

RECENT CASES.

PARTNERSHIP.

Partnership Note—Executed by Partner—Burden of Proof.—*Buettner v. Steinbrecker et al.*, 60 N. W. Rep. 177. The burden of proof rests with a firm to show, where one partner under the firm name executed a note for his own use, that such instrument is not an obligation of the firm or within the scope of its business. The second partner had allowed loans made on the strength of this note to be used for firm purposes. It was thus ratified and an innocent holder was entitled to recover against the firm.

Parties to a Suit for Accounting—Harper v. Anderson et al., 37 Pac. Rep. 926 (Cal.). Where action is taken against both the retiring member of a firm and the one buying out such interest for alleged accounts collected by the new member through procurement of the retiring partner, a nonsuit as to the party buying out the retiring partner is sustained.

Assignment—Firm and Individual Creditors.—*Calhoun v. Bank of Greenwood*, 20 S. E. Rep. 153 (S. C.). Assignments are made by both a bank firm and a member of it, to whom the bank is indebted. In the distribution of assets the assignee for the individual creditors cannot stand on an equal footing with the partnership creditors, the firm assets being primarily liable for the payment of partnership debts.

Partnership Accounting—Claims of Surviving Partner.—*Painter et al. v. Painter et al.*, 36 Pac. Rep. 865 (Col.). The deceased member of a firm engaged in making city directories had left an indebtedness, owing to the unprofitableness of the business, and, afterwards, the undertaking proving successful, an action was brought by the personal representatives for an accounting to include all the assets at the time of the suit. Held that the survivor having managed the business with skill and industry, should receive a fair allowance of the assets by reason of compensation for his services, and that the claim against the deceased partner should be adjusted by taking into account the good-will of the old firm, working out a settlement of the partnership, and not by presenting such claim against the estate of the deceased.

Joint-Stock Companies—Failure to Record Articles—Liability as General Partners.—*Hinds et al. v. Battin et al.*, 30 Atlantic Rep.

164 (Penn.). A contract was entered into between the plaintiffs and the Scranton Match Co. before articles of association had been recorded. Such contract was in the nature of a proposal of the defendants, subject to approval after the joint-stock company had recorded its articles of association. Such approval was made, and, subsequently, the company went into liquidation. The defendants were not, therefore, liable as individuals or general partners under the existing circumstances of delay in recording the articles of association, after commencement of the contract relations.

NEGOTIABLE PAPER.

Promissory Note—Action by Indorsee—Failure of Consideration.—*Merchants' & Planters' Bank v. Millsaps*, 15 South. Rep. 659 (Miss.). When, by statute, the maker of a note is allowed to plead want or failure of consideration to an action by the indorsee, he is not bound to pay a note, for which the consideration has failed, even though he has obtained an extension of time from the indorsee, provided he makes no promise to pay, to secure such extension.

Alteration of Note—Browning v. Gosnell et al., 59 N. W. Rep. 340 (Iowa). The signing of a fully executed and delivered note, by a stranger, is such an alteration as to discharge previous signers, if they have had no notice, and such stranger may be held on the note.

Attachment—Action by Sheriff on Note—Defenses.—*Nichols v. Hill*, 19 S. E. Rep. 1017 (S. C.). All defenses may be set up to an action, by a sheriff, on a note taken by attachment, which could be set up by the defendant in the attachment suit.

Action on Note—Defenses.—*Hulley v. Chedic et al.*, 36 Pac. Rep. 783 (Nev.). The defense of revocation, by subsequent recovery of a gift made *causa mortis*, of a note transferred by indorsement, may be made by the donor alone, as the gift is merely voidable. The right of payment on such a note may not be challenged by the maker or his creditors.

Liability of Drawer on Certified Check.—*Cincinnati Oyster and Fish Co. v. National Lafayette Bank*, 36 N. E. Rep. 833 (Ohio). It is no defense to an action on a check, which had been presented at the bank on which it was drawn, within a reasonable time and due notice sent to the drawer of its non-payment, owing to the insolvency of said bank, that such check had previously been certified by said bank.

CONSTITUTIONAL LAW.

Act to Reimburse Public Officer—When Public—Validity.—McClelland, Trustee et al. v. State ex rel Speer, 37 N. E. Rep. 1089 (Ind.). The Act, April 8, 1885, to reimburse a certain township trustee, by taxation of the township, for money lost by him by the failure of a bank in which it was deposited, and to release him and the sureties in his bond from liability, is inoperative and void, because the legislature has no power to raise money by taxation for private objects and purposes, but only for public purposes; especially where the money lost by the failure of the bank belonged to a fund which was not raised by taxation; also that part of the Act relating to a release of the trustee and his sureties in his bond from liability violates the Bill of Rights, which provides that no law impairing the obligation of contracts shall be passed.

Trade-Mark.—Cohn v. People, 37 N. E. Rep. 60 (Ill.). A Statute of Illinois entitled, "An Act to Protect Associations, Unions of Workingmen, and Persons in Their Labels, Trade-Marks and Forms of Advertising," is not unconstitutional as granting special privileges to certain associations contrary to the Illinois Constitution, as it gives the right to all associations whether composed of workingmen or not. A cigar label, which states that "the cigars contained in this box have been made by a first-class workman, a member of the Cigarmakers' International Union of America, an organization opposed to inferior, rat-shop, coolie, prison, or filthy tenement house workmanship," is not illegal, as being immoral, or against public policy, because the label attacks no other cigar manufacturer but commends the cigars to which it is attached.

Prize Fighting—Glove Contest—Athletic Club—Forfeiture of Charter.—State v. Olympic Club, 15 South. Rep. 190 (La.). Where a criminal statute makes what is commonly called prize fighting a misdemeanor punishable by fine and imprisonment, but contains a provision that the statute shall not apply to exhibitions and glove contests between human beings which may take place within the rooms of regularly chartered athletic clubs, it is a question of fact for the jury or court to determine whether any given contest or series of contests are prize fights or glove contests; and the court will not disturb a finding of the jury as to the fact. Moreover, if such contests are violative of good morals and of a sound public policy, the remedy comes within the power of the legislative department of the government, and the court cannot on these

grounds annul the Charter of a Corporation for doing acts permitted by the Legislature.

Trial by Jury.—*State v. Griffin*, 29 Atl. Rep. 414 (N. H.). The law of New Hampshire requiring an appellant from a sentence of a justice of the peace to pay certain fees, is not an infringement of the constitutional right to a trial by jury, as the amount of such fees is less than the amount of those required by the Act of 1718, which was in force at the time of the adoption of that provision of the constitution, and the trial by jury secured to the subject by the constitution is a trial according to the course of the common law, and the same, in substance, as that which was in use when the constitution was framed.

CRIMINAL LAW.

Burglary—Evidence.—*State v. Valwell*, 29 Atl. Rep. 1018 (Vt.). On a trial for burglary the State proved that two of the defendants entered a house and stole property, while a third remained in their wagon. Evidence that earlier in the same night the latter participated with them in burglarizing another house was held admissible, as tending to show that he was cognizant of the second crime.

Homicide—Dying Declarations.—*Boulden v. State*, 15 S. Rep. 341 (Ala.). Statements of the deceased sought to be introduced as a dying declaration are not necessarily inadmissible because death did not occur until two months after they were made.

Criminal Jurisdiction—Division of County—Effect of Pending Prosecution.—*People v. Stokes*, 37 Pac. Rep. 207 (Cal.). While a criminal prosecution was pending, that part of the county in which the offense was committed was organized into a new county, and the prosecution was dismissed. Afterward the defendant was tried and convicted in the new county, which on appeal was held to have jurisdiction of the offense.

Evidence—Recalling Jury—Additional Instructions.—*State v. Hale*, 59 N. W. Rep. 281 (Iowa). Upon the jury being called in to receive additional instructions from the Court defendant and his counsel were not present. Reasonable efforts having been made to find them, but without success, the instructions were delivered. Held that their absence was not under such circumstances ground for a new trial.

Extradition.—*Carr v. State*, 16 S. Rep. 150 (Ala.). A person who has been surrendered by one State to another upon requis-

tion, may be tried for an offense other than that designated in the requisition before being tried for the latter, or allowed to return to the State which surrendered him.

False Imprisonment—Evidence—Damages.—Sandum et al. v. Wells, 26 S. W. Rep. 1001 (Tex.). When a case of false imprisonment occurs, the sureties of the constable serving the process, are not liable unless it can be definitely proved that he was acting within his special and legal authority. The court held further that the character of the business of the person distrained should also be considered in estimating damages. That the mental suffering endured is a matter of fact for the jury, and no testimony of a witness as to it is admissible. And that the thoroughly honest intent of the constable is admissible as a mitigating cause.

GENERAL CASES.

Action on Note—Joint Liability.—Stevens et al. v. Catlin, 37 N. E. Rep. 1023 (Ill.). Upon the death of one of four joint parties to a promissory note, it was claimed that the surviving promisors could not be sued jointly. The Court held that the death of one did not affect the liability of the remaining parties to the note.

Damages—Materials for Building—Delay in Furnishing—Injury to Building by Rains.—Carnegie, Phipps & Co. (Limited) v. Holt, 58 N. W. Rep. 623 (Mich.). Plaintiffs sold to defendant steel pillars and beams for a building, to be furnished upon "reasonable notice" as ordered by defendant's architect. Defendant sought damages for delay in furnishing such materials, on the ground that this delay postponed the completion of the building until January 1st, and that in December heavy rain-storms filled the basement with water, causing the foundation to sink on one side, and also that the walls being wet the plastering was affected. The Court held that the injury to the building from the rains was too remote to constitute an element of damage, and that the drenching of the building by a December rain-storm was not an ordinary proximate and direct result of plaintiffs' delay, as a rain-storm might have come in any other month as well as in December.

Res Judicata—County Swamp Lands—Validity of Contract.—Wm. Brown Estate Co. v. Wayne Co., 27 S. W. Rep. 322 (Mo.). The Supreme Court, in an action between third parties upon matters involved in a contract for the sale of swamp lands, assumed the contract to be valid. The same court, in a subsequent suit involving the nature of the contract, declared it void. The plaintiff thereupon brought suit to compel its performance, alleging

that, as he had acted upon the belief that the first decision was an affirmation of its validity, he was within the protection of that clause in the Constitution which provides that the obligation of contracts shall not be impaired by any State. Held, that the question as to whether the contract was void or not, was subject to the final determination of the court, a previous assumption of its validity having no effect as against the final decision, and that the plaintiff was not within the protection of the constitutional provision.

Riparian Rights—“High Water Mark”—Assessment of Benefits.—Carpenter et al. v. Board of Commissioners of Hennepin County, 58 N. W. Rep. 295 (Minn.) An assessment for benefit on lands actually damaged by the proposed “beneficial measure” was held to be void, and the right of the State, in aid of navigation, to maintain the water of a lake up to ordinary “high-water mark” without compensation to riparian owners, turns on the construction of the term “high-water mark.” For fresh-water rivers and lakes, “high-water mark” was held to be a line separating land valuable for pasturage and agriculture from that rendered useless by frequent action of the water, a line coördinate in no case with unusual or extraordinary high-water mark.

Roads—Dedication—Prescription.—Jones v. Phillips, Road Overseer, 26 S. W. Rep. 386 (Ark.) The appellee was granted an order restraining the appellant from obstructing a portion of the public road, alleged by him to be under his supervision, to which the appellant excepted and appeals. Although the appellant permitted the public to use the road which was on her soil, the Court could discover no intention or acts on her part to make a dedication. The main contention of the appellee was “that the public had acquired a right by prescription—by continuous, uninterrupted and adverse use for more than a statutory period.” Inasmuch as the owners have never ceased to keep gates and fences where it enters the field on either side, they have never ceased to exercise dominion, absolute or qualified.