

Opinion of the Court.

inability of the Miller wood pavement to resist the usual disintegrating forces to which all pavements are subjected. Against this defendant did not warrant, and for its consequences he did not agree to become responsible.

In the absence, therefore, of any evidence that the pavement became defective within three years from imperfect or improper material or construction used by defendant, there was no case against him, and the direction of the judge was correct.

*The judgment of the Supreme Court of the District of Columbia is, therefore, affirmed.*

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VINAL v. WEST VIRGINIA OIL & OIL LAND COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

Submitted January 10th, 1884.—Decided January 21st, 1884.

*Action—Error—Partnership.*

*Mr. John A. Hutchinson* for plaintiff in error.

*Mr. N. Goff, Jr.*, for defendant in error.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

This judgment is affirmed. One partner cannot recover his share of a debt due to the partnership in an action at law, prosecuted in his own name alone against the debtor. That is the only question presented by the bill of exceptions in this case. The refusal of the court below to grant a new trial is not reviewable here.

*Affirmed.*