for carrying on the business of a publican to the amount of £35, and paid for the same with money lent to her by the Defendant, who at her request lent her thirty five pounds, for that purpose and which the defendant paid to her in an upper room of the Plaintiffs house at Laverton. The Defendant wished Plaintiffs wife to give him a Promissory Note for the money lent which she agreed to do after the confusion of the sale was over. After the sale plaintiffs name was expunged from the sign board of the public house and that of his wife painted instead and the business of the Inn was carried on by plaintiffs wife on her own account. Defendant shortly after the sale called at plaintiffs house with two Promissory Notes for the money to be signed by Mrs Webb when he was told that she had died very suddenly in child-bed and was then laying dead in the house. Defendant was much annoyed as he had nothing to show for his money, the plaintiffs wife had directly after the sale told two or three people that he (Defendant) had found her the money to purchase the necessary articles at her husbands (the plaintiff) sale. At the plaintiffs request and suggestion (he well knowing the Defendant had lent his wife the money) his daughter Annie E Webb signed her mother's name to two promissory notes one for £25 and another for £10. Defendant has made frequent applications to plaintiff since the loan for payment of the money, and has been put off by plaintiff that he has never denied his liability.
Plaintiffs wife died without a Will and he took over

all her effects as "Administrator" and Defendant counterclaims against plaintiff in that capacity for the £35 and interest at £4 per cent from the 15th February 1890. Defendant did not inform his Solicitors as to the circumstances attending the making of the Promissory Notes until after the counterclaim was filed or instead of claiming on the Promissory it would have been safer to have claimed for money, lent only, tho? the notes were signed by Plaintiff's daughter at his request and suggestion. Defendant not thinking of the consequences at the time and only wishing to have something to shew for his money. Counsel will however, please concede? this point and as to the advisability of applying to the Judge to amend the counterclaim though it is believed the plaintiff or his daughter have forgotten that the Notes were not signed by Plaintiff's wife.

In the beginning of 1892 it was agreed between the Plaintiff and Defendant that they should go into partnership respecting the entire horse. That the horse should be valued at £30. That Defendant should pay Plaintiff £15 for an equal share in the horse and that all profits (if any) should be shared equally between the parties.

On the 14th January 1892 they went to Mr Whitham, Solicitor, Ripon who prepared a receipt for the £15 paid by the Defendant to Plaintiff for a share in the horse. Plaintiff still kept the horse at his house though Defendant found Plaintiff with food for the horse and at various times paid Plaintiff money, for the horses keep. Defendant is informed and believes that from the date of the commencement of the partnership until within a week or two before the season of 1892 Plaintiff was working the horse regularly leading coals from Ripon and stones on to the high roads for the Surveyor of highways though no account has ever been given to the Defendant of the money received by Plaintiff for that work.

During the season of 1892, on or about the 1st June the horse was taken very ill and Two Veterinary Surgeons were called in to attend him he was suffering from a stoppage of the bowels and had little or anything to eat for sixteen days. The horses illness was brought on by the improper usage of the horse by the Plaintiff (who was his groom and travelled him) and in fact treated him in such a way that would have killed most horses. Plaintiff is a drunkard and has neglected both the horse and his business and such arrangements with farmers and others who used the horse that it is utterly impossible to enforce or recover any

fees for the horses services. During "Young Fireaway's" illness Defendant was put to very great expense and much inconveniences and annoyance in finding and engaging other horses to take "Young Fireaway's" place besides loss of time going "Young Fireaway's" route with the grooms who were strangers.

At the end of the season 1892 the horse was taken to Defendants farm and was there until Defendant sold him. In July of that year plaintiff, having again got into difficulties (he was suing Mr Richard Garbutt of Ripon, Cornmiller over a £100 and very large accounts to both Mess'rs Hepworth & Co and Mess'rs Wells & Sons of Ripon) agreed to sell his remaining share in the horse to Defendant for £15. A Deed of dissolution of partnership was drawn up with the usual clauses for accounts (copy herewith) and agreed by plaintiff and defendant, defendant paid plaintiff £15 and then became the sole owner of the horse. Before plaintiff would sign the deed he wished for a note from Defendant that he (plaintiff) could have a share in the horse again on payment of £15 on or before the 1st February 1893 and the Defendant agreed to the plaintiffs proposal on the understanding that the horse was in his possession at that time. Defendant gave plaintiff a memorandum to that effect (copy herewith) and that memorandum forms the foundation of the plaintiffs claim.

Defendant has at various times since the dissolution of partnership on the 19th July 1892 collected what fees he could for the services of the horse and has filed in Court an account of his receipts and payments which brings plaintiff debtor to the defendant for £23. 3. 6 (half the deficiency on the defendants accounts) and the defendant has counterclaimed against plaintiff for that sum.

On the 7th December 1892 Defendant sold the horse to his father Mr Henry Pearson bona fide for £30 and gave him a receipt for the price. Some time previously to that date Plaintiff knew of Defendants intention to sell the horse as a man (John Topham) offered Defendant £30 for the horse in plaintiffs house at Laverton which defendant refused as he then wanted £40 for the horse.

On or about the 26th January 1893 plaintiff offered, but did not tender?, defendant £15 in country bank notes for a half share in the horse when defendant informed plaintiff he (defendant) had sold the horse.

Plaintiffs claim is a very original one and may be to his Solicitors mind ingenious, though it is most absurd to ever entertain such a claim.

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The damages are in the first place too remote and besides plaintiff must be put to proof of the damage and has now given particulars of his claim which he cannot well alter. If the partnership was to be carried on in future seasons under the same disastrous management as the season of 1892 was – no doubt it was good for the plaintiff – but the poor unfortunate defendant who had all the money to find to keep the thing going would soon find himself in the Bankruptcy Court and he had that view in his mind when the partnership was dissolved by mutual consent on the 19th July 1892.

It is supposed that the only damage the plaintiff is entitled to - if he can succeed which is doubtful and Counsel must please cross examine plaintiff very closely and if possible break down his case at the outset – is the difference in value of one half share in the horse on the 19th July 1892 and the 1st Feby 1893.

See Chitty on Contracts 12th Edition pp. 854 and 856 and cases there cited, also pp. 718 and 719 and cases there cited.

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Proofs

John William Pearson the Plaintiff saith

I am a farmer and reside in Dallowgill and know and am well acquainted with the Plaintiff.
In January 1892 he was the owner of an entire horse called "Young Fireaway". In that month plaintiff and myself went into partnership in respect of the horse. Plaintiff valued him at £30.
On the 14th January 1892 at the Black Horse Inn, in Ripon I paid plaintiff £15 for an equal share in the said horse. Receipt produced.

From the 14th January till the commencement of the season 1892 I provided all the food for the keep of the horse though he was stalled at the plaintiff's. Plaintiff during that time worked the horse regularly leading coals from Ripon and stones for the Surveyor of Highways – and for which I have received no account of the earnings of the horse.

From the 12th January to the 6th April 1892, I paid plaintiff at various times £8.10.0. for the keep of the horse. And it was agreed that plaintiff should have and act as groom for the horse. At the commencement of the season I went with plaintiff at different times to shew him the routes he had to travel the horse. Plaintiff as the groom had to keep an account of all the names of all the persons using the horse which he and I entered into a book for that purpose when he came home every Saturday night which was done correctly so far as I am aware up to the 1st June though I had to depend entirely on plaintiffs honesty as to who had used the horse and what bargains he had made with them

I have since found out whilst collecting fees that he has not told me the truth. On or about 1st June 1892 the horse fell ill and I to engage the services of two Veterinary Surgeons. The horse was so ill I did not expect he would get better and the Veterinary Surgeons gave little hope of his recovery. Young Fireaway was unfit for service till the end of June or the beginning of July

During that time I was put to a very great expense and much annoyance and inconvenience through having to engage other horses to take "Young Firewaway's" place. I had two other horses "Young Elegance" and "Othello". I had to go with the grooms of "Young Elegance" and "Othello" to shew them the different routes taken by "Young Fireaway". At the end of the season the horse went to my house and stayed there till he was sold. On the 19th July 1892 the plaintiff having become embarrassed in his affairs we dissolved partnership and a deed was drawn up to that effect. I paid plaintiff £15 for his share of the horse and an account had to be taken of all moneys received and paid in respect of the partnership and the profits divided in equal shares or the deficiency had to be made up in equal shares between plaintiff and myself. Plaintiff was not at first willing to sign the said deed but wished for some assurance the he could have a future interest in the horse when I told him if the horse was in my possession and my property on the 1st February 1893 and plaintiff paid me £15 he could have a share in him again. As it was I was glad to make the best arrangement as I could as plaintiff had so mismanaged the affair that I was losing money very fast. I have since the dissolution of

of the partnership collected what fees I could for the services of the horse. Most people who have used him refuse to pay saying they had to go to other horses. That plaintiff agreed with them for "no foal, no fee" and such like.

I have filed my accounts in Court – And they are a true and correct account of all my receipts and payments in respect of the partnership.

As to the Counterclaim

The £23.3.6 is the plaintiff's share of the deficiency on my accounts in accordance with the Deed of dissolution and I say that that sum is justly and truly owing by plaintiff to me as appears by my said accounts.

In the beginning of the year 1890 the Sheriff's Officer was in possession of plaintiffs effects and his Landlord distrained for rent. At the request of plaintiff's late Wife and with his knowledge and consent I lent her £35 to purchase what furniture and other effects she required at the sale so that she could carry on the business in her name and if possible make a living. I attended the sale and entered for her in a Memorandum book the articles plaintiff's late wife purchased, after the sale I lent her in an upper room the £35 (Mr Walker the Auctioneer and Mr Wilkinson of Ripon were in the same room, but they were busy balancing up their Accounts and I cannot say whether they remember me paying Mrs Webb the £35). I asked her to give me a Promissory Note for the money at the time and she promised to do so when things were a little more settled. Shortly after the sale I called at plaintiffs house and saw plaintiff when he told me his wife had died very suddenly under her confinement

and was then laying dead in the house. I produced the Promissory Notes and told him that his Wife promised to sign them when he suggested his daughter Annie should sign the Notes instead of his Wife and I agreed to that course.

Joseph Hardwick saith

I live at Grassington and am a horse-breaker. I know the entire horse "Young Fireaway" and his groom Webb the plaintiff in this action. Plaintiff asked me to go with and shew him the route we had to travel knowing the plaintiff's financial position I asked him who would pay me – plaintiff said defendant would when we got to Pateley Bridge as the horse belonged to them both. In conversation with plaintiff at Middlesmoor plaintiff told me he (plaintiff) was about spent up and said defendant would be at Pateley Bridge and he (plaintiff) could get some more money – plaintiff also said defendant would pay me when we got to Pateley Bridge. Defendant handed me 17s/6d at Pateley Bridge for shewing plaintiff the route from Grassington.

Plaintiff in my hearing asked for some more money and said the expenses had been heavy and he (plaintiff) was out of money – defendant thereupon gave plaintiff some money. I have been used to and travelled entire horses and in my opinion plaintiff is not a proper person to have anything to do with entire horse and he certainly did not treat "Young Fireaway" properly. I have on several occasions seen plaintiff ride in any conveyance that he could and lead the horse behind and thus heat and make the horse sweat so that when the horse came to stand at Public Houses he got cold and I really wonder the horse

did not fall ill before he did. I have seen plaintiff riding in a bus that ran daily from Grassington so far on his road and lead the horse behind and have heard several respectable farmers cry shame to plaintiff as to the way he was treating the horse. Plaintiff was also very irregular on his route being many a time a day late and sometimes plaintiff did two days journey in one. I know several persons plaintiff has entered into his book as using his horse who through plaintiff's neglect in being late and sometimes in not coming at all on the day he should have had to use other entire horses.

I have seen plaintiff many times on arriving at Grassington so drunk as not to be able to feed or groom the horse and other persons have had to do it for him. I have also seen plaintiff at Kettlesing Head so drunk as not to be able to look after the horse and to my knowledge several persons at Kettlesing, Grassington, Blubberhouses and other places have used other horses thro' plaintiff's neglect.

George Parker saith

I am a farm foreman at Cowgate Farm, Shaw Mills, Ripley; Frank Ward, my man on one occasion found plaintiff laid in the middle of the road near the public house at Shaw Mills helplessly drunk and the horse standing over him. The publican's Son (Alfred Wilson) and Ward brought plaintiff and the horse to my house and called me up. I was in bed, - I got up and put the horse into the stable and stripped and fed him – the horse was nearly starved to death and was trembling. I then found the plaintiff laid behind the house and helped to carry him in & took his boots off and

and put him to bed. I believe plaintiff had been at Bishop Thornton that day and he had the horse tied to a gate outside the public house for three or four hours.

I understand the horse fell ill the following week. Plaintiff stayed twice at my house and was very drunk both times. I have also seen plaintiff drunk early in a morning. Plaintiff in my opinion was not a proper person to have charge of an entire horse. I know several persons

who did not use "Young Fireaway" thro' plaintiff's neglect. Plaintiff was also behind his time on several occasions. One week plaintiff's face was much cut and bruised and plaintiff told me he fallen off the horse whilst riding him across Pateley Bridge Moor the previous Saturday.

Erasmus Buckle saith

I am a farmer and reside at Missis Farm near Laverton. I know plaintiff and also knew his late wife. Plaintiff's late wife asked me to lend her some money to buy furniture at the sale of her husbands effects in February 1890. The plaintiff's wife subsequently told me the defendant had lent her the money.

Christopher Lofthouse saith

I am a farm labourer and live at Azerley Grange in Dallowgill. I was one of the Sheriff's Officers men when he seized plaintiff's effects in February 1890. I remember several articles being placed out of sight and some were taken to an adjoining farm house to avoid sale. I heard plaintiff's late

wife say that "Defendant had loosed her and and lent the money to purchase what she bought".

Christopher Lofthouse saith

I live at Harper Hill Dallowgill. I remember defendant telling me shortly after plaintiff's wife's death the he (defendant) had lent her £35 when plaintiff was sold up – to buy furniture &c at her husbands sale and that as plaintiff's wife was dead defendant did not know how he should come on.

Mrs Whitwham saith

I am the wife of Thomas Whitwham Farmer and we live in Dallowgill. I knew the late Mrs Webb. Shortly after the sale of her husbands effects she told me "that if it had not been for defendant they would have no sticks in the house".

George Barker saith

I am a farmer and live at Pott Hall near Masham. I bred the entire horse "Young Fireaway" and sold him when he was four or five years for, I think, £25. I knew the horse very well, he is now ten or eleven years old. I should greatly doubt if he is worth more than £20. I keep an entire horse myself and have had great experience with horses.

John Topham saith

I was in the "Hope Inn" Laverton in company with defendant and (this is blank) Metcalfe when I offered defendant £30 for the horse ("Young Fireaway") in the presence of the plaintiff which he refused. I made this offer to Defendant previously to his selling the horse to Henry Pearson.

In the County Court of Yorkshire holden at Ripon

Between Joseph Webb (Plaintiff)

and John Thomas Pearson (Defendant)

List of mares served by "Young Fireaway" 1892

Cundall Thomas	10/-	10/-	Harrison Michael	10/-	10/-
Baul John	1/1/-		Simpson James	15/-	10/-
West James	10/-1	10/-	Tennant Ja's	10/-	10/-
Lambert Richard	10/-	10/-	Parker Rowland	10/-	10/-
Thackray -	1/-/-		Walker Jacob	1/-/-	
Watson James (Grey)	10/-	10/-	Rhodes Matt'w	10/10/-	
Watson James (Black)	10/-	10/-	Garth Jn'o	10/10/-	
Baul Joseph	10/-	10/-	Swales James	10/-	10/-
Taylor Arthur	10/-	10/-	Hall Wm	10/-	10/-
Richmond W (Winksley)	10/-	10/-	Fawcett Wm	1/-/-	
Nichols James	1/10/-		Johnson Jn'o Wm		
Rathall Robert	1/10/-		Barker Geo	1/-/-	
Mawer James	1/-/-		Simpson Mr	10/-	10/-
Smith Robert	1/10/-		Almack Miss	1/-/-	
Rogers -	10/-	10/-	Mallaby Rob't	10/-	10/-
Penwick W	15/-		Baul Joseph	1/-/-	
Storey Mr	10/-	10/-	Richmond W	10/-	10/-
Pearson J W	10/-	10/-	Metcalfe Thos	10/-	10/-
Hannam W	10/-	10/-	Atkinson Mr	10/-	10/-
Atkinson Mr	10/-	10/-	Holdsworth Thos	1/-/-	
Hattersley Jn'o	10/-	10/-	Ingleby Mr		
Boldwin Henry	10/-	10/-	Simpson Mr		
Nickles Thos	15/-	10/-	Pearson Thos	10/-	10/-
Wilkinson Mr	10/-	10/-	Pickersgill S	10/-	10/-
Smith Wm	1/-/-		Kirkbright Ja's	10/-	10/-
Teale Layfield	10/-	10/-	Horner Geo	10/-	10/-
Layfield J W	1/-/-		Richmond Wm	10/-	10/-
Ingleby Wm	1/-/-				
Richmond Wm	10/-	10/-			
Webster David	1/-/-				
Fryer Wilkinson	10/-	10/-			
Johnson Mr	10/-	10/-			
Down Jn'o	10/-	10/-			
Dunnell Isaac	10/-	10/-			
Almack Miss (Grey)	1/-/-				
Hall Jn'o	10/-	10/-			
Moorhouse B	10/-	10/-			
Leyland Jn'o	10/-	10/-			
Lodge O	10/-	10/-			
Lodge Rob't	10/-	10/-			
Rhodes Mr	10/-	10/-			
Marshall W M	10/-	10/-			
Heaton R	10/-	10/-			
Sayer Jn'o	1/-/-				
Newbold R	1/-/-				
King Jn'o	10/-	10/-			
Pickles Jnothan	1/-/-				

Report in the Ripon Gazette Thursday, April 20th 1893.

Partnership of a Horse – Breach of Contract

Joseph Webb, innkeeper, of Laverton sued John William Pearson, of Laverton, farmer for £50, breach of contract, bearing date the 19th July 1892. Defendant claimed a set-off, amounting to £62 9s 3d, being one-half of deficiency on accounts in respect of partnership in an entire horse named "Young Fireaway," £23 3s 6d, March 10th 1893 amount of principal owing by plaintiff as administrator *de son tort* of Ann Webb to the defendant on two promissory notes, both dated 15th February 1892, £35 and interest on the same at 4 per cent, £4 5s 9d. The balance of the set-off above £50 was waived in order to bring it within His Honour's jurisdiction.

Mr. Waugh, instructed by Messrs. Edmondson and Gowland, was for the plaintiff: and Mr. Palmer, instructed by Messrs. Calvert & Son, for the defendant.

Mr. WAUGH, at the onset, stated that the last court day an adjournment was applied for and granted on the terms that plaintiff should pay four guineas costs of the defendant. It appeared that Messrs. Edmondson and Gowland had offices at Ripon and Masham, and they paid the four guineas to Messrs. Calvert & Son at Masham from the Masham office, while at the same time from the Ripon office the sum of four guineas was paid into the County Court. His application was that the money paid into Court should be paid out again to plaintiff's solicitor. Notice had been given to the Registrar that he must not part with the money until consent was given, but he submitted there was no justification for that.

His HONOUR: Leave it in Court till the case is decided.

Mr PALMER: That is what we thought.

Mr. WAUGH: It is the personal money of plaintiff's solicitor.

His HONOUR: It has got into court, and if you win it will be paid back, but if not it will go in towards costs. I can only recognize what comes into court.

Mr WAUGH then proceeded with the case, and said that some three years ago plaintiff purchased an entire horse known as "Young Fireaway". That was a celebrated name and there were many "Young Fireaways".

His HONOUR: Is it an administration suit?

Mr. WAUGH: Yes, for the administration of a deed of dissolution – a partnership account.

His HONOUR: A partnership case.

Mr WAUGH continuing, said that some time at the end of 1891, or the beginning of 1892, defendant met plaintiff, and asked him to sell him a share in the horse, saying that he could get a great number of mares in a certain district, as he had a lot of influence. Ultimately it was agreed that defendant should join plaintiff in partnership, and that he should pay £15 for his share in the horse. The partners went to see Mr. Witham, Solicitor to request him to prepare a deed, but he told them there was no necessity for a deed, that when the money was paid, the defendant should receive a receipt from the plaintiff, and that would show the money had been properly paid. He believed that, as a matter of fact, Mr. Witham drew up the form of receipt, which he handed to plaintiff. The sum of £15, however, was never paid. The horse was travelled during 1892, by the plaintiff, it was agreed that he should have £1 per week for his services during the time the horse was travelling. During the season the sum of £92 10s was earned. The season lasted 16 weeks, and, after the horse had travelled 12 weeks, it fell ill, and remained ill for four weeks. Now plaintiff was indebted to a man named Garbutt, and the defendant, with a view of getting the horse into his possession of the 18th July, 1892, saw the defendant, and informed him that Garbutt was about to issue an execution upon his goods, and that he would seize the horse, and, in order to have it, defendant said he would purchase plaintiff's share in it for the sum of £15, and if the plaintiff repaid that sum, he was to have his share back again.

The defendant ultimately persuaded plaintiff allow him to take the horse to his place, and the following day they went to Masham and saw the solicitors who now represented the defendant. Apparently, the defendant had been there before. They were not plaintiff's solicitor, and plaintiff had no independent advice. A deed was prepared, which was read over to the defendant. He (Mr. Waugh) would not call for that deed.

Mr. PALMER handed the deed to his Honour.

Mr. WAUGH read over copy of the deed as follows: - "This indenture, made on the 19th July 1892, between Joseph Webb, of Laverton, near Ripon in the County of York, innkeeper, of the one part, and John William Pearson, of Dallowgill, Grantley, near Ripon aforesaid, farmer, of the other part. Whereas the said Joseph Webb and John William Pearson, are partners in equal shares of an entire horse, called "Young Fireaway", and it has been agreed between them that the said partnership shall be dissolved on the terms and conditions hereinafter mentioned. Now, this indenture witnesseth as follows: That the partnership hereto carried on by the said Joseph

Webb and John William Pearson is hereby dissolved, as from the day of the sale hereof, and in consideration of the sum of £15 now paid by the said John William Pearson to the said Joseph Webb (the receipt whereof is hereby acknowledged); the said Joseph Webb, as beneficial owner, hereby releases and assigns unto the said John William Pearson all the share and interest of his, the said Joseph Webb, in the good will, contracts, assets, debts and effects of the said partnership in the said horse; provided always, and it is hereby agreed and declared that all moneys and fees due for the services of the said horse for the season of 1892 shall be got in and account taken of all debts and liabilities due in respect of the said partnership, and the ultimate net balance divided in equal parts between the said Joseph Webb and John William Pearson, and that if it shall be found that there is a deficiency such deficiency shall be paid by the said Joseph Webb and John William Pearson in equal shares."

Mr. WAUGH said that plaintiff on hearing the deed read over, said there was nothing in it about him having a share of the horse on repayment of £15, and he refused to sign it. Mr. Calvert said it did not require anything further as defendant would not like to lose so good a partner. But plaintiff was not to be cajoled in that way from having in writing the express terms upon which the agreement was entered into, and he refused to sign. Ultimately, upon refusing to sign, Mr. Calvert junior, said "We will prepare another document." Accordingly, a document, not under seal, but an agreement was prepared as follows (the original being handed to His Honour):-

"It is hereby agreed between John William Pearson, and Joseph Webb that the said Joseph Webb shall be entitled to one equal share in the entire horse "Young Fireaway", on payment to the said John William Pearson of the sum of £15 on or before the 1st day of February, 1893. Dated this 19th day of July, 1892."

The two documents were contemporaneous and, they were signed together, and his (Mr. Waugh's) submission to His Honour would be that it was impossible to read one document without reading the other. He did not know what point his friend would raise on the document, but he thought His Honour would come to the conclusion that the two documents carried out the actual agreement come to between the parties, and that the one was entirely dependant on the other. On the 20th Jan., 1893, plaintiff tendered to the defendant the sum of £15. He tendered it first in Bank of England notes. This took place at the Black Swan Hotel, in Ripon, defendant refused it whereupon plaintiff said, "If you don't want it in notes, I will tender it in gold." He tendered it in gold, and defendant refused the tender, and said he had nothing to do with the horse as he had sold it to his father. Defendant had no right to sell anything but his own share to his father, he could not sell the plaintiff's share without his consent. Interrogatories had been administered. Defendant had answered them, and in his answers he denied that any tender of any sum was made to him, therefore it had been necessary to subpoena witnesses, respectable people who were present when the tender was made, and who would give evidence if defendant still persisted in his statement. After having heard those witnesses His Honour would be able to consider what reliance could be placed upon the evidence of that man, who upon his oath had sworn that which he thought His Honour would come to the conclusion was absolutely false. That was the case with regard to plaintiff's claim, but defendant had filed a counterclaim. It was a well known axiom at the bar nowadays that if you have no defence you must have a counterclaim. (Laughter). The outward and visible sign of the absence of defence was a counterclaim, and when His Honour considered what the counterclaim was he would come to the conclusion that the usual practice had been followed in that case. The first part of the counterclaim related to the partnership transaction, being one half the deficiency of the defendant's accounts in respect of "Young Fireaway" Defendant was not entitled to claim until accounts had been taken and credits given on both sides, and then whatever balance remained on either side had to be equally divided. Then as to the amount of principal alleged to be due from plaintiff as administrator of Ann Webb, deceased, the onus rested upon the defendant to prove that. The claim of £35 was a remarkable thing.

His HONOUR: Can he set off at all in that way.

Mr. WAUGH said he did not know, but he was going to deal with the merits of the claim and make the technical point afterwards. In answer to interrogatories defendant said "he had demanded the £35 on several occasions," and yet, singularly enough, he had since then paid to plaintiff £15 as his first share of "Young Fireaway", and a second £15 at Masham when he took over plaintiff's share in the horse. It was remarkable that he should pay plaintiff £30 when he held two promissory notes of £35. Of course, Ann Webb, was dead and plaintiff did not know how these promissory notes came to be given.

His HONOUR: Are you absolutely administrating?

Mr. WAUGH: No, your Honour.

His HONOUR: Mr. Palmer, how do you make out there is an administration if they have never

taken out administration?

Mr. PALMER: He is the legal administrator of his wife. He was taken over the whole of the estate and dealt with it.

His HONOUR: That is as Executor *de son tort.*

Mr. PALMER: He has acted as administrator. He is not executor, because he was not appointed.

His HONOUR: It is a question whether you are bound to take out the administration for you wife.

Mr. WAUGH: It is rather a startling proposition to my mind. He further admitted that the horse was a valuable animal, seeing that it earned £90 in twelve weeks. Putting the value of the commencement of the season at £80, plaintiff's half share would be £40, then the difference between that amount and £15 would be £25. There was the further point whether loss of profits would not increase the damage.

His HONOUR said there would be the expenses of travelling to take into account.

Plaintiff was then called, and give evidence in support of Counsel's statement. He had only received one £15 from defendant and it was the Thursday after they went to Masham. – Cross – examined by Mr. PALMER: He did not know that he could have got £80 for the horse at any time. He never tried. When the partnership was arranged the horse was valued at £30, he considered the horse was worth £80, because his stock had turned out well.

Mr. PALMER at this point put in the original receipt for £15, which amount plaintiff had acknowledged by his signature having received from defendant. The witness to the receipt was Mr. Witham, solicitor.

His HONOUR: What do you say to that?

Plaintiff: It is my writing.

His HONOUR: Explain why you signed the receipt if you did not get the money? – I don't remember getting it.

His HONOUR: That is a different thing.

Mr. PALMER: Are you prepared to say if you did not receive the money? – I signed it whether I received it or not.

Plaintiff in further cross-examination, stated that he was sold up in the spring of 1890. Nine months previous to that, he sold the horse to Mr. Baul, of Gate Bridge, for £25. Afterwards bought it back for £26. His wife purchased most of his goods back at the sale. He borrowed money from Mr. Spence, of Ripon. Had since repaid him. On the morning of the sale he (plaintiff) gave £20 to defendant to give to his (plaintiff's) wife. He was not present when the promissory notes were signed. It was usual to lead an entire horse. He had ridden the horse and he had let it run behind an omnibus. He had gone into public houses when he had business. He did not know Frank Ward.

Mr. PALMER: Will you be surprised to hear that Ward found you drunk in the road with the horse standing over you?

His HONOUR: Then how could he know the man. (Laughter) It is rather hard upon him.

Plaintiff in further cross-examination stated "Young Fireaway" would be 10 or 11 years of age. It had capped hocks. In 1892 he was very pressed for money by Mr. Garbutt, to whom he owed about £100. In June, 1892, the horse was taken ill. It was not through his ill-treatment. Other horses were hired to take its place. He attended to the horse that was ill. Pearson paid for the employment of the other horses.

His HONOUR: What is the object of all these questions. If I hold he is bound by this deed there is an end of it. If I hold he is not bound, it is a question for the registrar to settle.

Plaintiff was then cross-examined as to the tender of the £15 in the Black Swan. He borrowed the money.

Mr. PALMER: Had you a banking account of your own at that time? – No, I wish I had. (Laughter)

His HONOUR: Probably the bankers would not wish it. (Renewed laughter)

Plaintiff denied emphatically that any money passed at the time the receipt was signed in Mr. Witham's presence.

Mr. WAUGH stated that but for the unfortunate circumstances that had occurred in Mr. Witham's family, he would have been in Court, and, speaking advisedly, he might say that he would have called him.

Mr. PALMER: The receipt speaks for itself.

Mr. WAUGH said he was prepared to accept whatever Mr. Witham might state in writing.

Mr. PALMER offered no objection.

His HONOUR eventually decided not to send to Mr. Witham, as it was a matter of creditability.

Richard Henry Dawson of Kirkby Malzeard, contractor, was present in the Black Swan Hotel on January 26th, and saw plaintiff offer to defendant £15 in bank notes and afterwards in gold. Defendant refused, and said he had sold the horse to his father.

William Metcalfe of Galphay, farmer's Son, corroborated.

James Beckwith of Cow Mires, farmer, also corroborated. He valued Young Fireaway at the beginning of the season at £80.

Frederick Newsome, of Azerley, farm bailiff, and *George Ascough* of Grewelthorpe, farmer, also valued the horse at £80.

His HONOUR did not see that defendant had any case whatever. He went to a solicitor's office, and

the deed was read over. Plaintiff was not satisfied, and a sort of redemption clause was prepared, and after that, he must be bound by the deed. Under the circumstances it was all one transaction, and he could not set aside the partnership. The only question that remained was the value of the animal.

Mr. PALMER submitted that there was already sufficient evidence to decide that point. The horse was valued by the plaintiff himself for the purposes of the partnership of £30. Whether money actually passed when the partnership was entered into was a question to be dealt with by the Registrar. There could be no damage beyond the difference between the mortgage price of the animal and the market value. He would call evidence on that point.

Defendant stated that he valued the horse at £30. He was a farmer and had had 15 or 16 years experience of horses.

Cross-examined by Mr. WAUGH: Do you remember the 26th January? – Yes.

Has your recollection been freshened since you came in to Court? – No.

Do you still say that the plaintiff never tendered to you the sum of £15? – He offered me some paper. (Laughter)

His HONOUR: Bank note is paper.

Mr. WAUGH: Did he offer you bank notes? – Some people like bank notes.

His HONOUR: Were they Bank of Providence notes? (Laughter)

Defendant: They were not Bank of England notes. (Laughter)

His HONOUR: How do you know?

Defendant: They were dark coloured ones (Loud laughter)

His HONOUR: Bank of England notes, like other paper, get dirty sometimes. (Laughter)

Defendant: they were much smaller, too, not so large as Bank of England notes.

Mr. WAUGH: Did you say you would not have them because they were not Bank of England notes? – No.

Did he then offer you £15 in gold? – I never saw £15.

Did he put it on the table? – No.

Will you swear he did not? – Yes.

It is utterly untrue that he ever offered you bank notes or £15 in gold? – He offered me some paper, but I never saw any Bank of England notes.

Did he offer you any gold? - He said he would give me £15 in gold, but he never tendered it down.

What did you say then? – I said I had sold the horse to my father.

Then all these witnesses who saw the gold on the table are mistaken? – I never saw any.

His HONOUR: Did you see it in his hand? – He had a purse in his hand, but I never saw any gold.

Defendant in further cross-examination said he did not know the plaintiff had to redeem the horse before the 1st of February. He knew there was an agreement with regard to plaintiff having the horse again. Sold the horse to his father because he wanted the money. He went to plaintiff's house about it on the 1st December. He had offered it to Mr. Topham. He had mentioned the matter to his solicitor. The person who owned the horse now was no relation to him. It was his wife's Uncle. (Laughter) His name was Watkinson.

Mr. WAUGH: In fact he is such a valuable horse that you don't like to let him go out of the family. (Laughter)

Defendant: I have not had anything to do with him since December 7th. He was sold to Mr. Watkinson in Knaresbro' Market on March 15th for £34. That was after the action had been commenced.

Several witnesses were called who stated that the value of the horse was not more than £30 to £35. These concluded Joseph Hardwick of Grassington, horse-breaker; Erasmus Buckle of Laverton, farmer; George Barker of Pott Hall, Masham (the breeder of the horse who first sold the horse for £25); and John Topham of Grantley, sheep dealer.

This concluded the defendant's case.

His HONOUR in giving his verdict said that defendant had done what was wrong and illegal. He must have known that he held the horse subject to being redeemed upon the payment of £15 by Joseph Webb, and he quietly put the animal into his father's hands, and then apparently his father put it up at Knaresborough where it was bought in under the name of defendant's wife's uncle. It seemed to him to be a trick to prevent a proper value being put on the horse. He had not the slightest doubt that the plaintiff did offer the money to the defendant on January 26th. The way in which defendant gave his evidence showed that he wanted to prevent plaintiff getting the benefit of the agreement. He put a small value on the horse; and everybody knew that if a person chose to be a spoliator everything in a court of law went against him. He did not believe his evidence. He should fix the value of the animal at £75. Half the amount would be £37.10s from which, deducting £15, he would give a verdict for the plaintiff for £22 10s, with costs. With regard to the counterclaim on the promissory notes, defendant could not set off a claim of that kind against a debt in his own right, and on the

counterclaim the verdict would be for the plaintiff, with costs. His Honour directed that the four guineas in court, be paid to plaintiff, and also that the ordinary partnership account between plaintiff and defendant in respect to the horse called "Young Fireaway", be taken in the terms contained in the indenture of the 19th July 1892; and that in taking the said account, the plaintiff shall be at liberty to show that the sum of £15 was not paid to him, for which the receipt dated 16th January, 1892, was given; but in the absence of such proof the receipt is to be taken to prove such payment. The £22 10s to be retained in court till the result of the account is ascertained. Defendant is ordered to pay in the £22 10s in 14 days. The cost of the trial to-day may be taken out of court by plaintiff.

The court then rose.