NEW YORK SUPREME COURT

Ketchum v. Clark

22 Barb. 319 (1856) · Decided September 1, 1856

SUMMARY

The court held that, in an accounting reference under the applicable code provision, parties who did not object before the referee or take exceptions to the referee's report were generally precluded from challenging the account on appeal. The decree was modified to credit Alva Clark with an additional $150, reducing his indebtedness from $737.43 to $587.43, and was otherwise affirmed with appeal costs paid from the receiver's fund.

CASE DETAILS

COURT	New York Supreme Court
WRITING FOR THE COURT	E. Darwin Smith; T. R. Strong; Welles
JURISDICTION	New York
DECIDED	September 1, 1856
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from a decree entered at Special Term dissolving a joint stock association, confirming a referee's accounting with modifications, and determining that Alva Clark owed the association a specified balance.
STANDARD OF REVIEW	Review of the referee's accounting and the decree based on that report, subject to the rule that unobjected-to accounting details and an unexcepted referee's report are not properly reviewable on appeal.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Alva Clark v. Ketchum

TOPICS

commercial litigation · civil procedure · appellate procedure · commercial

PRACTICE AREAS

civil procedure · commercial litigation · accounting

QUESTIONS PRESENTED

1. Whether a party may challenge details of a referee's accounting on appeal when the party made no objection before the referee and took no exception to the report.
2. Whether the decree should be corrected because the referee improperly charged Alva Clark individually with $450 received by the firm, while crediting him with only $300.

HOLDINGS

1. When a reference to take and state an account is made under the accounting provision of the Code, it is governed by the former chancery practice; if no objection is made before the referee and no exception is taken to the report, the parties are concluded by the report and may not raise issues concerning the account's details at the hearing or on appeal.
2. The decree had to be amended to credit Alva Clark with the full $450, reducing his indebtedness from $737.43 to $587.43, with interest; in all other respects, the decree was affirmed.

KEY QUOTATIONS

> *"No objection having been taken in this case before the referee, and no exceptions taken to his report, both parties are concluded by it, and neither is entitled to raise any question in respect to the details of the account, on the hearing of the cause."* (320)

> *"The decree should be amended, so as to reduce the amount of the indebtedness of the said Alva Clark from $737.43 to $587.43, as of the date of the charge against him, with interest, and in all other respects should be affirmed, with the costs of the appeal, to be paid out of the fund in the hands of the receiver."* (321)

FACTUAL BACKGROUND

A referee prepared an accounting in an action to dissolve the joint stock firm of Clark, Ketchum & Sharp and determine the associates' respective balances. The referee charged Alva Clark with $450 that had actually been received by the firm, although $300 of that amount was later credited back to him. The resulting decree left Clark charged with $150 of the amount by mistake.

PROCEDURAL HISTORY

The action sought dissolution of a joint stock company and an accounting among its associates. The matter was referred to a referee to take and state the account; after the referee's report, the Special Term entered a decree dissolving the association and confirming the account with alterations. Alva Clark appealed from the portion of the decree determining the balance charged against him.

DISPOSITION

other