RECENT CASES.

SALES.

Vendor and Purchaser—Contract—Interpretation.—Stewart v. *Arendt*, 37 N. Y. Supp. 684. When in a contract there is a statement that the consideration for a sale of lands is a certain sum of money, and later from definite and particular terms showing the method of payment it appears that the consideration was a greater sum, the latter statement will prevail.

Sales—Action for Deceit—Principal and Agent.—West Florida Land Co. v. *Studebaker*, 19 Southern Reporter, 176 (Fla.). This was an action for fraud and deceit in the sale of lands. The court held that an action at law could be maintained for fraud of this sort, that principals are liable *civiliter* to third parties for the deceit of their agents when committed in the course of the principals' business, and that proof of other frauds of the same character committed by the same parties at approximately the same time was admissible to show the motive for the fraud in question.

Sale by Sample—Evidence—Value of Goods.—Eiseman et al. v. *Heine et al.*, 37 N. Y. Sup. 861. In an action for breach of contract of sale, the acknowledgment of agent that an order was received and that an attempt was made on his part to fill it will be admitted as evidence to show existence of contract. When the sale was made by sample the injured party will be allowed to estimate his loss by showing value of goods, according to quality claimed by him to be represented by the sample.

Sale—Written Notice by Vendee—Warranty.—J. F. Seibling & Co., v. *Newton*, 43 N. E. Rep. 151 (Ind.). In an action for the price of a machine sold with warranty on a contract requiring immediate written notice to vendor if the terms of warranty were not satisfied, it was held that as the plaintiffs' agent was present at the trial of the machine and, failing to make it do good work, told the vendee to return it, the written notice was waived.

Sale—When Title Passes—Attachment.—Gates Iron Works v. *Cohen*, 43 Pac. Rep. 667 (Col.). Plaintiff agreed to furnish a concentrating mill to defendant who promised to pay for it if on being tested it proved capable of doing the required work. The mill was erected on a foundation of solid masonry upon defendant's

land and in a building owned by defendant, but before it had been fully tested a creditor of defendant levied upon it and the land upon which it stood. Held, that title to the mill never having passed to defendant, such creditor acquired no interest in it.

Specific Performance by Part Owner—Sale by Agent.—Cochran v. *Blount et al.*, 16 Supreme Court Rep. 454. L, a part owner of a tract of land, placed the property in the hands of an agent for sale. The agent made a contract of sale which was approved by L and by some of the part owners. The other owners refused to sanction it and thereupon L withdrew his approval. The purchaser then brought suit against L to obtain specific performance. Held, that a decree of specific performance could not be granted unless it were shown that L held himself out to the agent as full owner or as authorized to dispose of the shares of the others.

PARTNERSHIP.

Partnership—When Exists.—State Bank of Luskton v. *O. S. Kelley Co.*, 66 N. W. Rep. 619 (Neb.). Where two farmers purchased a threshing machine, paying for the same by joint and several notes and jointly used the machine in threshing grain for others, it was held that the evidence warrants the conclusion of joint ownership rather than partnership.

Partnership—What Constitutes.—Stratton v. *O'Conner et al.*, 34 S. W. Rep. 158 (Texas). Cattle were furnished by defendant to another at a fixed valuation upon an agreement that the latter should care for and keep them for four years when they should be sold, their cost repaid to defendant and the remaining profits or loss, if any, should be shared equally. Held, that the arrangement constituted a partnership and defendant was liable for the indebtedness incurred by his partner in keeping the cattle.

Partnership—Order of Supersedeas—Contempt of Court.—Silliman et al., v. *Whitmer et al.*, 34 Atl. Rep. 56 (Penn.). A partner who is served with a supersedeas order staying operations which are in charge of another partner, is guilty of contempt of court if he fails to transmit the order to the partner in charge.

Partnership—Accounting by Survivor.—Little v. *Caldwell*, 44 Pac. Rep. 340 (Cal.). Two law partners made a written contract to conduct certain litigation for fifteen per cent of the amount recovered, which was afterwards modified by parol to the extent that the clients should defray part of the expense of the suit.

After the death of one of the partners, the surviving partner and the client agreed that the survivor should continue the suit, paying all costs, and if finally successful, should receive forty-five per cent in addition to the original contingent fee which the firm were to receive. The deceased partner's heirs afterwards executed to the surviving partner an assignment of their rights in the original contract upon the consideration that he "would do what was right" by them if the suit was successful. Upon the success of the suit the court held that inasmuch as the several agreements did not constitute separate contracts but formed modifications of the original written contract, the deceased partner's heirs were entitled to half of fifteen per cent of the amount of the judgment obtained.

Promissory Note—Place of Payment—Insolvent Firm—Member's Rights as Creditors—In re Parisian Cloak & Suit Co.'s Estate, 34 Atl. Rep. 224 (Penn.). When two insolvent partnerships have practically the same composition in their membership but one is creditor of the other, the former cannot participate in the distribution of the assets of the latter until the claims of the other creditors are satisfied.

Partnership Agreement—Construction.—Magilton v. *Stevenson et al.* 34 Atl. Rep. 235 (Pa.). A provision in a partnership agreement required an equal division of losses on condition that the partner who furnished the capital should not be put to any loss over a stated amount. Held, that the loss of said partner in excess of this definite amount was a joint and several liability of the other.

BANKRUPTCY.

Bankruptcy—Assignment.—Lancey v. *Goss et al.*, 33 Atl. Rep. 1071 (Maine). Such items of estate as the assignee declines to appropriate or utilize remain the property of the bankrupt, always subject to the superior right and title of the assignee and creditors, and until such paramount right is asserted the bankrupt has a title good against all others.

Bankruptcy—Fraudulent Conveyance—Possession Retained by Mortgage.—Bank of Hazelhurst v. *Goodbar et al.*, 19 Southern Reporter 204 (Miss.). The security which the appellant, one of the chief creditors and the assignee of an insolvent firm, accepted from its debtors included a mortgage of the stock of goods and store accounts, under contemporaneous oral agreement by which the debtors were permitted to continue their mercantile business,

using the mortgaged stock of goods therein, selling the same and reinvesting the proceeds. The conveyance was held fraudulent and void as to other creditors.

Insolvency—Discharge—Composition—Estoppel.—W. L. Blake Co. v. *Lowell*, 34 Atl. Rep. 264 (Me.). If an insolvent debtor withdraws the percentage gained on composition proceedings and withholds it he can not use the discharge to accomplish his own fraud by pleading it in bar of the suit of his creditor.

Bankruptcy—Assignment—Preferences.—Goodbar Shoe Co. v. *Montgomery*, 19 Southern Reporter 196 (Miss.). The appellant claimed that an assignment in which certain creditors were preferred was void. It was held that, as the assignment expressly stated that the assignee should pay "according to the true amounts legally due the creditors," and that any creditors whose names had been accidentally omitted should share under it, the objection alleged did not invalidate it.

MISCELLANEOUS.

Contracts—Consideration—Eaton v. *Libbey et al.*, 42 N. E. R. 1127. The defendants in this action maintain that a child was a stranger to the consideration of a note given to his parents for his benefit for the privilege of giving him a name, and that he, as plaintiff, could not sue on it. Held, that the consequence of a name affects the child more than any one else—that the child has an interest in the name imposed and that it forms a consideration which will give him right to sue on the note.

Libel and Slander—Book Review—Correct Statements—Criticism—Characterization.—Dowling v. *Livingston*, 66 N. W. R. 225. The plaintiff published a book entitled "The Wage Worker's Remedy." The defendant's paper, *Detroit Journal*, in reviewing the book spoke of its author as appropriating the theories of other writers without giving them any credit, while his solutions of different labor problems were characterised as "quack remedies which would only intensify the trouble." The whole attack was full of sarcasm and ridicule, but there was no misstatement of fact. The court said, "When an author places his book before the public he invites criticism and however hostile that criticism may be and however much damage it may cause him by preventing its sale, provided the critic makes no misstatement of any material facts contained in the writing and does not attack the character of the author, there is no remedy."