RECENT CASES.

Signers of articles of incorporation not liable as partners.—Rutherford et al., v. *Hill et al.*, 29 Pacific Reporter 546. Defendants executed, acknowledged and filed with County Clerk and Secretary of State articles of incorporation as "Himes Printing Co.," but did nothing further towards effecting an organization, electing officers or transacting the proposed business. One of their number, Martin, however, appropriated the proposed company's appellation and transacted business as general agent, and upon one of his obligations created in so doing the present suit is brought against both him and all the others who had signed the articles of incorporation, to hold them as partners. The court held that they could not be so held, and in the course of the opinion says: "Such liability would have to rest upon the theory that by the mere signing the articles with Martin, they constituted him their general agent. * * * No authority to which our attention has been directed has gone so far, and we feel safe in saying that none can be found to support that doctrine." And further the court says if they could be held liable "this would grow out of their conduct in carrying on the business and not out of the mere fact of signing and filing the articles," and the evidence showed absolutely no participation in the conduct of the business or even knowledge thereof. In view of the fact that the evidence showed that plaintiffs did not intend to give credit to defendants as partners when they transacted business with the pseudo Himes Printing Co., § 748 of Morawetz on Priv. Corp., cited in the opinion, seems very much in point, although the subject therein discussed has more intimate reference to illegal incorporation where corporators actually and intentionally did business as a corporation, in this respect differing from the case at bar. The editors take leave to add a sentence from that section: " * * * It is equally clear that the party contracting with the association does not inintend to contract with its members individually. To treat the individual members of the association as parties to the contract, under these circumstances, would therefore involve not only the nullification of the contract which was actually contemplated by the parties, but the creation of a different contract, which neither of the parties intended to make."

Unreasonable Search of Private Papers—How This May be Overcome by the Court.—*Potter* v. *Beal et al.*, 49 Fed. Rep. 793 (Mass). Bill in equity was brought by plaintiff, the president of a bank which had failed, (1) to prevent Beal, the receiver thereof, from opening a locked trunk (which remained in the bank vaults and to which plaintiff held the key), before the Grand Jury, at the summons about to be issued by the U. S. attorney, for the reason that he (the plaintiff) was charged with violations of the law, and that the trunk contained private papers only; and (2) to compel him to deliver the same to the plaintiff. Witnesses showed that the trunk had been considered the President's property but were ignorant of its contents. The receiver argued that it had come into his possession with other assets of the bank and claimed the right of searching for memoranda, etc., relating to bank affairs. The government attorney, a party on motion, asked for an order to lay the trunk before the Grand Jury. Defendants offered evidence as to the character of the trunk's contents, which was excluded on plaintiff's objection that such a proceeding was in violation of the Constitution, securing immunity from "*unreasonable* searches," "the seizure of private property without due process of law," and compulsory self-incriminating testimony. The court states that the plaintiff does not object to a private search and that the court agrees with the plaintiff, that a public search, *i. e.*, one before a jury, of private papers, of even evidence before a court as to the character of such papers, *is* such a search on investigation as would be unreasonable within the spirit of the Constitution. Before the Court could rightfully transfer the custody of the trunk to the plaintiff, however, it became necessary to discover whether it contained any of the bank's assets or not. To learn this in a manner not unreasonable, the Court appointed a third party, to examine the trunk alone, retaining all bank papers and returning all private ones to the plaintiff. All publicity, except a report to the Court, to be excluded, upon which the parties will be heard as to the disposition of papers material to the government's case.

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Prize-fighting—Testimony of experts.—*Seville* v. *State*, 30 N.E. Rep. 621 (Ohio), discusses the question of the admissibility of expert testimony, on an indictment for prize-fighting, for the purpose of showing whether a given contest was a prize-fight or a mere boxing exhibition. On the trial below the defense sought to introduce as expert testimony the evidence of a witness who testi-

fied he had been engaged in fifty-two prize-fights and boxing contests and had spent a number of years in acquiring the art of boxing. The court summarily disposes of the question as follows: "The question for the jury to decide, was whether this combat was a prize-fight, not what the Queensbury rules or any other rules called it, nor what name those accustomed to such combats have given it. What was it, in plain English? And this question of fact, under a proper instruction from the court as to what constitutes a prize-fight, the jury was as competent to decide as the most experienced boxer or prize-fighter. The question was not one of skill or science, to be decided upon the opinions of those experienced in such practices, or by rules adopted for the government of associations of such persons; but one within the comprehension of the common understanding, and the range of common knowledge, which the jury could decide upon the facts proven, as well as a professional pugilist."