COMMENT.

The rule that suits between partners to obtain an account and settlement of the affairs of the partnership are subject to the statute of limitations has recently been applied by the Supreme Judicial Court of Massachusetts in an interesting case involving property rights in a seat in the Boston Stock Exchange. *Currier* v. *Studley*, 33 N. E. Rep. 709. The seat in question was purchased with partnership funds and held in the name of one of the partners, who continued to control it for seventeen years after the dissolution of the firm, when he sold it at a high premium. On a suit by the copartner for a division of the proceeds of the sale, it was held by a four-to-three decision that the copartner could not recover. In the absence of an express contract in regard to the matter, or of conduct of the parties which could work an extension of the time for bringing the suit, the statute began to run from the dissolution and not from the day of sale. There could be no trust in favor of the copartner when the other partner held the seat for his own use without objection, and paid several fines and assessments in order to retain his membership in the Exchange. The minority opinion assuming that the seat was property, and personal, contended that there was evidence on which a jury could properly have found an express trust, inasmuch as an express trust in personal property may be created and shown by parol. If not an express trust, there was a resultant or constructive trust which would prevent adverse possession until the seat was sold, which was less than six years prior to the institution of the suit. Even if there were no trust, it was claimed that the statute of limitations as to personal actions affected only the remedy and did not extinguish the right.

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Whatever doubts may have been raised by the decision of the Court of Appeals of New York in upholding the Apportionment Act of 1892, as to the disposition on the part of that court to interfere with the "gerrymander," have been silenced by the decision of *People ex rel. Baird et al.* v. *Board of Supervisors*, 33 N. E. Rep. 827. Among the duties of the Board of Supervisors of each county is that of dividing the county into assembly districts in conformity with the plan outlined in the Act of 1892. The

Kings County Board attempted to divide that county into eighteen districts, and succeeded in varying the size of the districts so that the Ninth contained about thirty thousand inhabitants, and the Fifth over one hundred thousand. The court held that this division was in violation of the constitutional requirement as to equality of representation, and that not only did the constitution require such equality, but the policy of the State since the beginning of its existence had been in the line of direct representation of inhabitants as distinguished from representation through corporations of a quasi-political character, and while perfect equality was impossible, owing to certain requirements as to convenience and contiguity of territory and the indivisibility of towns in making the division, yet the Supervisors of Kings County had plainly made an unequal division. Although the Act of 1892 did not in express terms call for a division as nearly "as may be according to population," nevertheless the constitutional duty resting upon the Board was as plain as that which rests upon a legislature when making an apportionment. Whatever discretion may have been vested in the Supervisors was held to be subject to review by the courts, but the opinion goes on to say: "We do not intend by this decision to hold that every trifling deviation from equality of population would justify or warrant an application to a court for redress. It must be a grave, palpable, and unreasonable deviation from the standard, so that, when the facts are presented, argument would not be necessary to convince a fair man that very great and wholly unnecessary inequality has been intentionally provided for." The action of the Supervisors, being unconstitutional, was a nullity, and mandamus was held to be the proper means to compel them to make a valid division of the County of Kings into assembly districts. It is most encouraging to note the growing tendency of courts of last resort to interfere with the "gerrymander," and thus to secure to citizens their undoubted political right—that of equality of representation.

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The subject of constitutional revision is one of so much interest and importance in Connecticut at the present time that we take occasion to quote from the able argument of Hon. Henry C. Robinson before the Judiciary Committee at Hartford, upon a bill providing for a constitutional convention: "Let me submit to the committee that a constitutional convention is not the best body of men to revise a constitution. A smaller body of men, representative of wisdom and study in constitutional law, of the

great commercial, educational, and agricultural interests of our State, in number not exceeding twenty-five or thirty, made up in nearly equal proportion from both parties and selected with care, either by the General Assembly, or by the executive or the Chief Justice, or, as has been suggested, by four of our distinguished ex-Governors, would give the people better results than would be obtained from a convention formed upon the lines of this bill. * * * To be a member of such a Commission should be a high honor, and its members should serve without compensation. The legislature should provide a room for their public meetings, and clerks and stenographers, and should pay the personal expenses of its members." Revision of organic law otherwise than in accordance with the mode prescribed by that law, is no doubt, as Mr. Robinson shows, revolutionary in its character, and justifiable only as an extreme measure, but we are inclined to believe that a large portion of the people of this State are thoroughly convinced that a change in the constitution is so necessary as to justify almost any peaceful means that may be employed to bring about that result. The true democratic idea is that representation is to be based upon the individual and not the town as the unit. However, such a commission as is suggested, would draft a far better constitution, and one more adapted to the real needs of the people, than would be obtained as the result of the labors of a constitutional convention.

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The letter carriers' eight-hour law, enacted May 24, 1888 (25 St. 157), provides that eight hours shall constitute a day's work for letter carriers, and that if any letter carrier is employed a greater number of hours per day he shall be paid extra in proportion to the salary fixed by law. Under this statute a number of cases have come before the Court of Claims (See 27 Ct. Cl. 244), and have been decided uniformly in favor of the carriers. Two of these cases (*U. S.* v. *Post*, 13 Sup. Ct. Rep. 567 and *U. S.* v. *Gates*, 13 Sup. Ct. Rep. 570), were appealed to the Supreme Court, and have been decided very recently. In *U. S.* v. *Post*, the contention of the government is that this law applies only to the particular work of a letter carrier, the collection and distribution of mail, and the carrier must show that he performed eight hours service of this kind, and that the extra hours were devoted to work of a similar nature. The Court of Claims found in this case that a considerable part of the carrier's work was in the post office and of a clerical character. The court held that to recover for extra hours it was only necessary that he be a letter carrier

and be lawfully employed, under the direction of the postmaster, in work that is not inconsistent with his general business as a letter carrier. In *U. S.* v. *Gates*, *supra*, an additional question is raised. On Sundays and holidays the number of hours' service falls short of eight. It is contended by the department that as many hours should be deducted from the total number of extra hours as may be necessary to make up the deficit on Sundays and holidays. But the court held that the carrier is entitled to his full salary whether he is furnished work eight hours a day or less, and for any excess above eight hours on any day, he is entitled to extra pay. To sustain the interpretation given the act by the department would necessitate reading in it, by construction, the words, "on an average, eight hours per day," which is manifestly contrary to the spirit, if not the letter, of the statute.

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There is some conflict of opinion in different parts of the Union as to whether the public can be ousted by adverse possession of its right to a highway once dedicated. The Supreme Court of Rhode Island in the recent case of *Almy* v. *Church*, 26 Atl. Rep. 58, applies the rule, "*nullum tempus occurrit regi*," on the ground of public policy, the lack of interest felt by individuals in public rights, and since an obstruction is a nuisance and no nuisance can ripen into a right. Other States taking the same view are, New York, New Jersey, Pennsylvania, Louisiana, Indiana, Iowa, California, Mississippi and Tennessee. The Rhode Island decision, however, qualifies the doctrine to this extent, that when a highway has been obstructed, and another way equally convenient has been in use by general and long-continued acquiescence, the latter will be considered as substituted for the original highway.