

Shelford on the Law of Railways. Third Edition, with the Cases and Statutes complete to the time of publication. In royal 12mo. 30s. cloth.


Questions for Law Students on the Third Edition of Mr. Serjeant Stephen's New Commentaries. By James Stephen, Barrister at Law, &c. &c. 8vo. 10s. 6d. cloth.

O'Dowd's New Chancery Practice, containing the Acts and Orders of 1852-3. Second Edition, with the latest Cases. In 12mo. 7s. 6d. boards.

Rouse's Copyhold Enfranchisement Manual, 1853. In 12mo. 5s. cloth.

Warren's Law and Practice of Election Committees as remodelled. In royal 12mo. 15s. cloth.


Grant's Law of Corporations in General, as well Aggregate as Sole. Royal 8vo. 26s. boards.


Quain and Holroyd's New Common Law Practice under the Act of 1852. In 12mo. 7s. 6d. cloth.

Baker on the Law and Practice of Coroner, with Forms. 12mo. 1s. 4d. cloth.

Wills on the Principles of Circumstantial Evidence. Third Edition. 8vo. 9s. boards.

Coote's Practice of the Ecclesiastical Courts, with Forms, &c. 8vo. 28s. boards.


Hertslet's Collection of Commercial Treaties and Conventions between Great Britain and Foreign Powers. 8 vols. 8vo. 8l. 5s. boards.

Moore's Solicitors' Book of Practical Forms. In 12mo. 7s. 6d. cloth.


Keyser on the Law of the Stock Exchange. In 12mo. 8s. cloth.

Pulling's Law and Usage of Mercantile and Joint Stock Companies' Accounts. In 12mo. 9s. boards.

Kennedy's Code of Chancery Practice, with all the Orders from 1814 to the present time, and the New Acts and Orders, 1852-3: complete with Indexes. 2 vols. in 12mo. 19s. 6d. cloth.

Archer's Index to the Unrepealed Statutes connected with the Administration of the Law. In 8vo. 5s. boards.

Davis's Manual of Evidence in the New County Courts. 12mo. 8s. boards.

Whittaker's Practice under the New York Codes. In royal 8vo 21s. bound.


Oke's Magisterial Formulist, being a Companion Book of Forms to the above. 8vo. 21s. cloth.

Oke's System of Solicitors' Bookkeeping, with Forms of the Account Books recommended. 8vo. 5s. cloth.

Oke's Law of Turnpike Roads, including the General Acts now in force, and Forms. 12mo. (In the press.)
A TREATISE ON THE CONTRACT OF PARTNERSHIP.
TO

THE RIGHT HONOURABLE

THE LORD JUSTICE KNIGHT BRUCE,

This Work

IS, BY PERMISSION,

WITH THE GREATEST RESPECT,

DEDICATED.
PREFACE

by

THE TRANSLATOR.

The merits of the following Treatise of Pothier on Partnership, and its utility as being often cited in our Courts, and referred to by our text writers, would, it is believed, sufficiently justify this publication. The principal object, however of the Translator has been, by adding to the Notes the French Civil and Commercial Code upon this subject, to show, by one example, in what mode those Codes were framed, and to what extent their framers were indebted to the Treatises of Pothier. This work will, it is believed, illustrate in a striking manner what is asserted by M. Dupin (Ainé) in the dissertation\(^1\) prefixed to his edition of the Treatises of Pothier:

\[\text{"Les ouvrages de Pothier n'ont pas été reçus comme lois; mais ils ont obtenu un honneur semblable; car plus des trois quarts du Code civil}\]

\(^1\) P. 104.
ont été littéralement extraits de ses Traités. En effet, les rédacteurs de ce Code, persuadés qu'ils ne pourraient jamais imaginer un ordre plus parfait que celui que Pothier avait adopté pour ses divers traités, et que nulle part ailleurs ils ne trouveraient ni des principes plus sûrs, ni des décisions plus équitable, ont eu l'extrême bon sens de se borner à analyser ses ouvrages."

30. Chancery Lane, January, 1854.
## CONTENTS

<table>
<thead>
<tr>
<th>Preliminary Article</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1</td>
</tr>
</tbody>
</table>

### CHAPTER I.

**Of the Nature of the Contract of Partnership**

- § I. In what Partnership differs from Community or Partnership
- § II. To what Class of Contracts Partnership belongs
- § III. What is of the Essence of the Contract of Partnership
- § IV. What Natural Equity requires in the Contract of Partnership
- § V. Of Fictitious Contracts of Partnership

### CHAP. II.

**Of the different Kinds of Partnerships**

- Sect. I. Of Universal Partnerships
- Art. I. On the Partnership *Universorum Bonorum*
- § I. What it is. When it is to be considered as contracted, and between what Persons it can be contracted
- § II. How the Property of the Partners is communicated or rendered common
- § III. What does or does not enter into the Partnership *Universorum Bonorum*
- § IV. Of Charges or Incumbrances on the Partnership *Universorum Bonorum*
- Art. II. On the Second Kind of Universal Partnership, called by the Romans *Universorum quæ ex questu veniunt*

- Sect. II. On Particular Partnerships
- § I. Of Partnerships in certain Things
CONTENTS.

§ II. Of Partnerships for the Exercise of a Profession - - - - - 38
§ III. Of Partnership for Commerce (or Trade) - 39

CHAP. III.
The different Clauses in Partnership Contracts - - - - 43
§ I. The Clauses concerning the Time for the Commencement and the Duration of the Partnership - - - - - 44
§ II. The Clauses which relate to the Management of the Partnership - - - - 45
§ III. As to the Clauses concerning the Shares of each of the Partners in Profits and Losses - 49
§ IV. Of the Clauses which concern the Manner of recompensing one of the Partners who, although they are Partners for equal Shares, has brought more than the others into the Partnership - - - - - 51

CHAP. IV.
As to the Persons who can enter into, and the Forms required by our Law for the Contract of Partnership - 54
Art. I. Of the Persons who can enter into the Contract of Partnership - - - - - ib.
Art. II. Of the Forms required for the Contract of Partnership - - - - 55
§ I. Of the Forms required for Universal Partnerships - - - - - 56
§ II. Of the Forms required for Commercial Partnerships - - - - - 58
§ III. On particular Partnerships which are not Commercial Partnerships - - - - 61

CHAP. V.
Of the Right each of the Partners has to the Property belonging to the Partnership - - - - - ib.
§ I. General Principles - - - - - - ib.
First Maxim - - - - - ib.
Second Maxim - - - - 62
Third Maxim - - - - 63
Fourth Maxim - - - - 64
CONTENTS.

§ II. Whether one Partner can associate a Third Party in the Partnership, or only as to his own Share; and of the Effect of his doing so 66

CHAP. VI.

Of the Debts of Partnerships, and the Liability of each of the Partners for them - - - - - - - 70

§ I. Of the Debts of Partnerships _en nom collectif_ - _ib._
First Condition - - - - - - 71
Second Condition - - - - - - 74

§ II. Of the Debts of Partnerships _en commandite_, and of Anonymous Partnerships - - 75

§ III. Of the Debts of Partnerships not Partnerships in Trade - - - - - - - 77

CHAP. VII.

The respective Obligations of Partners, and the Action _Pro Socio_ - - - - - - - - - - - 81

Art. I. As to the different Things which each of the Partners can owe to the Partnership, and for which he is obliged to account to his Co-partners - - - - - - - - - - - _ib._

§ I. As to what a Partner has agreed to contribute to Partnership - - - - - - - - - - - 82

§ II. As to what each of the Partners has withdrawn from the Common Funds - - - - - - 86

§ III. Of the Loss that One Partner has caused to the Partnership - - - - - - - - - - - 91

Art. II. As to the Things for which a Partner may be Creditor of the Partnership, and for which the other Partners are obliged to account to him according to his share in the Partnership 92

Art. III. As to other Kinds of Obligations which arise from the Contract of Partnership - - - 97

Art. IV. Of the Action _Pro Socio_ - - - - - - - - - - - 97

CHAP. VIII.

The different Modes in which a Partnership is dissolved - - 101

§ I. As to the Expiration of the Time - - - - _ib._
§ II. The Extinction of the Thing which constitutes the Object of the Partnership, and of the Completion of the Business - 102

§ III. As to the Death of One of the Partners, and his Insolvency - 105

§ IV. As to the Wish to be no longer a Partner - 109

CHAP. IX.

The Effect of the Dissolution of Partnerships, and the Distribution of the Effects - 116

ART. I. As to the Effect of the Dissolution of Partnership - 116

ART. II. As to the Distribution or Division of the Partnership Effects - 122

§ I. By whom, against whom, and when, the Demand for Distribution can be made - 123

§ II. How Parties should proceed to a Distribution 125

§ III. As to the Obligations which arise from the Distribution - 131

§ IV. As to the Effect of Distribution - 133
ON THE CONTRACT OF PARTNERSHIP.

PRELIMINARY ARTICLE.

1. Partnership is a contract, by which two or more persons put, or oblige themselves to put, something in common, in order to make therefrom in common a lawful profit, of which they reciprocally bind themselves to render each other an account.

We shall treat in the First Chapter, of the nature of the Contract of Partnership. We shall enumerate in the Second, the different kinds of Partnerships; in the Third, the different clauses in Partnership Contracts. We shall examine in the Fourth, what are the forms which our law requires in the Contract of Partnership. We shall treat in the Fifth, of the right each of the partners has to the Partnership Property.

1 Partnership is a contract by which two or more persons agree to put something in common with a view of dividing the profit which may result therefrom. Civil Code of France, art. 1832. Every partnership must have a lawful object, and be contracted for the common interest of the parties. Ibid., art. 1833. See Wats. Partn. 1. Coll. Partn. 2. 2 Bell's Comm. p. 613., 4th edit. Stor. Partn. 2. Code of Louisiana, art. 2772. 2775.
Pothier on Partnership.

In the Sixth, how each of them is bound by debts. In the Seventh, of the obligations which arise from the Contract of Partnership. We shall examine in the Eighth, how Partnership is dissolved. In the Ninth, we shall treat of the distribution of the Partnership effects.

CHAPTER I.

OF THE NATURE OF THE CONTRACT OF PARTNERSHIP.

We shall examine,—1. Wherein Partnership differs from community or partownership. 2. To what class of contracts it belongs. 3. What is of its essence. 4. What natural equity requires in this contract. 5. We shall treat of fictitious Contracts of Partnership.

§ I. In what Partnership differs from Community or Partownership.

2. Partnership and Community are not the same thing. Partnership is a contract, by which two or more persons

2 Code of Louisiana, art. 2777. The same distinction exists in our Law between Partnership and Community, or Partownership. In both, indeed, there exists a community of interest; in the former, however, it is the result of a contract between the parties, whereby there is either expressed or implied a community of profit and loss; the latter often either exists independent of any contract whatever, as in the case of joint legatees, or devisees, or coheirs, or at any rate independent of any contract implying a community of profit and loss; as where persons jointly purchase property, which is not to be sold for their common benefit, but to be allotted to them in distinct shares, such community of interest will not constitute a partnership. Hoare v. Dawes, Doug. 371.; Coope v. Eyre, 1 H. Black, 37.; Gibson v. Lupton, 9 Bingh, 297. So, likewise, although there is a community of interest between the representatives of a deceased partner and the surviving partners, there is not, independently of contract, any partnership between them. Pearce v. Chamberlain, 2 Ves. 33.

Upon the same principle, where persons engage to do some particular work
agree to put something in common. When in execution of that contract they have actually put in common what they agreed to do, a community certainly is formed between them; but this kind of community is also called a partnership, because it is formed in execution of a contract of partnership.

There is also a community which exists between several persons, without the intervention of any contract, and consequently without any contract of partnership, as when an estate has descended to co-heirs, or a legacy has been bequeathed to several legatees jointly. In these cases there exists amongst the heirs a community of the descended estate, amongst the legatees a community of the property bequeathed, but there is no partnership between them. A community of this kind is not a contract, but a quasi contract, which creates, amongst persons having things in common, obligations similar to those which have their origin from the contract of partnership.¹

3. In this alone consists the difference between partnership and community. It is a gross error to say, with the author of “The Conferences of Paris,” vol. ii. p. 15., that partnership differs from community in this respect, viz. “that in partnership the capital brought in by each of the partners is not common, and that the profits only are properly common.”

This is erroneous. For if partners sometimes put into partnership the use only of certain things, of which they remain each separately the owners, they sometimes also put into partnership the things which they bring into it, and render them common amongst themselves, as well with respect to property as with respect to mere enjoyment.

To establish this paradox, the author of “The Conferences” cites in another place these terms of Law 13. § 1. ff. De

¹ Pothier treats of these quasi contracts in an Appendix to this treatise.
§ II. To what Class of Contracts Partnership belongs.

4. Partnership is a contract of natural right, which is formed and governed by the rules only of natural justice.

If the Ordonnances have prescribed certain formalities for

All partnerships must be reduced into writing, when their object is more than the value of one hundred and fifty francs.

No evidence is admissible against or beyond the contents of the act of partnership, nor concerning what shall be alleged to have been said before, at the time of, or subsequently to such act, although the question be of a sum or value less than one hundred and fifty francs. Civ. Code of France, art.

It will be observed, that the regulations of the ordonnance, which Pothier says had fallen into disuse in his time, have been retained in the French Code.

According to the Law of England, no writing is necessary to constitute a private unincorporated partnership, the consent of the parties, or their dealings from which a contract may be implied, being sufficient for that purpose; (Peacock v. Peacock, 16 Ves. 49.; Featherstonhaugh v. Fenwick, 17 Ves. 298.; Alderson v. Clay, 1 Stark. 405.;) and when there is an agreement in writing, it is by the unanimous concurrence of all the partners, open to variations from day to day, and the terms of such variations may not only be evidenced by writing, but also by the conduct of the parties in relation to the agreement and their mode of carrying on the business (England v. Curling, 8 Beav. 129, 133, 137, and see Geddes v. Wallace, 2 Bli. (O. S.) 270, 295, 297.); and special clauses in partnership articles, for instance, as to the mode of taking accounts, will be con-
Pothier on Partnership.

this contract, they have only been prescribed in order to serve as a proof of it, nor do they belong to its substance. Although they may not have been observed, the contract between the contracting parties is complete, and it creates between them the obligations which arise therefrom; it is only with respect to third parties that these formalities are required.

5. This contract, like those of sale and of letting out to hire, is consensual; that is to say, it is formed by the consent alone of the contracting parties, and is perfectly complete as soon as the parties have each agreed to bring something in common, although they may not at that time have actually contributed their quota.

6. This contract is synallagmatic or bilateral, for each of the parties by it engages himself reciprocally towards the others.

7. Lastly, it is a commutative contract, as each of the contracting parties expects to receive as much as he gives.

§ III. What is of the Essence of the Contract of Partnership.

8. It is essential in the contract of Partnership, first, that each of the parties should bring or oblige himself to bring

sidered as expunged from the articles if the parties have not acted on them. Jackson v. Sedgwick, 1 Swanst. 460. 469.

The contract of Partnership, as it is founded on the consent of the parties, must be entered into with perfect good faith, hence, when a person has been induced by fraud or misrepresentation to become a partner, a Court of Equity will not only declare the contract to be void, but will put the injured party as far as possible in possession of his original rights and property. Tattersall v. Groote, 2 Bos. & Pull. 131.; Ex parte Broome, 1 Rose, 69.; Green v. Barrett, 1 Sim. 45.; Oldaker v. Lavender, 6 Sim. 239. Stor. Partn. 341.; Coll. Partn. 244, 245.

* Code of Louisiana, art. 2776.
* Ibid., art. 2772.
* Every partner must bring to the partnership either money, or other property, or his skill. Civ. Code of France, art. 1833. Code of Louisiana, art. 2772. With regard to the partners, inter se, our law is the same in this respect (Peacock v. Peacock, 16 Ves. 49.; Reid v. Hollinshead, 4 B. & C. 878.; 7 Dow. & Ryl. 444.; Meyer v. Sharpe, 5 Taunt. 74.; Cheap v. Cramond, 4 B. & A. 663.); but with regard to third parties, if a person holds himself out as a partner; as,
something into the partnership; either money or other effects, or his labour and industry. If, therefore, a trader, from affection for his niece, agrees, during a certain number of years, to give her yearly a certain share of the profit which he may make, and the niece supplies to his business nothing in return — neither money, nor goods, nor labour, — this agreement is not a Contract of Partnership; because the niece neither brings nor promises to bring anything into the partnership: it is a pure donation, which the trader wishes to make to his niece, of a share of his expected profits in trade; and it is not valid unless it were made in the marriage contract of the niece, because, according to our French law, donations of future property are not binding, except in the contract of marriage.

9. It is not, however, necessary that what each of the contracting parties brings or promises to bring into the partnership should be of the same nature. If one brings, or promises to bring, money or goods, it is not necessary that the other should, in like manner, bring the same; and it is sufficient that he should bring his labour and industry.

Societatem uno pecuniam conferente, alio operam, posse contrahit magis obtinuit. L. i., Cod. Pro Soc., Cod. 4. tit. 37. l. 1.

10. But it is necessary that what each of the partners brings into the partnership should be appreciable. Therefore, if the partners for the establishment of a manufacture should agree with a man in power to give him a certain share in their anticipated profits during a certain number of years, upon condition that he would aid them by his interest in the affairs of that manufacture, that agreement would not be a Contract of Partnership; because the assistance from the

for instance, by allowing his name to appear in the firm, or by acting in such manner as to induce the belief that he is a partner; he will, although contributing nothing to the partnership, and entitled to no profits from it, be liable as a partner to such third parties; such person is commonly called a nominal partner, in contradistinction to persons having an interest in the profits whose names appear to the world as, and who are, actual partners, for both nominal and actual partners are what are called ostensible partners. Waugh v. Carver, 2 H. Bl. 235. 246.

* See Peacock v. Peacock, 16 Ves. 49.

interest of such person is not a thing which is appreciable or capable of being valued. That agreement is void, as contrary to public probity and good morals, which do not permit persons in power to barter their interest for money.

11. Secondly: it is essential in this contract that the partnership should be contracted for the common interest of the parties. When, in an agreement, the private interest of one of the parties only is regarded, it is not a Contract of Partnership, but a contract of mandate, subject to revocation. Therefore, in that case of Law 52. ff. pro Soc. (Dig. lib. xvii. tit. 2. l. 52.)—where, having entered into an agreement with my neighbour that he should buy an estate then for sale in our neighbourhood, and that he should give me up a certain part of it contiguous to my estate, and should himself retain the remainder, having afterwards myself purchased that estate, it is asked if my neighbour has a right to bring against me the action pro socio, to compel me to give him a part of that purchase. Julian answers that it depends upon our intention in entering into that agreement. If it was our intention to make the purchase in order that we might each derive a profit therefrom, it is a contract of partnership, which would give my neighbour the right to that action. But if our intention was solely that he should make the purchase in order to do me a favour, the agreement amounts only to a mandate, which not having been executed by him, gives him no right of action.

12. Thirdly: it is essential in the Contract of Partnership that the parties propose thereby to make a gain or profit in which each of the contracting parties may expect to have a share, in proportion to what he has brought into the partnership.

Therefore, if, by the contract of a pretended partnership, it has been agreed that the entire profit should belong to one of the contracting parties, without the other being able, in any case, to make any claim to it, such an agreement would not be a contract of partnership, and would be void.

An agreement which would give to one of the partners the whole of the profits is void. Civ. Cod. of France, 1855. Code of Louisiana, art. 2785.; Bailey v. Clark, 6 Pick. 372.; 2 Bell's Comm. 615.
as manifestly unjust. The Roman jurisconsults have given
to this kind of agreement the name of Leonine Partnership,
by allusion to the fable of the lion who, having made a part-
nership agreement with the other animals to go a hunting,
secured for himself the whole of the prey. * Aristot refert Cas-
sium respondisse societatem talem cóire non posse; ut alter
lucrum tantum, alter damnum sentiret; et hanc societatem leon-
inam solitum appellare; et nos consentimus. * * * Iniquissimum enim genus societatis est, ex qua quis damnun,
non etiam lucrum spectet. L. xxix. § 2. ff. Pro Soc. (Dig.
Lib. xvii. tit. 2. L xxix. § 2.)
13. It is not, however, necessary to the validity of the

18 In commenting on this number or section Mr. Justice Story observes, that,
"Pothier has not, indeed, spoken with his usual clearness or exactness on the
subject. But Pardessus has expressed his opinion in the most direct and satis-
factory manner. Thus, he says, whenever a merchant, instead of a fixed salary,
agrees to give to his agent a certain part of the annual profit, the agent is a letter
of his services under an aleatory condition, but he is not a partner. He cannot
make claim in that quality to any proprietary interest in the merchandise bought
with the funds of his principal, although he partakes of the profits thereof. He
cannot, at least, without an express stipulation, have any voice in the delibera-
tions of the partnership; and he will not be subjected to the contracts of the
partnership in respect to third persons, unless, indeed, he has exceeded his
power, and then he is responsible as a mandatary; so when one person has trusted
goods to another, to be sold for him, and has agreed to give him the whole or
a part of the price, which shall exceed a certain sum, this will not create a
partnership between them; but only be a salaried mandate, or commission to the
agent thus undertaking the business (Pardess., Droit. Comm. tom. iv. n. 969.;
Id. tom. ii. n. 306. 560.; tom. iii. n. 702.). Duvergier (Droit. Civ. Franc.
tom. v. n. 48, n. 56.) holds the same opinion, and has reasoned out the grounds
thereof with uncommon acuteness and ability. And, indeed, it seems to be the
established doctrine of the French tribunals."—Story, Partn. 76. Our own law
upon this subject is similar to the French; the great difficulty, however, has
been in ascertaining whether the contract for the payment to a person of a
salary, dependent on the amount of the profits, makes the recipient a partner or
a mere agent. The cases upon this subject, in which very refined distinctions
are taken, are very ably reviewed in 1 Smith's Leading Cases in the note to
Waugh v. Carver, p. 490.; and the learned author comes to the conclusion, that
whenever it appears that the agreement was intended by the partners themselves
as one of agency or service, but the agent or servant is to be remunerated by a
portion of the profits, then the contract would be considered, as between them-
sefves, one of agency (Geddes v. Wallace, 2 Bligh, 270.; R. v. Hartley, Russ.
& R. 139.); but as between them and third persons, one of partnership, (Smith
v. Watson, 2 B. & C. 407.; Ex parte Rowlandson, 1 Rose, 91.; Green v. Beasley,
2 Bing. N. C. 110.; Ex parte Langdale, 18 Ves. 300.). But, that, if the agent
contract of partnership that each of the contracting parties should have, in all events, a share of the partnership profits: it is sufficient that he may probably have a share, which may be made to depend conditionally on the amount of the partnership profits. This is to be found in that case of Law 44. ff. Pro Socio. (Dig. lib. xvii. tit. 2. l. 44.): Si Margarita tibi vendenda dedero, ut si ea decem vendidisses, redderes mihi decem; si pluris, quod excedit tu haberes: mihi videtur, si animo contrahendae societatis id actum sit, pro socio esse actionem.

In that case, the tradesman with whom I have contracted partnership for the sale of my jewels, to which partnership he brings his labour and industry in order to sell them, would not have any share in the profits of the sale, which is the object of the partnership, save in one event, viz., if the jewels be sold for more than ten thousand livres; and that share is regulated in proportion as they shall be sold above ten thousand livres. If they are only sold for ten thousand livres, he will have no part of the price, and he will have lost the labour he or servant is to be remunerated, not by a portion of the profits, but by part of a gross fund or stock which is not altogether composed of the profits, the contract, even as against third persons, will be one of agency, although that fund or stock may include the profits, so that its value, and the quantum of the agent's reward, will necessarily fluctuate with their fluctuation (1 Smith's Leading Cases, 507.); and, it seems, that where the agent or servant is not to receive a part of the profits in specie; but a sum of money calculated in proportion to a given quantum of the profits, he will not be a partner even as to third persons. (Ex parte Hamper, 17 Ves. 404. 412.; Ex parte Watson, 19 Ves. 461., and see Grace v. Smith, 2 W. Black. 998.; Pott v. Eyton, 3 C. B. 32.; Barry v. Nesham, 3 C. B. 641.; Withington v. Herring, 3 M. & P. 30.; Stocker v. Brockelbank, 3 Mac. & Gord. 250.). The option to become a partner and receive a share of the profits, even from a time past, is not of itself alone, and while it remains unexercised, sufficient to make him a partner. Gabriel v. Evill, 9 Mee. & W. 297., Car. & M. 358.; Ex parte Turquand, 2 M. D. & D. 340.; Wilson v. Whitehead, 10 Mee. & W. 503.

A person receiving interest or an annuity, fixed as to amount and duration for money lent to a firm, is not a partner, because he has no mutuality in the profits with the firm (Grace v. Smith, 2 Sir W. Black. 998.); but if he received an annuity out of (Bond v. Pittard, 3 M. & W. 557. 561.; Ex parte Wheeler, Buck. 25.; Ex parte Chuck, 8 Bingh. 469.; Ex parte Hamper, 17 Ves. 404. 412.) or in lieu of the profits of a trade, or determinable on the cessation of the trade (Bloxam v. Pell, 2 W. Bl. 999.), or an annuity (Young v. Axtell, cited 2 H. Bl. 242.; Ex parte Wheeler, Buck. 25.), or rate of interest (Ex parte Chuck, 8
has been at to sell them. In the contract of partnership, then, there may be withheld from one of the partners, not in all events, but only in a certain event, a share in the profits resulting from the partnership, and that share may be made to depend, as in the case quoted, on the amount to which the profits may reach.

Observe, with regard to the natural equity of this agreement, it is necessary that the value of the labour which the tradesman brings to the partnership, and which he runs the risk of losing if the jewels are not sold for more than ten thousand livres, should be equivalent to the value of the expectation of their being sold at a greater price.

Observe, also, that in order that the agreement, by which I have agreed to give to the person whom I have commissioned to sell my jewels whatever they may be sold for above ten thousand livres, should comprehend a contract of partnership, it is necessary that such person should be a tradesman or a jeweller to whom I relinquish that part of the price in consideration of his industry and care, which he is to contribute in order to procure an advantageous sale for my jewels. But if that person is neither a tradesman nor a jeweller, and it was in order to confer a gratuity upon him that I promised a share in the price of my jewels, which I could sell as advantageously myself, in such case the agreement amounts to a donation, and not a contract of partnership; because that person is not to receive a share of the proceeds of the sale, on account of the labour and industry which he contributes to the business of that sale, but as a gratuity. Therefore the jurisconsult, in the law above cited, leaves for examina-

Bing. 469.), although it be contingent (Ex parte Wilson, Buck. 48.), fluctuating with the rate of the profits, he will be considered as a partner. See Coll. Part. 26—29. ; Stor. Part. 98.

The reason given why in these cases, when it is held there is a community of profits, the person receiving a salary, an annuity, or interest, is considered as a partner, is, that by taking a part of the profits he takes from the creditors a part of the fund which is their proper security for payment to them of their debts. Waugh v. Carver, 2 H. Black. 235. ; Barry v. Nesham, 16 L. J. C. P. 21., and it is upon this ground that a dormant partner, that is to say, one who without being known to third parties as a partner receives a share of the profits of a firm, is liable for its engagements. Robinson v. Wilkinson, 3 Price 538. ; Winter v. Crowther, 1 Cr. & Jer. 316.
Pothier on Partnership.

11

tion what has been the intention of the parties in that agreement, si animo contrahenda societatis id actum sit.

14. Fourthly: it is necessary to the validity of a contract of partnership that the business which is its object, and for which the contracting parties associate themselves, should be lawful, and that the profit which they propose to draw therefrom should be a lawful profit.

Therefore, an agreement by which persons enter into a partnership to carry on smuggling is null and void; as well as that by which persons enter into partnership in order to carry on usury, or to keep a house of ill fame (mauvais lieu), or to rob; nec enim uta societatis malificiorum; l. i. § 14., De Tut. et Rat. Distr. (Dig. lib. xxvii. tit. 3. l. 1. § 14.) nec, societas aut mandatum flagitiosae rei utlas vires habet; l. xxxv. § 2. ff. De Contr. Empt. (Dig. lib. xviii. tit. 1. l. 35. § 2.)

§ IV. What natural Equity requires in the Contract of Partnership.

FIRST RULE.

In order that the contract of partnership may be equitable, it is generally necessary that the share assigned by it to

"Civ. Code of France, 1833. anté, 1. Code of Louisiana, art. 2775. Our law is the same upon this subject, and is now settled that a partnership not only entered into for immoral purposes such as are mala in se, but also for purposes such as are not bad in themselves but prohibited by the laws of the country, is void. The consequence is, that with regard to transactions arising out of such partnerships, no proceedings can be taken by the parties, either against each other or third parties; for, although, as observed by Lord Mansfield, "the objection that a contract is immoral or illegal, sounds, at all times, very ill in the mouth of a defendant, it is not for his sake that the objection is ever allowed; but it is founded in general principles of Policy, which the defendant has the advantage of, contrary to the real justice as between him and the plaintiff. The principle being, ex dolo malo non oritur actio." Cowp. Rep. 343. It has, however, been held, that a partner who has possessed himself of the property of the firm, cannot retain it by merely showing that in realising some provision of an Act of Parliament has been violated or neglected, and the Court will not refuse to interfere between importers of any article of commerce merely on proof that in its production or exportation some fiscal law of the country of produce has been violated. Sharp v. Taylor, 2 Ph. 841. Partners will be liable to third parties, who may contract with them without a knowledge of the illegal or immoral object of the partnership. Aubert v. Maze, 2 Boss. & Pull. 371."
each of the partners in the anticipated profits should be in proportion to the value of what each of them has brought into the partnership.

15. For example, if two partners have contributed equally to the capital of the partnership, they ought each to have an equal share in the profits. But if one of them has brought in double what the other has, he ought to have a double share of the profits; that is to say, he ought to have two thirds and the other only one third.

In order then to regulate the shares which each ought to have in the profits of a partnership, a value should be put upon what each brings into it. If a false valuation has been made, and there has been allotted to one of them a smaller and to another a larger share than he ought to have, the contract of partnership is inequitable. For example: if I have contracted a partnership with you in which what we have each contributed is of the value of five thousand livres, and yet, by an incorrect valuation, my contribution has been estimated only at four thousand livres, and, on the contrary, yours has been valued at six thousand livres; — if, in consequence, there has been assigned to you three fifths of the capital and profits of the partnership, and to me only two fifths, the contract of partnership is inequitable. If you are aware of it, either at the time of the contract, or since, you are under an obligation in foro conscientia to make up to me the moiety which I ought to have had in the division of the capital and the profits of the partnership, if a correct valuation had been made.

In the exterior forum; that is to say, in strict law, the parties cannot be heard, in such a case, to complain of the inequity of the contract, according to the principles established in my "Treatise on Obligations." (n. 34.)

16. When a trader enters into partnership with an artisan, to which the latter brings only his labour, which I will suppose worth a hundred crowns, and the trader brings a sum of one thousand crowns — whether in ready money or stock-in-

1 See vol. i. p. 21. of the Translation of the "Treatise on Obligations," by the late Sir W. D. Evans.
trade on the terms of withdrawing it at the distribution (au partage) of the effects of partnership, which is to last for a year; in that case, in computing what each has brought into the partnership, and, consequently, in fixing what share each of the partners should have in the profits, we ought not to say that the artisan has contributed the sum of one hundred crowns, at which his labour is estimated, and the trader, one thousand crowns, and that, consequently, the trader should have for his share ten-elevenths, and the artisan one-eleventh only; for the trader does not bring the sum of one thousand crowns into the partnership; he only brings in the use thereof for the year during which the partnership is to last, and then he may withdraw it. We ought not, then, to reckon that the trader has brought anything into the partnership, save the value of the use of that sum, which Puffendorf believes ought to be estimated at the ordinary interest of money. According to this principle, in the case supposed, the trader will be considered to have brought into the partnership the sum of one hundred and fifty livres; and he ought, consequently, only to have a third part of the profits.

It would be different if the trader had not reserved the right of withdrawing that sum. For in such case, as he would bring into the partnership the sum itself, and not merely the use of it, it is clear that he ought, in the case proposed, to have ten-elevenths, as well of the capital as of the profits of the partnership, and the artisan only one-eleventh.

17. The principle which we have established, that the contract of partnership is inequitable, when the share which each of the partners is to have in the profits of the partnership is not in proportion to what they have brought into it, is subject to two exceptions.

The first is, when one of the partners, knowing at the time of the contract that the other brings less than himself into the partnership, is willing, nevertheless, in order to make a gratuity, to admit him to an equal share therein. In such case, it cannot be said that there is a want of equity in the contract: because volenti non fit injuria: but the contract is not, in that case, purely and entirely a contract of partnership; it is partly a donation. Nevertheless, it is not the less
valid. It is true, that if the contract was only made in order to confer a gratuity upon one of the contracting parties, who had contributed nothing, it would not be a contract of partnership: and it is in that sense that Ulpian says: *Donationis causa societas non recte contrahitur;* l. 5. s. 2. ff. *Pro Soc.* (Dig. lib. xvii. tit. 2. 1. 5. § 2.)

But although a person may, by the contract, in some particular, have conferred a gratuity upon one of the parties, nevertheless, it does not cease to be a true partnership contract, and will be valid, provided the partner to whom I have given an advantage is not a person to whom the law forbids me to make a gift; in the same manner as a contract of sale, which would not be a true contract of sale, if there were no (*prix sérieux*) valuable consideration for it, does not cease to be a true contract of sale, although the seller, in order to confer a gratuity upon the purchaser, sells at a price below the real value, provided that such purchaser is not a person to whom it is forbidden to make a gift. ¹ *L.* 38. ff. *De Contr. Empt.* Dig. lib. xviii. tit. 1. 1. 38.

18. The second exception is, that there may be assigned by the contract to one of the partners a greater share in the profits than what he has contributed to the partnership, without the contract containing, on that account, anything inequitable, or even any gratuity, when that partner compensates for the advantage by an equivalent which he, on his part, has conferred upon the other partner.

The following case may be given as an example. Two coopers enter into partnership together for the manufacturing and sale of casks; each of them contributing to the partnership his labour, and half the capital of which it is to be composed. One of them, depending upon his ability as a judge of wood, after having examined what they are about to employ, takes upon himself, by the contract of partnership, the sole charge of the warranty (*du vice de fût*) against defects in the casks, for which coopers are liable, to those who purchase their casks; and they agree, that in conse-

sequence of his having charged himself alone with that warranty, and of his having bound himself to indemnify the partnership therefrom, he shall have three-fourths of the profits, if there are any: and that, nevertheless, in case of loss, he shall only bear a moiety.

This agreement is valid; for such part of the profits, which is assigned to him, over and above the moiety, is a recompense for the benefit which he has conferred upon his partner by discharging him from the risk of the warranty, to a moiety of which he would have been liable. It is the price of the moiety of the risk from which he discharges him. An infinity of other examples may be imagined.

SECOND RULE.

Generally, each of the partners ought to bear the same proportion of the losses of the partnership, as he ought to have of its profits, in case it is prosperous.

19. There is an exception to this rule in the case, where one of the partners, to whom there has been assigned a share in the profits in proportion only to what he has contributed to the partnership in money or stock-in-trade, has also brought to it his skill and industry. It might, in that case, be equitably agreed that he shall bear a smaller, or even no share of the loss, provided the value of his skill and industry be equal to the risk of the loss from which he is discharged.

Ita cōri societatem posse, ut nullius partem damni alter sentient, lucrum verò commune sit Cassius scribit; quod ita demum valebit, si tanti sit opera, quanti damnum est. L. 29. § 1. ff. Pro Soc. (Dig. lib. xvii. tit. 2.; l. 29. § 1.)

20. In general, whenever one of the partners (en son particulier) personally brings any advantage to the partnership, in order to recompense him, it may be agreed that he shall

* A stipulation that one of the partners shall not be liable to loss, is in our law valid, as between the parties themselves (Fereday v. Hordern, Jac. 144.; Gilpin v. Enderby, 5 B. & A. 954.; Bond v. Pittard, 3 M. & W. 357.); unless it were intended as a mere disguise of usury (Jestons v. Brooke, Cowp. 793.; Morse v. Wilson, 4 T. R. 353.); but it will not render him less liable to third parties. Waugh v. Carver, 2 H. Bl. 235.; 1 Smith's Lead. Cas. 491.; Fereday v. Hordern, Jac. 147.
be discharged, either partially or entirely, from the loss which the partnership may sustain. For example, if, in the cooperage trade, one of the partners charges himself alone with the warranty (du vice de fût) against defects of the casks, and binds himself to indemnify the partnership therefrom, in order to recompense him for the advantage which he has conferred upon the partnership, it may be agreed, although he is a partner as to one-half, and is to receive one-half of the profits, if there are any, that nevertheless, in case of loss, he shall bear only a smaller share,—for instance, one-third or one-fourth only.

This agreement is equitable, if the share of the risk of loss from which he is discharged, is equivalent in value to the share of the risk of the warranty from which he has discharged his partner.

21. What has been said, that it may be agreed, without acting inequitably, that one of the partners shall bear a smaller, or even not bear any, share in the losses, ought not to be understood in this sense, that such partner shall have a share in the profit of every transaction which shall have been advantageous to the partnership, without sustaining any of the losses that the partnership has incurred in those which have been disadvantageous, for that would be manifestly unjust: but it is to be understood in this sense, that after the dissolution of the partnership, an account shall be taken of all the gains that the partnership has made, and an account of all the losses that it has incurred in all the different transactions in which it has been engaged; and that if the total of the profits exceeds the total of the losses, that partner shall take his share of the surplus; and that if, on the contrary, the total of the losses exceeds that of the profits, he shall have neither profit nor loss: Neque enim lucrum intelligitur, nisi omni damno deducto; neque damnum, nisi omni lucro deducto; L. 30. ff. Pro Soc. (Dig. lib. xvii. tit. 2. l. 30.)

81 A stipulation which would set free from all contributions to losses, sums or effects put into the capital of the partnership by one or more of the partners, is void. Civ. Code of France, art. 1855. See Bond v. Pittard, 3 Mees. & Wels. 357. 359, 360.; Gilpin v. Enderby, 5 Barn. & Ald. 954.; Fereday v. Hordern, Jac. 144.
§ V. Of fictitious Contracts of Partnership.

22. When it appears that a contract of partnership is fictitious, and that it has only been entered into for the purpose of disguising a usurious loan of money, it is clear that the contract ought to be declared void, and that whatever has been received by the pretended partner, in the place of his share in the profits of the pretended partnership, ought to be (imputé sur) reckoned against the principal sum which he has put therein, and that the sum which he has received diminishes (de plein droit) of full right that which ought to be restored to him.

So according to our law, a pretended contract of partnership entered into with the mere intention of obtaining a usurious interest for a loan of money, will be null and void, as "there is no contrivance whatever," to use the words of Lord Mansfield, "by which a man can cover usury." See Jestons v. Brooke, Cowp. 793.; Morse v. Wilson, 4 T. R. 353.; Coll. Partn. 38.

It must, however, be remembered now that bills of exchange, and loans, of money above 10L. not being upon the security of lands, tenements, or hereditaments, or any estate or interest therein, are not affected by the usury laws: see 2 & 3 Vict., c.37., continued by 8 & 9 Vict. c. 102., and by subsequent enactments. However, even previous to the passing of these Acts, although the return of the capital and profits beyond the legal rate of interest might have been secured to one of the parties, if the contract of partnership did not appear to be fictitious, or to have been used as a mere shift to cover usury, it would be valid, because the principal advanced, would, although secured at all events to be repaid by the other partner, be hazarded by being liable to the demands of third parties. Thus, in Gilpin v. Enderby, 1 D. & R. 570., 5 B. & Ald. 954. Enderby being established in trade and wishing to increase his capital, entered into a contract of partnership for ten years with Gilpin, who advanced 20,000L., upon a covenant that he should receive 2000L. per annum, during the partnership, out of the profits, if there were any, and if none, out of the capital; that he should not be answerable for any losses or expenses incident to the concern, and that the business should be carried on in the name of Enderby only; that at the end of the ten years, if the partnership determined by efflux of time, he should be repaid the 20,000L. by instalments at three months' date bearing legal interest; and that if default was made in the annual payment of 2000L., or the joint capital was at any time reduced to 20,000L., then he should be at liberty to terminate the partnership and repay himself the 20,000L. advanced, immediately. Gilpin brought an action of covenant and recovered damages for the nonpayment of the 20,000L. at the end of ten years, the jury expressly negativing usury; upon a writ of error it was held, affirming the judgment, that upon the face of the deed, Enderby and Gilpin were partners, and that there was no loan of money within the meaning of the statute of usury. The law upon the subject is well stated by C
This ought to be sufficient to determine the question of the legality of a celebrated agreement, supposed, by the casuists, which contains three contracts.

First. A contract of partnership which I enter into with a merchant, who, having already capital, suppose thirty thousand livres, takes me into partnership for a fourth of his business, (à raison) in consideration of a sum of ten thousand livres which I bring into the partnership.

Secondly. A contract of assurance, by which the same merchant guarantees me my capital of ten thousand livres, which I put into the partnership, and which he binds himself to restore to me on its termination, upon condition that on my part I yield to him a certain portion of the profits I have a reason to expect for my share in the partnership; for example, if I expect that my share in the partnership will produce yearly a profit of about twelve per cent., more or less, I give up to him half of it.

Moreover, a third contract, by which I sell to the same merchant my capital in the partnership thus guaranteed, and all the gains I expect from it (moyennant le prix), in con-

Lord Tenterden, C. J., in his judgment. “By the execution of the deed,” said his Lordship, “Enderby undoubtedly made himself liable as a partner to all the partnership creditors, though he might not be liable as between Gilpin and himself; and if the deed discloses the real facts, and the real intentions of the parties to it, this is not a case of a loan of money from Enderby to Gilpin, but a contract of partnership between them, of a peculiar kind certainly. If the deed does not disclose the real facts and intentions of the parties, but was executed only as a contrivance to cover a loan of 20,000/. for ten years, at 10 per cent. interest, then undoubtedly it is void. This is a fact, however, which ought to have been found as such affirmatively by the jury, in order to have enabled the Court to pronounce an opinion thereupon. But as such fact has not been found, and in the absence of such finding we must consider the deed as speaking the real language of the parties, and so considering it, we cannot pronounce it void. The partnership as constituted by this deed, may be probably of an unusual kind, but that circumstance will not authorise us to say that there was no partnership, and that this was simply a loan of money.” See also Morisset v. King, 2 Burr. 891.; Fereday v. Hordern, Jac. 144., and see Armstrong v. Lewis, 2 Cromp. & M. 274.; see, however, Brophy v. Holmes, 2 Moll. 1.

1 It must be borne in mind, that, at the time when Pothier wrote, all loans of money at interest were held to be usurious, partly because money was considered to be in itself an unproductive commodity, but principally because ecclesiastics thought that the lending of money at interest was forbidden by Holy Writ. See also 1 Domat. book I. tit. 6.
consideration of a sum of ten thousand livres, which he binds himself to pay to me at the termination of the partnership, with five hundred livres for interest yearly until the time of repayment. Diana, after having supposed this agreement, proposes the question, whether it be lawful. He decides in the affirmative. His reason is, that these three contracts, considered separately, being lawful, they cannot be the less so, although united by the same agreement. It is not necessary, for the purpose of refuting this decision of Diana, to accumulate all the authorities which the author of the "Conferences of Paris" has collected.

It needs no great acuteness to perceive that such agreement in truth is nothing else than a loan of ten thousand livres at interest made by me to that merchant, which ought, according to strict law (dans le for extérieur), as well as in foro conscientiae, to be declared usurious; and, consequently, the interest ought to be reckoned against the principal. It is very clear, that the three pretended contracts, comprised in the agreement are only feigned in order to disguise a loan at interest, and that, in truth, I had no intention of entering into partnership with the merchant, but only of getting from him interest on the sum which I lent. And even if, by a misconception, I should have persuaded myself that I had really the intention of entering into three successive contracts with him, this would be an illusion produced by my cupidity, in order to disguise from myself the vice of usury in the loan at interest to which the whole of the agreement resolves itself.

In general, whenever a private person makes a pretended contract of partnership with a trader, who takes him as partner into his business for a certain sum of money, which he brings to that trader, who binds himself to restore it to him at the end of the partnership, without that person bearing any share of the loss, if the partnership does not succeed; and on the terms that he shall have a certain share of the gain, however moderate that share of the gain may be, in con-

1 See Troplong's "Droit Civil expliqué Contrat de Société," vol. i. p. 61., who attributes the origin of this celebrated agreement to the Oriental clergy.
sequence of his not bearing any part of the loss, and whether that share is (assurée) guaranteed to amount to a certain sum yearly, or whether it be not so, such a contract ought to be considered a contract of a fictitious partnership, which has only been entered into to disguise a usurious loan which that private person wished to make to the trader of the sum of money which he had put in his hands. The trader who by this pretended contract of partnership does not discharge himself from any part of the risk of losses which may happen in his business, has no intention of entering into a contract of partnership; he has no other intention than that of borrowing the sum that such person puts in his hands; and the share that he gives him in the profits of the partnership is instead of the interest which that person requires for the loan. That person, in like manner, has no other intention than to draw an illegal profit from the loan of that sum of money, which it ought not to produce, by disguising the loan as a contract of partnership.

23. The decision will be otherwise in the case where a trader who has a good business, of which the capital is forty thousand livres, enters into a contract of partnership with a private person, who also brings in a capital of forty thousand livres, with a clause that such person should, in consideration of his taking upon himself all losses, have three-fourths of the profits, instead of the moiety which he ought only to have. This contract is a true contract of partnership. The clause by which the trader discharges himself from risk of loss, at the expense of his partner, is not at all inequitable, provided the expectation of gain being at least in double ratio to the risk of loss, the value of the expectation of the fourth of the profits, which the former gives up, is equivalent to the value of the risk of his moiety of the loss with which he charges his partner. The capital, which the trader has put into the partnership, being a productive thing, he can retain a part of the gain, although the other partner assures to him the capital, and frees him from the risk of loss.

24. If the private person, who has entered into a contract of partnership with a trader, to which he has brought a certain sum of money, in order to have a share as well in the capital as in the profits or los of the partnership, on account of that
sum, — makes, at a time not liable to suspicion, after some years, an agreement with that trader, by which he sells to him his right in the partnership for the same sum which he brought into the partnership, which the trader binds himself to repay at the time fixed for its termination, with a certain interest yearly — is such an agreement which would not have been valid if it had been made at the time of the contract, and which would then have passed for a loan, at interest, disguised as a false contract of partnership, — is it binding, having been made at the end of several years? I think that it is valid, both in foro conscientiae and in strict law (for extérieur). It is valid in foro conscientiae, provided it be a new agreement, and that the contract of partnership were not made upon a secret compact, that the trader would purchase from such person his share of the partnership. It is equally binding in strict law (for extérieur), because the length of time which has elapsed between the contract of partnership and the agreement renders it impossible to suspect that such contract was not a true contract of partnership, or that it was made with that secret compact.

But there having been a true contract of partnership between the parties, the private person having, by such contract, acquired a share in the capital of the business, which constitutes the capital of the partnership, and the capital of the business being productive, he can sell to his co-partner his share in the capital of the business, and take interest for the price at which he has sold it.

25. The same decision must be given with respect to a contract of assurance, by which that private person, at the end of some years, causes what he brought into the partnership to be guaranteed to him by the trader his co-partner, who, undertakes to bear at his own cost all the loss which may happen to the partnership, if unsuccessful, in consideration of such person giving up to the trader a part of his share of the expected profits. This contract, as well as the former, is quite lawful, provided the value of the expected profits, which such person gives up to the trader, be equal to the value of the risk of loss with which he is charged.

Nevertheless, the author of the Conferences, vol. ii. p. 70.,
asserts that a person cannot legally make this contract of assurance with his co-partner, although he allows, p. 71., that he can, with a third party. He gives a very bad reason for this; viz., that such contract of assurance destroys, in his opinion, the contract of partnership. This is incorrect, for we have seen above (n. 19.) a contract of partnership may be valid, although one of the partners is not to bear any share of the loss (which is, indeed, an assurance of what he has brought thereto,) provided that he has given to his co-partners, who have charged themselves with the risk of loss which he might incur therefrom, an equivalent to the price of that risk.

26. The author of the Conferences, in the same place where he condemns the contract of assurance by which one of the partners causes what he has brought into the partnership to be guaranteed by another partner, condemns also another agreement, by which one of the partners, without causing what he has brought into the partnership to be guaranteed, and remaining subject to loss as to his share, if the partnership be unsuccessful, sells his share in the expected profits for a certain sum. I see nothing wrong in this agreement. The expectation of profits from a partnership is appreciable, as is the hawl or take of a net; and I can consequently sell it, either to my partner or to a third party, in the same manner as one may sell the take of a net.

The reasons of the author of the Conferences are, that according to his opinion, the contract of sale, which I enter into with my partner, of the uncertain profits which I expect from the partnership, "is contrary to the equality which ought to be found in partnerships." He should have said "in contracts;" for here the question is not about a contract of partnership. The contract now in question, although it may be entered into between partners, is not a partnership contract. It is a contract of sale that I enter into with my partner, as I could with any other person, of my share of the expected profits of the partnership. Nevertheless, I agree that equality should be found in this contract: and it is to be found there; because the share which I have in the uncertain expectation of the profits of the partnership being something appreciable, it suffices, in order that equality should
be found in the contract, that what is given to me thereby for the price of the expectancy which I sell, should be the just price of that expectancy.

The author of the Conferences adds:—"That a contract of sale assures a certain profit to one partner; but between partners there ought not to be any certain profit, everything ought to be uncertain, as well the capital as the profits." If the author means, by this, that the share of the uncertain expectation of profits cannot be given up in consideration of a certain sum, it is to assume precisely the point in question; that is, only a petitio principii and bad reasoning.

27. If the person who has brought to a trader a sum of money, in order to be in partnership with him in his business, had made these contracts of sale or assurance of his share shortly after the contract of partnership, there would have been grounds for the presumption that they were only in execution of a secret compact added to the contract of partnership; and, consequently, in strict law (for extérieur), these contracts, as well as the contract of partnership, ought to be declared void and fictitious, as being entered into for the purpose only of disguising a usurious loan of the sum of money brought by such person to the trader.

SECOND CHAPTER.¹

Of the different Kinds of Partnerships.
Partnerships are either Universal or Particular.

SECTION I.
Of Universal Partnerships.
28. The Roman law draws a distinction between two kinds of partnerships, one of which is called universorum bonorum,²

There are two kinds of universal partnerships, a partnership of all present property, and a universal partnership of profits. Civ. Cod. of France, 1836.

Universal partnerships in feudal times were very numerous in France, espe-
the other universorum quæ ex quaestu veniunt. In our French law, besides these two kinds of partnerships, the conjugal community which is contracted between husband and wife, and that which is continued between the survivor of them and the heirs of the deceased, are universal partnerships of a different kind, and governed by peculiar principles; they will be treated of at length in my Treatise on the "Contract of Marriage," as well as the agreements which usually accompany them.

First Article.—On the Partnership universorum bonorum.

§ I. What it is. When it is to be considered as contracted, and between what Persons it can be contracted.

29. The partnership universorum bonorum is that by which the contracting parties agree to put in common all their property, both present and future.

pecially for agricultural purposes; hence they were often called Rustic Partnerships. Troplong attributes their use to two causes; one civil, namely, that as on the death of a serf, according to the maxim of the feudal law, "mors omnia solvit," the lord became possessed of all his property; a family by living together and uniting its labours, revenues, gains, and acquisitions, became as it were a corporate body possessing its patrimony, notwithstanding the death of individuals, by a species of survivorship. Another reason of an economical and political nature, was the interest of the lord that his lands should be better cultivated; and that all confusion of dividing the land into small portions should be avoided. Universal partnerships were also sometimes contracted between roturiers and sometimes even nobles. At present partnerships of this nature are rare, the necessities which gave rise to them having in a great measure ceased to exist. Troplong "Contrat de Société," vol. i. pref. p. xxxviii. and p. 244—249.

29 A partnership of all present property, is that by which the parties put in common all the property moveable or immoveable which they actually possess and the profits which they may derive therefrom. They may also comprehend therein every other kind of profits; but the property which may come to them by succession, donation, or legacy does not enter into such partnership, except for enjoyment. Every stipulation tending to make the ownership of such property enter therein is prohibited except between husband and wife, and conformably to all that is ordained with regard to them. Civ. Cod. of France, 1837.

The universal partnership omnium bonorum of the old French law, it will be
Partners are not considered, in the absence of express contract, to have entered into this kind of partnership: l. 7. ff. Pro Soc. (Dig. Lib. xvii. tit. 2. s. 7.)

30. This partnership may be entered into by persons, although one be richer than the other: *Hæc societas coëri potest et valet etiam inter eos qui non sunt aequis facultatibus.*

The reason which Ulpian gives for this is, that the industry of the one who is poor may be equivalent to the greater property of the other, *cum plerumque pauperior opera suppleat quantum ei per comparationem patrimonii deest; Dict. l. 5. § 1.* (Dig. Lib. xvii. tit. 11. s. 5. § 1.)

Even when that reason is inapplicable, and the partner who has less property is also less industrious, the partnership is none the less valid. For the only consequence of such inequality is, that the Contract of Partnership is partly a donation, the richer partner having wished to confer a gratuity upon the poorer. But, although a Contract of Partnership is partly a donation, it is not on that account, as we have already seen, less valid: n. 17.

§ II. How the Property of the Partners is communicated or rendered common.

It is peculiar to this kind of partnership, that all the property of each of the partners at the time of the contract becomes from that instant common between them, each of them being considered to have made reciprocally a feigned delivery, and to be constituted possessors thereof in the name of the partnership: *In societate omnium bonorum omnes res quae coeuntium sunt continuò communicantur; quia licet specialité traditio non interveniat, tacitè tamen creditur intervenire: l. 1. § 1.; l. 2. ff. Pro Socio.* (Dig. Lib. xvii. tit. 2.; sec. 1. § 1.)

observed, however well adapted to the Middle Ages, must in later times have been the source of much fraud and litigation, and it has been considerably modified. Thus, though the Code comprehends, as in the old law, all the existing property of the partners, it does not extend to property to be acquired by succession, donation, or legacy, and every stipulation by which an attempt is made to bring them into such partnership is void. See Troplong, "Droit Civil Expliqué Contrat de Société," vol. i. pref. xxxv. and p. 244.
sec. 2.) This nevertheless, according to the Roman law, did not take place with respect to (dettes actives) active debts, (i.e. debts owing to the parties) which by their nature are not capable of delivery, and which cannot pass from one person to another except by a cession of the right of action; but, when required, each of the partners is bound to make that cession. Therefore it is that Paulus adds, *Ea vero quæ in nominibus erunt, manent in suo statu, sed actiones invicem præstare debent*: l. 3. (Dig. Lib. xvi. tit. 2. sec. 3.)

In our French law, where we more readily supply and presume these cessions of rights of action, I think that debts, owing to parties who enter into a partnership of this kind, at once fall, as well as their other property, into the partnership, without there being any necessity for an express cession of the rights of action.

32. By the Roman law, whatever one of the partners acquired in his own name after the Contract of Partnership was not acquired (de plein droit) of full right for the partnership, the other had only a right of action to compel him to bring it therein: *Si quis societatem contraxerit, quod em it ipsius fit, non commune; sed societatis judicio cogitur rem communicare*: l. 74. ff. Pro Soc. (Dig. Lib. xvi. tit. 2. sec. 74.) The reason was, that the feigned delivery, which was considered to have taken place in the Contract of Partnership, by which each of the partners was considered to constitute himself possessor in the name of the partnership, could only take place with respect to the property which he actually had at that time, he not being able to constitute himself possessor of that which he as yet had not.

In our French law, which is not so (littéral) strict as the Roman law, I think that a partner omnium bonorum, who by the contract of that kind of partnership is obliged to make all acquisitions on the partnership account, ought to be readily presumed to have intended to make such acquisition in the name and on account of the partnership, although he may not have expressed it to be so; and, consequently, to have acquired the thing fully for the partnership, without the other partners being obliged to demand it from him.
§ III. What does or does not enter into the Partnership Universorum Bonorum.

33. This partnership being generally of all property, present and future, every thing which accrues to either of the partners during the partnership falls into it, by whatsoever title it comes to him, even by succession, donation, or legacy, l. 3. § 1. (Dig. 17. tit. 2. sec. 3. § 1.); even for a civil reparation of an injury which has been inflicted upon his own person, or upon the persons of those belonging to him: l. 52. § 16. ff. Dict. Tit. (Dig. xvii. tit. 2. sec. 52. § 16.)

34. Nevertheless, in one case, things which have accrued to one of the partners under the title of donation or legacy do not fall into the partnership; that is to say, when they have been given or bequeathed to him upon condition that they should not do so; because the donor or testator, having had it in his power to refrain from giving these things, has it also in his power in conferring them to attach to his donation whatever condition he pleased; and he does not thereby do any wrong to the partners of the donee, who would have had no pretence to them, if he, being the owner, had not made the donation.

35. But whatever declaration there may be in a contract of purchase which a universal partner makes, that the purchase is made on the private account of the purchaser, the things purchased will nevertheless fall into the partnership.

Cannot, however, it be said, as in the preceding case, that the seller, who had it in his power to refrain from selling, was able to sell under that condition? No. The reason of the difference is, that in a contract of this nature the presumption is that the purchaser has caused that clause to be inserted in fraud of the partnership. The contract of sale being a commercial contract, in which each of the parties usually seeks only his own interest, the presumption arises that the vendor would be indifferent whether the thing which was sold did or did not fall into the partnership of the purchaser. On the contrary, donations being made from motives

See anté, n. 29., as to present law of France.
of friendship which the donor bears towards the donee, such
motive may cause the donor to wish and stipulate that he
alone should profit by the things given, and that they should
belong to the partnership.

36. However universal this kind of partnership may be,
whatever one of the partners may have acquired, by criminal
or dishonest means, does not fall therein; because, it being of
the essence of partnerships that they should be entered into in
order to make in common an honest profit (suprâ, n. 14.), no
criminal or dishonest gain is capable of being made the object
of any partnership.

For example, if one of the partners had carried on smugg-
gling, and had a warehouse of smuggled goods, the partners
have no right of action to compel him to bring them into the
partnership, or to account for the profit which he has made
in such undertakings. The reasons above given, and the
laws which forbid them taking part in such transactions,
be furnishing a defence to that action. They have only a right of
action to compel him to refund the money which he has
taken from the common chest in order to carry on the
smuggling, he having no right to take it for such a purpose.
Although what one of the partners has acquired by criminal
or dishonest means does not fall into the partnership, never-
theless, if that partner had brought it into the partnership,
and put it into the common chest, whether with or without
the knowledge of his partners, it would not be allowable for
him to withdraw and take it away, under the pretext that as
it was acquired by criminal means, it does not belong to the
partnership; for it is not allowable for him to allege his own
turpitude. Nevertheless, if the goods were stolen, and he
had been condemned to restore them to the owner, it would
be lawful, in obedience to a judicial sentence, to take them
out of the warehouse where he had placed them. Quod ex
furto, vel ex alio maleficio quasitum est, in societatem non
oportere conferri palam est; quia delictorum turpis atque fæda
communio est. Planè, si in medium collatum sit, commune erit
lucrum; l. 53., quod enim ex maleficio contulerit socius, non
aliter recipere debet, quâm si damnatus sit. l. 54. (Dig. lib.
xvii. tit. 2. §§ 53. and 54.)
§ IV. Of Charges or Incumbrances on the Partnership Universorum Bonorum.

37. This partnership, comprehending all the property, present and future, of the partners, it ought equally to comprehend all the charges, as well present as future, thereon. For this reason the partnership ought to be bound, not only by all the debts which each of the partners owed when they entered into partnership (these debts being a present charge on their present property, quum bona non intelligantur, nisi deducto aere alieno): but it ought also to be bound by all the expenses which each of the partners may be obliged to incur during the partnership, as they are a future charge on all the goods, present and future.

In those expenses ought to be comprehended, not only what each of the partners is obliged to incur for the maintenance of himself and his children, and for their education, but even generally for all the reasonable expenses which propriety (bienséance) may require any of the partners to incur during the partnership, provided that they are so incurred with a prudent economy, regard being had to the resources of the partnership, and the rank of the partners; l. 73. § 1. Dict. Tit. (Dig. lib. xvii. tit. 2. s. 73. § 1.)

38. According to these principles the common opinion of the Doctors is, that such partnership is bound, not only by the expenses of each of the partners for the education of his children, such as the outfits with which he furnishes those who follow the profession of arms, the allowances (pensions) of those whom he sends to colleges or the universities, the books which are necessary for them, the salaries and remuneration of their tutors, &c., but even those which he should incur in order to procure an establishment for them, by marriage or otherwise; and that consequently the portions which one of the partners may have given to his daughters on their marriage, provided they are not excessive, ought to be borne by the partnership, and they cannot be deducted from the share of that partner in the partnership; because the obligation of providing for children being an
obligation natural to fathers, and mothers that expense was a future charge on all his property, present and future. This is the opinion of Treutler, of Bachou on Treutler, of the Theses of Cologne, of Lauterbach, of Brunneman, &c. This decision, according to these authors, would be the same, even when only one of the partners had daughters, in the same manner as successions, which come to one of the partners during that partnership, fall into it, notwithstanding the other has no succession to expect. *Nec obstat* that this is contrary to the equality which ought to prevail in partnerships; because we have before seen that this kind of partnership does not cease to be valid, although each of the partners has contributed to it unequally. Moreover, the Law, 81. *ff.* Pro Soc. (Dig. xvii. tit. 2. sec. 81.), says expressly that the agreement that the daughters of the partners shall be endowed out of the common funds, provided it be entered into with all the partners, does not cease to be valid, although only one of them has a daughter to marry.

*Domat* (liv. i. tit. 8. sect. 3. n. 11.) appears inclined to draw from this law (81.) an argument against the opinion which we have just given, viz., that such partnership of all property, present and future, is extended to the portions of the children of the partners, because it is said in that law that the partnership is bound by them when the parties have agreed thereto; from whence he concludes that it is not bound by them legally without an express contract. The answer to that objection is, that the question of that law being proposed generally with respect to all kinds of partnerships, and not only with respect to the partnership of all property, present and future, *Papinian* answers that it can only take place with respect to those which contain an agreement that the fortunes of the daughters of the partners shall be taken from the common funds. Moreover, *Papinian* draws no distinction, because that does not come within his subject, if they contain that agreement by an express contract, which is necessary in partnerships which are not of goods present and future, or if they contain it from the nature of the contract, where the partnership is of all property, present and future.

39. With respect to the extravagant expenses which a
Pothier on Partnership.

partner may incur during a partnership of all present and future property, the partnership is not bound by them: they ought to be borne by his own share: for it cannot be said that they were a future charge upon his present and future property which he has put into the partnership, since he was under no obligation, and it was his duty not to have incurred them.

40. A fortiori, he ought not to charge upon the partnership what he has lost at play, or in debauchery: Quod in alea aut adulterio perdiderit socius, ex medio non est laturus; l. 59. § 1. ff. Pro Soc. (Dig. xvii. tit. 2. sec. 59. § 1.)

41. For the same reason, the partnership will not be bound by the penalties (amendes) nor (réparations civiles) damages, to which one of the partners may have been condemned for some offence. L. 52. § 18. ff. Dict. Tit. (Dig. lib. xvii. tit. 2. sec. 52. § 18.)

If, nevertheless, he had been condemned unjustly, the partnership ought to bear that loss, provided it was not by his own fault, as for instance by making default, he allowed himself to be condemned; d. § 18. The reason is, that the costs in such a case are expenses which do not arise from his own fault, and which he could not avoid. They are a charge upon his property, with which the partnership is charged.

Observe that the partner cannot be heard to allege, that he has been unjustly condemned, for whilst the judgment remains, it affords a presumption against him. But, if after having got it reversed (fait infirmer) by the appellate judge, he could not recover what he had been obliged to pay in obedience to the judgment, in consequence of the insolvency of the respondent and his surety, it would in such case be a loss which ought to fall upon the partnership.

42. The principle which we have established that the partnership is not bound by civil damages, and penalties (amendes) due for the offence of one of the partners, is subject to an exception in the case where that partner has brought into the capital of the partnership what has accrued to him from that offence; because, in such case, the partnership is bound by the restitution which ought to be made to the
injured party, at least to the extent of what the partnership has profited from the occasion of the offence, when the property arising therefrom has without the knowledge of the other partners been put into the capital of the partnership. But if with their knowledge and assent, the partnership will be bound by all damages which may result from the offence whether it be for civil reparation, or for (amendes) penalties. *Si ex hoc conventus fuerit, qui maleficium admisit, id quod contulit, aut solum, aut cum penâ auferret: si mihi proponas, insciente sociorum in societatis rationem hoc contulisse: quod si scient*, etiam possum socium agnosere, et illum esse, ut eundem socium possit contulisse societatis rationem; etiam ab eo socium agnosco portet; quod enim, ut cuius participavit lucrum, participet et damnum, l. 55. ff. Dict. Tit. (Dig. lib. xviij. tit. 2. sec. 55.) *Nec quicquam interest utrum manentes societate præstiterit ob furtem, an dissolutâ ed; l. 56.* (Dig. lib. xviij. tit. 2. sec. 56.)

**Article 2.**

*On the second kind of Universal Partnership, called by the Romans universorum quæ ex quaevstu veniunt.*

43. The second kind of universal partnership is that which is called in the Roman law *universorum quæ ex quaevstu veniunt*, and the parties thereby contract a partnership of all that they may acquire during its continuance from every kind of commerce.

They are considered to enter into this kind of partnership when they declare that they contract together a

A universal partnership of profits comprehends all that the parties shall acquire by their industry, by whatever title it may be, during the term of the partnership; the moveables which each of the partners possesses at the time of the contract are also comprised therein, but their personal immovable enter therein for enjoyment only. Civ. Cod. of France, 1838.

The simple agreement for universal partnership made without any other explanation, only imports a universal partnership of profits. Civ. Cod. of France, 1839.

It is unnecessary to say anything about universal partnerships; the former kind *universorum bonorum* seems to be entirely unknown amongst us, and perhaps the same may be said of the latter, *universorum bonorum quæ ex quaevstu veniunt.*

"There is probably," says a learned American judge, "no such thing as a universal partnership, if, by the terms we are to understand that every thing done, bought, or sold is to be deemed on partnership account. Most men own some real or personal estate which they manage exclusively for themselves." U. States Bank v. Binney, 5 Mason R., 176. 183.
partnership, without any further explanation. Coiri societatem simpliciter licet, et si non fuerit distinctum, videtur coita esse universorum quae ex questu veniunt; l. 7. ff. Pro Soc. (Dig. lib. xvii. tit. 2. sec. 7.) The same kind of partnership also is considered to be entered into when the parties declare that they contract a partnership of all the gains and profits they may make from all sources. Sed et si adiciatur, "ut et questus et lucri socii sint," verum est, non ad aliud lucrum quum quod ex questu venit, hanc quoque adjectionem pertinere; l. 13. ff. Dict. Tit. (Dig. lib. xvii. tit. 2 sec. 13.)

44. According to the Roman law, the enjoyment only of the property and not the property itself which the parties had when they contracted this partnership, entered therein. But according to our customary law, the moveable property, which they have at the time of the contract, enters therein: my "Custom of Orleans," article 214., also contains a provision to this effect:—"This partnership, if it be not limited, will be understood only of all the moveable property, and the immovable property acquired by the said parties during the partnership." See Berry, tit. 8. art. 10, &c.

45. It is only what each of the partners acquires during the partnership by some kind of commerce, as by purchase, lending, &c., which falls therein. Si quod lucrum ex emptione, venditione, locatione, conductione descendit; Dict. Leg. 7. (Dig. lib. xvii. tit. 2. sec. 7.)

Thus also whatever each of them acquires, by the exercise of his profession, his pay, his appointments; l. 52. § 8. ff. Dict. Tit. (Dig. lib. xvii. tit. 2. sec. 52. § 8.)

46. This partnership being generally of all that the partners may acquire during the term of the partnership, it suffices that one of them may have made by some kind of commerce any acquisition during that period, in order that it may fall into the partnership, even although the contract by which such acquisition is made does not express that it is entered into an account of the partnership.

Yet more, if the contract expressly declares that the acquisition is made on the private account of one of the partners, still the others can oblige him to bring it into the
common stock unless it has been made out of his own private monies excepted from the partnership.

47. Observe also that real estates, although acquired by commerce during the partnership, do not fall into it, when the title, by virtue of which one of the partners has acquired them, is anterior to the contract of partnership, as when having bought an estate before the contract of partnership, the tradition or conveyance of it has not been made to him until after. In that case, the estate is his own private property; he ought only to account to the partnership for the money which he has drawn therefrom to pay the purchase-money.

48. In like manner the property, of which one of the partners becomes owner, during the partnership, by the cancellation of the contract of alienation, which he had entered into with respect to it before the contract of partnership, rather than by a new acquisition which he has made thereof, does not fall into the partnership; as, for instance, when he has revoked on account of the (survenance) unexpected birth of children, or on account of ingratitude, a donation which he had made of such property.

49. Neither should the estate—which one of the partners has acquired during the partnership (par droit de retrait lignager¹) by the right of redemption as being of the same family as the vendor,—fall into the partnership, because that right, by its nature, not being (cessible) assignable, ought not consequently to be capable of being (communicable) made common.

50. Although exchange or barter may be (un titre) a kind of commerce, nevertheless, as the estate taken in exchange is substituted for that which has been given in exchange, and assumes its nature, the estate acquired by one of the partners during the partnership, in exchange for an estate which was his own private property, will be equally so, and will not fall into the partnership.

51. It is only what each of the partners has acquired

¹ This right of redemption, having its origin in feudal times, has not been recognised in the French Civil Code.
under the head of commerce during the partnership which falls into it.

Whatever comes to one of the partners by succession, donation or legacy, does not fall therein. L. 9, 10, 11. and 71. § 1. **ff. Pro Soc.** (Dig. lib. xvii. tit. 2. ss. 9, 10, 11. and 71. § 1.)

My Custom of Orleans, Art. 317., has also a provision to this effect: it takes place even when the donation has been made to him in consequence of the business of the partnership procuring for him the goodwill of the donor. L. 60. § 1. *in fine ff. Pro Soc.* (Dig. lib. xvii. tit. 2. s. 60. § 1.)

52. With respect to the charges on this partnership, according to the Roman law, the partners not bringing into it any of the property which they had when they entered into the contract, it ought not to be bound by the debts which they then owed.

But our customary law bringing into that partnership what the partners had at the time they entered into the contract, it follows that such partnership ought to be bound by all the (*les dettes mobilières*) debts affecting moveables which they then owed. Those debts, according to principles of our ancient French law, ought to follow the moveable property, being a charge upon it.

53. With regard to the debts contracted by the partners during the partnership, the partnership will be bound by those only which are contracted for the business of the partnership: *Sed nec as alienum, nisi quod ex quastu pendebit, veniet in rationem societatis.* L. 12. (Dig. lib. xvii. tit. 2. sec. 12.)

---

**Section 2.**

**On Particular Partnerships.**

There are many kinds of Particular Partnerships. There is one where parties contract to have certain particular things in common, and to divide their produce; another where they contract to exercise in common some art or profession. Lastly, there are partnerships in commerce.
§ I. Of Partnership in certain Things.

54. A partnership may be contracted in particular things, or even in one thing alone: *Societates contrahuntur unius rei*;  

A particular partnership is that which applies only to certain determinate objects, or to their use, or to fruits to be reaped therefrom. Civ. Cod. of France, 1841. According to our law particular partnerships are divided into two kinds, public and private; with regard to public companies they are divided into unincorporated, incorporated, or such as exist under a charter from the Crown.

It will be sufficient here to state that unincorporated companies are, except in the mere mode of management, unless it be expressly provided for by statute, governed by the same rules as private partnerships. (Coll. 764. 771.) Incorporated companies or corporations are governed strictly by the terms of their charter, and the individual shareholders or stockholders will not, as in the case of unincorporated companies, be liable for the acts of their directors or other officers or members, unless it be expressly declared in their charters. Stor. Part. 109.

A partnership which would, strictly speaking, be sometimes called by the Roman or French lawyers a particular partnership, would be called by us a general partnership; as, for instance, when a merchant carrying on only one branch of trade or commerce enters into partnership with another, it would be called a general partnership, in the same way as if they carried on any other trade or business together in common.

That species, however, of particular partnership which is contracted for the purpose of carrying out a single transaction or adventure only, as the purchase and sale on joint account of a particular parcel of goods, is generally called a special or limited partnership Stor. Part. 107.

So in our law there may be a partnership in profits without there being a partnership in the capital stock. Thus where several persons joined together for the purpose of carrying on the business of common carriers of passengers and goods, and one finds a coach and the others divide the roads into districts, and each horses and conveys the coach through his own district, finding his own horses, harness, stables, and equipments, servants, and coachmen, and all things necessary for the purpose, there is no partnership in the stock in trade although there is a partnership in the accruing profits. (Barton v. Hanson, 2 Taunt. 49. 51.; and see Wilson v. Whitehead, 10 M. & W. 503.) If goods are sent to a broker to sell, under an agreement that he is to have half of whatever he can get for them beyond a certain amount, there is no partnership in the goods although he is a partner with the owner in the sale. Smith v. Watson, 2 B. & C. 481.; 3 D. & R. 751.; Meyer v. Sharpe, 5 Taunt. 74.; 2 Addis. Cont. 749.

But still there may be partnerships where, although all the capital is contributed by one and his labour only by the other, the capital is to be considered as joint stock, to which or to the produce of which they are entitled in equal shares. See Reid v. Hollinshead, 4 B. & C. 867.; Puffendorf on Law of Nat. & Nat., 5 Ch. 8., 12 by Kennet and Barbeyraac's notes. Stor. Partn., 43. In our law as well as in the French, in determining the question, what property
Pothier on Partnership.

1. 5. ff. Pro Soc. (Dig. lib. xvii. tit. 2. s. 5.); as when two neighbours agree to purchase a cow at their common expense, in order to feed, take care of her in common, and share the profits.

There may be put into this kind of partnership of particular things, in the same manner as in universal partnerships, either the things themselves, or only their use and the perception of their profits. For example, when two neighbours, who have each a cow, have agreed that the two cows shall be common between them, it is a partnership of the things themselves; each of the partners is no longer the separate owner of his cow, each of them is the owner in common of the two cows. Therefore if one of the two cows happen to die the loss will be common, and that which survives will continue to belong in common to the two partners, and he who brought her into the partnership will not be able to claim any more right to her than the other. But if two neighbours, without agreeing that their cows shall be in common, only agree that they shall take in common all the fruits and profits which may accrue from them, in that case the cows themselves are not put into the partnership, each of the partners remains sole owner of his own cow, and if it happen to die he alone bears the loss of it, and cannot make any claim to the other.

In like manner, when two persons enter into a contract of partnership to sell in common certain things which belong to each of them, and to share the proceeds, it is necessary to examine what was their intention. If it was to put into the partnership the things themselves, it will be a partnership of the things themselves, and if one of the things perish before the proposed sale the loss will be common. But if the intention was to put into partnership, not the things themselves, but the proceeds of the proposed sale, the entire loss will fall upon that partner to whom the thing belongs. This is the distinction which Celsus draws in the following case:—

Quum tres equos haberes, et ego unum, societatem coimus, “ut

belongs to the joint stock—an important question when the shares of the partners are to be ascertained,—the Court will be guided by the intention of the parties when it can be ascertained.
accepto equo meo, quadrigam venderes, et ex pretio quartam
mihi redderes:" Si igitur ante venditionem equus meus mor-
tuus sit, non putare se Celsus ait, societatem manere, nec ex
pretio equorum tuorum partem deberi; non enim habenda
quadriga, sed vendenda coitam societatem: cæterum si id actum
dicatur, ut quadriga fieret, eaque communicaretur, tuque in eà
tres partes haberes, ego quartam, non dubiè adhuc socii sumus.
L. 58. ff. Pro Soc. (Dig. lib. xvii. tit. 2. sec. 58.) The
same distinction ought to be made with respect to two
tradesmen who enter into partnership for the sale of goods
which they each have in their shop. If their intention was
to put their goods into the partnership, and afterwards
those which were in the shop of one of them are destroyed
by lightning, the loss will fall upon the partnership, and
the partner whose shop has been burnt will continue to have
a share in the goods in the shop of the other partner. But
if the intention of those tradesmen was to contract a partner-
ship, not of the goods, but of the sale which they should
make of them, the loss which happened by the lightning
striking the shop of one of the tradesmen will fall upon him
alone, and he will not have any claim to a share in the goods
of the other.

§ II. Of Partnerships for the Exercise of a Profession.

55. Several persons of the same profession or trade may
enter into partnership together for the exercise of their pro-

---

as The contract by which several persons enter into an association, either for
a proposed enterprise or for the exercise of some trade or profession, is also a

Our law is the same as to the objects of partnership. Stor. Partn. 114.: Coll. Partn. 622, 623.

These partnerships may embrace a variety of businesses, such as that of attor-
nies, solicitors, conveyancers, surgeons, apothecaries, mechanics, artisans, engi-
neers, owners of stage coaches, farmers, brokers, bankers, factors, consignees,
and even of artists, sculptors, and painters. (See Stor. Partn. 114.; Coll. Partn. 29—32.) But there cannot lawfully be a partnership in a mere personal
office, especially when it is of a public nature and involves a distinct personal
confidence in the skill and integrity of the particular party. (Stor. Partn. 115.;
Coll. Partn. 31, 32.) The case, put by Pothier, of the slaters entering into a
partnership not to work except at an exorbitant price, would not according to
our laws be illegal; supposing however that it was a part of the terms of the
partnership that the parties were to use violence and intimidation to prevent
fession or trade, and agree to put into a common stock all the gains which they may make in the exercise of their trade or profession, in order to share them together.

We see many partnerships of this kind among masons.

These partnerships are lawful provided they do not tend to a bad object, for instance, that of arbitrarily enhancing the price of their labour. For example, in the case where a violent hurricane has unroofed all the houses of a small town; if all the slaters of the place entered into a partnership for the exercise of their trade during a certain time, in order to work in repairing the roofs, and they agreed among themselves not to get upon the houses unless paid their day’s work, at a much higher than the ordinary price; such partnerships ought not to be tolerated, and the (juges de police) civil judges ought to punish (des amendes) by penalties those who have entered into them.

§ III. Of Partnership for Commerce (or Trade).

56. Savary, in his "Parfait Négociant," notices three different kinds of partnerships in trade. 1. Partnerships en nom collectif, or under a collective name. 2. Partnerships en commandite, or in commendam. 3. Anonymous and unknown partnerships.

57. Partnerships en nom collectif is that which two or more traders enter into to carry on in common a certain commerce in the name of all the partners.

Therefore, all the dealings that each of the partners enters other slaters from working, save at the price they fixed upon, or unless they joined with them, such an agreement would be illegal and the partnership consequently void.

56 The contract of partnership is governed by the civil law, by laws peculiar to commerce, and by the agreements of the parties. Comm. Cod. of France, 18.

The law recognises three kinds of commercial partnerships: the partnership (en nom collectif) under a collective name, the partnership (en commandite) in commendam, and the anonymous partnership. Ib. 19.

57 The partnership en nom collectif is that which two or a greater number of persons contract, and which has for its object to trade (sous une raison sociale) under the style of a firm. (Comm. Cod. of France, 20.) This kind of partnership differs little from our ordinary partnerships in trade.
into for that commerce are signed, "such a person and company." He is considered to contract therein, as well in his own name as in the name of his co-partners, who are considered to contract and bind themselves jointly with him by his agency.

It is necessary, however, in this respect, to follow the laws prescribed for the contract of partnership, as we shall afterwards see.

58. This partnership is composed solely of the things which the partners put therein at the time of the contract, and those which each of them has acquired during the partnership, in the name of the partnership, by signing the dealings "such a Person and Company," whether he has made the acquisitions with the money of the partnership or with his own. But the things which one of the partners has acquired on his own private account, although acquired during the continuance and with the money of the partnership, will not fall into it; that partner is only debtor to the partnership for the sum which he draws out of it. This is what is decided by the Law 4.

Cod. Com. utr. jur. Si patruus tuus ex communibus bonis res comparavit, non omnium bonorum socius constitutus . . . res emptas communicare eum contra juris rationem postulas. In this respect, particular differ from universal partnerships, as we have before observed (n. 46.): accordingly, it results from these terms, non omnium bonorum socius constitutus, which show that the decision would have been different in the case of a universal partnership.

59. Nevertheless, even in particular partnerships, if the

50 Upon this principle, in the case of Featherstonhaugh v. Fenwick, 17 Ves. 298., where one partner had secretly, for his own benefit, obtained a renewal of the lease of the premises where the joint trade was carried on, he was held to be a trustee of the lease for the benefit of the partnership.

So where two persons were partners in dealing in lapis calaminaris, and one of them who was a shopkeeper, instead of purchasing it from the miners by cash payment, obtained it by way of barter for shop goods; it was held by Sir John Leach, that the partnership was entitled to an account and equal division of the profits made by such barter. "The defendant," said his Honour, "here stood in a relation of trust or confidence towards the plaintiff, which made it his duty to purchase the lapis calaminaris at the lowest possible price; when in the place of purchasing the lapis calaminaris he obtained it by barter for his own shop goods, he had a bias against a fair discharge of his duty to the plaintiff.
bargain which such partner has made on his own private account was advantageous and belonged to the species of business which was the object of the partnership, and it would have been for the interest of the partnership to make it on account thereof, such partner can be compelled by his co-partners to bring into the stock of the partnership that which he has acquired thereby; for he ought not to prefer his private interest to that of the partnership, nor to take away from it an advantageous bargain, by making it on his own private account.

For example, if two persons enter into partnership to carry on a large (cabaret) tavern, and one of them finds a parcel of wine at an advantageous price for sale, and buys it on his own private account with the partnership money which he has in his hands, it is necessary to examine if, when he made that bargain, it was the interest of the partnership to make it on its own account. If there was only wine sufficient for a short time for the custom of the tavern, he ought not in this case to make the bargain on his own private account. But if the tavern was stocked with wine for many years, and he made the bargain on his own private account in order to re-sell the wine wholesale in the hope of gaining a profit thereby, the object of their partnership not being wholesale trade, his partner cannot claim a share of it.

60. Partnership en commandite is that which a trader enters

The more goods he gave in barter for the article purchased, the greater was the profit which he derived from the dealing in store goods, and as this profit belonged to him individually, and as the saving by a low price of the article purchased, was to be equally divided between him and the plaintiff, he had plainly a bias against the due discharge of his trust or confidence towards the plaintiff." Burton v. Wookey, 6 Madd. 367. See also Glassington v. Thwaites, 1 S. & S., 124. 133.

The partnership en commandite is contracted between one or more partners jointly and severally responsible, and one or more partners who are mere holders of capital, who are called commanditaires or partners en commandite. It is carried on under a partnership name, which must necessarily be that of one or more of the partners who are jointly and severally responsible. Comm. Cod. of France, 23.

It appears that, although at one time partnerships en commandite were carried on in the name of one manager alone, they were afterwards, before the promulgation of the Code, modified by the practice and necessities of commerce,
into with a private person (a person not in trade) for a trade to be carried on in the name of the trader only, and to which the other contracting party contributes only a certain sum of money which he brings into the capital of the partnership under an agreement that he is to have a certain share of the profits if there are any, and to bear, in the contrary event, the same share of the losses, in which, nevertheless, he will only be bound to the extent of the capital he has brought into the partnership.

61. The anonymous or unknown partnership, which is also called compte en participation, is that by which two or more persons agree to take a share in a certain business which shall be carried on by one or other of them in his own name alone.

For example, I am about to purchase a certain lot of goods in order to resell, but not having the necessary funds for that transaction, I propose to you by letter whether you are willing to take a share with me. You answer me, you will; and that you will let me have the necessary funds for your share. Consequently I do the business in my own name alone. It is an anonymous partnership which is entered into between us, in which I am the only known partner, and you the unknown partner.

There is also a kind of anonymous partnership called (mo-
mentanée) momentaneous, when (des revendeurs) brokers, who
attend sales by auction of moveables, in order not to bid one
against the other, reciprocally agree to share all the purchases
each of them shall make at the sale, and after it is finished, to
put into a mass all the goods which they have each bought
separately, in order to share the whole amongst themselves.
This partnership is permitted, provided it does not tend to get
the goods at a price below the just value, and there are at
the sale a great concourse of other (revendeurs) brokers be-
sides the partners.

But if those who had entered into this partnership were
the only persons at this sale who were in a condition to en-
hance the price of the goods, it is evident that such partner-
ship which had a tendency to get the goods for as low a
price as they wish to put upon them, would be unjust.

63. The anonymous partnership is similar to the partner-
ship en commandite in this respect, that in both there is only
one of the partners who contracts and binds himself with
respect to the creditors of the partnership; the unknown
partner in anonymous partnership, as well as the partner en
commandite, are only bound to them with respect (vis à vis)
to their principal partner.

These partners differ in this respect, that in the anonymous
partnership, the unknown partner is bound indefinitely with
regard to his share in the partnership, to acquit his partner
of the debts which he has contracted for the partnership; on
the other hand, the partner en commandite is only bound to
the extent of the sum which he has put into the partner-
ship.

THIRD CHAPTER.

The different Clauses in Partnership Contracts.

The clauses which ordinarily occur in contracts of partner-
ship, relate either to the time from the commencement or

* See post as to the liabilities of partners in anonymous and en commandite
partnership.
duration of the partnership, its management, the shares each of the partners is to have in the profits or losses, or the mode of recompensing such one of the partners, who although their shares as partners are equal, has, nevertheless, contributed to the partnership more than the others.

§ I. The Clauses concerning the Time for the Commencement and the Duration of the Partnership.

64. A partnership may be contracted either without any stipulation as to its commencement, in which case it commences from the time of the contract; or to commence at a certain period.

That period, which ought to be expressed, forms the matter of one clause of the contract.

The contract of partnership may also be made to depend upon a condition: Societas coïr potest vel extempore, vel sub conditione. L. 1. ff. pro Soc. (Dig. lib. xvii. tit. 2. l. 1.)

For example, I can enter into a contract for a partnership in trade with a person, which is not to take effect unless he marry my daughter.

65. The time for which the partnership is to last, ought also to form the matter of a clause of the contract of partnership.

That time may be of greater or less duration. When the parties have not expressed their intention concerning it, they will be considered to have contracted a partnership during

### Notes

- The partnership commences at the very instant of the contract, if it does not mention another time. Civ. Cod. of France, 1848.; Civ. Cod. of Louisiana, 2824. Our law is the same. Stor. Partn. 290.; Coll. Partn. 140.; and it has been held at law that parol evidence is inadmissible against this intention. Williams v. Jones, 5 Barn. & Cress. 108.
- If there be no agreement concerning the duration of the partnership, it is considered to be contracted for the whole life of the partners, under the modification contained in article 1869.; or if it be respecting business of which the duration is limited, for the whole time which such business lasts. Civ. Cod. of France, 1844.; see Art. 1865.; Civ. Cod. of Louisiana, 2825. Our law is the same in this respect. Crawshay v. Maule, 1 Swanst. 521, 522, 523. 525.; Alcock v. Taylor, Tamlyn, 506.; Featherstonhaugh v. Fenwick, 17 Ves. 299. 307, 308.; 3 Kent. Comm. 52.; Coll. Partn. 68. As to the continuation of a partnership after the death of a partner, see post.
According to the principles of the Roman law, a person could not enter into a valid contract for the duration of the partnership after the death of the contracting parties. This is the sense in which Cujas understands what is said in the law 70., ff. dict. tit. Nulla societatis in aeternum coitio est. (Dig. lib. xvii. tit. 2. § 70.) See infra.

§ II. The Clauses which relate to the Management of the Partnership.

66. Sometimes, the partnership contract gives the management of the goods and affairs of the partnership to one of the partners.

The partners can by that clause either limit or extend, as they think right, the power of management given to one of their number.

That power, in the absence of the expressed intention of the parties, comprehends, with respect to the goods and affairs of the partnerships, whatever is comprehended by a (procuration générale) general power of attorney given by one person to another to manage his property: For the partner to whom this management is committed, is, as it were, the general attorney of his partners with regard to the property and affairs of the partnership.

According to this principle, that power enables a person to do all acts and make all bargains necessary for the affairs of the partnership; as for instance, to receive and give receipts for what is due to the partnership from its debtors; to take the necessary proceedings against them to obtain payment; to pay what is due to creditors; to make bargains with the

The partner charged with the management, by a special clause of the contract of partnership, may, notwithstanding the opposition of the other partners, do all acts belonging to his management, provided it be without fraud.

Such power cannot be revoked without lawful cause whilst the partnership lasts; but if it has been only given by an act subsequent to the contract of partnership, it is revocable like a simple mandate. Civ. Cod. of France, 1856.; See Stor. Partn. 303.; 3 Kent. Comm. 45.; Const. v. Harris, T. & R. 496. 517, 518. 521.
servants and workmen employed in the service of the partnership; to make purchases necessary for its affairs; to sell the things belonging to the partnership which are intended to be sold, and not others: for example, in an universal partnership, such one of the partners, to whom, by a clause in the contract, or by a subsequent agreement, the management of the partnership is given, can sell all the products from the harvests of the estates belonging to the partnership; a fall of coppice-wood, if it is at an age fit to be cut. But he cannot sell the estates nor the other immoveable property belonging to the partnership, nor even the moveables with which they are furnished except those of a perishable nature, if kept. *Procurator totorum bonorum, cui res administranda mandata sunt, res domini neque mobiles, neque servos sine speciali domini mandato alienare potest, nisi fructus, aut alias res quae facile corrupi possunt:* l. 63. ff. *de Procur.* (Dig. lib. iii. tit. 3. l. 63.)

67. In a commercial partnership the managing partner has power to sell the goods of the partnership, since they were put therein only for the purpose of being sold. But he has no power to sell the house which has been acquired for their place of business, nor to grant easements upon it: he cannot even sell the moveables which are in that house as fixtures; as for instance boiling-coppers, looms, and other utensils of trade.

68. In partnerships, whether universal or particular, the managing partner, without the consent of the others, has no power to compromise a suit of the partnership, because that also exceeds the power of a person having a general power of attorney: *Mandato generali non contineri etiam transactionem decidendi causâ interpositam:* l. 60. ff. *de Procur.* (Dig. lib. iii. tit. 3. l. 63.)

69. However extensive may be the power of managing the partnership affairs conferred by the clause of the contract, it does not extend to the power of disposing by donation of the effects of this partnership.

Nevertheless ordinary gifts of common courtesy are not forbidden.

For example, in a universal partnership, the managing partner can, without consulting his co-partners, make to
those who owe fines on alienation, or other seignorial dues of a like kind, the necessary returns which Seigneurs are accustomed to make: He may give (des étreennes) new years' gifts, and other small presents, in customary and proper cases. He may also be a party to a contract (d'atermoiement) of respite or composition which restrains (des saisies) distresses made against a debtor who has become insolvent. These returns are made with the intention of economy, in order to prevent a total loss rather than with the intention of making a donation.

70. The principles which we have established, are subject to an exception: First with regard to the kind of universal partnership, or community of goods between husband and wife. The husband has over the property of which it is composed, a power not of manager, but of absolute owner, as we shall see in my "Treatise on the Contract of Marriage." Secondly, with regard to the kind of universal partnership which the survivor of two persons united by marriage contracts, (faute de faire inventaire) from want of an inventory; although the survivor is not absolute owner of the property of that community, as the husband is of that of the conjugal community (as long as it continues, and he is the absolute manager of it); he has, nevertheless, a power of management so extensive, that he can generally dispose of all the estates and other property of the partnership as it seems good to him, provided that it be not by donation, as we shall see in my "Treatise on the Contract of Marriage."

Moreover, even in ordinary partnerships, our principles are subject to an exception, when, by the clauses of the contract, it has pleased the parties to give more extensive power to him whom they have made manager of the partnership.

71. Although the power of a partner, who, by a provision contained in the contract, is manager of the partnership property, may be compared to that of a man to whom another may have given a general power of attorney to manage his affairs, we must observe this difference between them. The power of the latter being revocable, according to the nature of the contract of mandate, he may, without the knowledge of the person who has given him the power of attorney, do all
acts belonging to the management which have been confided to him, the person who gave him the power of attorney being presumed to consent to them; but he can do nothing against his wish and against his dissent of which he has notice. On the contrary, the power of management which is given by the contract to one of the partners, being one of its conditions, he having only consented to the partnership upon condition that he should have its management, that power is not revocable while the partnership exists. Therefore it is that such partner can do, even against the wish and in spite of the opposition of the others, all the acts which belong to his management, provided that they be without fraud, and for the good of the partnership.

It would be otherwise, if the power of management had been granted to one of the partners, not by the contract of partnership, but afterwards. He would, in that case, be only a simple mandatory of his copartners, liable to have his power revoked, and able to do nothing contrary to their wishes.

72. The management of the affairs of the partnership is sometimes given by the contract to several of the partners. If the management has been divided amongst them, as if one has been (préposé) appointed to make purchases, another to sell goods, each of them can only do the acts which belong to that part of the management confided to him. But if the management has not been divided amongst them, each of them can, separately and without the other, legally do all acts which belong to the management of the partnership, unless the clause by which they have been (préposés) appointed express that they are not to do anything separately.

For this result an argument may be drawn from what is decided in the law 1. § 13 and 14. ff. De Exercit. Act. (Dig. lib. xiv. tit. 1. l. 1. § 13, 14.) with respect to several supercargoes of a merchantman: *Si plures sint magistri non divisis officiis,*

72 Where several partners are charged with management without their duties being definite, or without its being expressed that one cannot act without the other, they may each separately do all acts of management. *Civ. Cod. of France, 1857.* If it has been stipulated that one of the managers shall do nothing without the other, one of them cannot, without a new agreement, act alone in the absence of the other, even though it shall have been actually impossible for the latter to concur in acts of management. *Civ. Cod. of France, 1858.*
quodcunque cum uno gestum erit, obligabit exercitorem; si divisis, ut alter locando, alter exigendo, pro cujusque officio obligabitur exercitor: sed et si sic praposuit, ut plerumque factunt, "ne alter sine altero quid gerat"; qui contraxit cum uno, sibi imputabit.

The clause that one of the managers shall not do anything without the other, ought to be observed even in the case where it may happen that one of the partners is prevented from acting either by illness or otherwise, until the partners have come to a different arrangement.

§ III. As to the Clauses concerning the Shares of each of the Partners in Profits and Losses.

73. When the value of what each of the partners has brought into the partnership is apparent, as when it consists

"When the deed of partnership does not determine the share of each partner in the profits or losses, the share of each is in proportion to his contribution to the capital of the partnership.

With regard to the individual who contributes only his skill, his share in the profits or in the losses is regulated as if his contribution had been equal to that of the partner who has brought in the least. Civ. Cod. of France, 1853. According to our law, it would seem that in the absence of any express contract, or any dealing from which a contract may be inferred, as to the shares in the profits and losses, even if the contributions of capital be unequal, or when one partner may have contributed all the capital, and the other only his skill and labour, the shares will be equal. See Farrar v. Beswick, 1 M. & Rob. 527.; and see Peacock v. Peacock, 16 Ves. 56.; where Lord Eldon disapproved of the opinion of Lord Ellenborough on the trial of an issue, who thought that the shares ought to be ascertained by a jury on the footing of a quantum meruit; and see Webster v. Bray, 7 Hare, 159. 174. 178. 179.; Stewart v. Forbes; 1 Hall & T., 461. 472. ; 1 Mac. and Gord. 137., where Lord Eldon's doctrine has been adopted. Lord Ellenborough's views, however, were approved of in the House of Lords by Lords Wynford and Brougham, with regard to a case from Scotland, who were of opinion that where there is no express contract between partners, it is not, according to the law of Scotland, a necessary presumption of law that the profits are to be divided in equal shares, but that it is a question for a jury, upon evidence of all the circumstances (as good will, skill, capital, labour, &c.), what the proportion of interest in the profits and losses should be. Thompson v. Williamson, 7 Bligh, N. R. 492. See Stor. Partn. 30. But where there has been a contract as to the shares the partners are to take, and there is a difficulty in ascertaining what it really was, an issue may be directed for the consideration of a jury. Mc'Gregor v. Bainbrigge, 7 Hare, 164. n. It seems that the American authorities, as far as they go, are in favour of Lord Eldon's doctrine. Gould v. Gould; Wend. 263. ; 3 Kent. Comm.
of money, or of effects upon which a value has been put, it is not necessary to express in the contract what is to be the share of each in the profits and the losses, as in such case it will be in the same proportion as he has contributed to the partnership.

Although a certain value has not been put upon what each brought into the partnership, it is not necessary that the parties should express what share each is to have, if it is their intention that the partnership shares are to be equal; because a distribution by equal shares will take place in the absence of any expressed intention of the parties: *Si non fuerint partes societati adjectæ, æquas eæ esse constat*; l. 29. *ff. pro Soc.* (Dig. lib. xvii. tit. 2. s. 29.)

But when it is the intention of the contracting parties not to distribute the partnership by equal shares, and moreover they have not put a certain valuation upon what each has contributed; in that case, it is necessary by a clause in the contract of partnership to regulate the shares of each in the capital, and in the gains and losses.

In like manner, if, besides the sum which each of the partners has contributed, either in money or in effects, on which a value has been put, one of them has brought into the partnership a skill which is peculiar to him, on account of which he asks to have either a greater share than the others in the profits, or to incur a smaller share of the losses, the amount of such share must be regulated by a clause in the contract. With regard to the equity or inequity of the clauses which regulate the share of each of the partners in the gains or in the losses, see what I have before said, *suprâ*, c. 1. § 4.

28. Pothier has indeed observed (see *ante*, n. 15. n. 29.) that equity requires in general the share of a partner in the profits to be in proportion to the value of what he has brought into the partnership, whether it be money, goods, labour, or skill; the rule, however, laid down by Lord Eldon does not contravene that requirement of equity or natural justice, for, as in many cases, the skill of one partner, contributing a smaller share or even no share to the capital, may be equal in value to the capital contributed by the other, in the absence of any stipulation as to the interest of the parties in the profits, they are presumed to have considered that their respective contributions, even when there is only skill on one side and capital on the other, to have been equal.
74. Sometimes the parties do not themselves regulate the shares that each is to have, but they agree by the contract of partnership to abide by the regulation of a particular person, or even sometimes of one of themselves. But the regulation which they agree to abide by must not be understood to be of a purely arbitrary character, but one which is to be made according to the rules of equity; Arbitrium boni viri; ll. 76, 77, 78. ff. pro Soc. (Dig. lib. xvii. tit. 2. s. 76, 77, 78.)

If therefore the regulation, made by (expert) the expert to whom they have referred the matter, is clearly inequitable, the injured party may have it reformed: Si arbitrium ità pravum est, ut manifesta iniquitas ejus appareat, corrigi potest per judicium bona fidei; l. 79. ibidem (Dig. lib. xvii. tit. 2. s. 79.)

But unless the inequitableness of the regulation be evident, the presumption is in favour of its equity, and neither of the parties can be heard to complain.

§ IV. Of the Clauses which concern the manner of recompen sing one of the Partners, who although they are Partners for equal Shares, has brought more than the others into the Partnership.

75. That which one of the partners has brought into the partnership more than the others, either consists solely in his skill or labour, or in a greater capital, in goods or money. When it consists of his skill, which has not been taken into consideration in the regulation of the shares of each of the partners in the profits, he can be recompensed for it in many ways. For example, if three partners have contributed in money or in goods each 50,000 livres, to form a partnership in which they are each to have a third, and one of them has contributed to it beyond what the others have done his pecu-

"If the partners have agreed to refer the regulation of the shares to one of themselves, or to a third person, such regulation cannot be impeached unless it be evidently contrary to equity.

No claim is admitted on this subject, if more than three months have elapsed since the party who thinks himself aggrieved has had notice of the regulation; or if, on his side, there has been a part performance of such regulation. Cod. Civ. of France, 1854.
liar skill, and the labour which he has undertaken in the business of the partnership: 1st, It may be agreed that in recompense for his skill and labour he shall bear no loss which he would otherwise have to suffer, in case the partnership was unsuccessful, or that he should suffer a smaller proportion of the losses than the third, which he would have in the profits if the partnership was prosperous. We have seen, infra, chap. i. § 4., that such an agreement is equitable when the value of his skill and labour is equal to the value of his discharge from the risk of bearing the same proportion of the losses which has been assigned to him in the profits.

2ndly. When such partner participates in a third of the losses, as well as of the profits, the other partners may recompense him otherwise for his additional skill and labour which he contributes to the partnership, by agreeing that he shall receive every year from the partnership funds a certain sum, at which the contracting parties shall have valued such skill and labour.

The skill and labour of such partner may also be valued at a certain sum only, which he is to take from the capital, at the distribution made amongst the partners at the termination of the partnership.

76. When one of the partners has brought more than the others, in money or in goods, to a partnership in which the profits are to be equally divided, it is generally agreed that upon the distribution at the determination of the partnership, such partner shall withdraw that sum, with interest thereon, for each year of its duration.

This agreement is often entered into when a tradesman gives one of his children in marriage. For example, a tradesman, who has capital to the amount of 450,000 livres in money, debts due to him, and goods (déduction faite du passif), after deducting the debts he owes, withdraws 50,000 livres to give to his son on his marriage, and takes him into partnership in trade with him for ten years, and although his son has contributed to the partnership 50,000 livres which he received from his father, and an equal sum which his wife brought to him as her dowry (making in the whole 100,000 livres), and his father has contributed to it his remaining
400,000 livres; nevertheless, he takes his son into partnership for the half of his business, instead of the fifth, which he ought only to have in it, having only brought for his share a sum of 100,000 livres, which is the fifth of the capital of the partnership. To recompense the father for the 300,000 livres which he has contributed to the partnership more than the son, it is agreed, in the contract of partnership inserted in the marriage contract, that the father, at the termination of the partnership, shall withdraw, on the distribution, the sum of 300,000 livres, with interest upon that sum, for every year of the duration of the partnership.

It has been brought into question whether such interest is legitimate. Some theologians think that it is usurious, and that the father ought not, in conscience, to require it. They say that such arrangement comprehends a loan from the father of that sum of 300,000 livres to the partnership; that such sum, not being alienated, since he has a right to require it at the end of the partnership, and running no risk with respect to it, since it is to be returned to him by the partnership without any diminution, whatever losses the partnership may have suffered, he cannot, without usury, require any interest. I do not think this opinion is right. There is no usury, except in a contract for a loan, whether formal or disguised under the false appearance of another contract. This agreement is neither a formal nor a disguised loan. The father never having had any intention of making a loan to his son, it is only a clause of a contract of partnership, of which it forms a part, and it contains nothing unjust. The sum of 300,000 livres which the father has more than his son in the partnership is capital in trade, and is a fruitful thing, which produces considerable profits, which are, as it were, its fruits.

The father, who alone ought to have the profits, which he had reason to expect that such capital of 300,000 would produce, since he has contributed that sum beyond what each of the other partner has brought into the partnership, nevertheless abandons these profits to the partnership, and he receives therefrom, as the price of the said profits, the interest of that sum. If he is discharged from the risk of the losses
which he would bear with respect to that sum in case of misfortune, it is because the profits, which he had reason to expect from a thriving trade, being much more considerable than the interest of the money, and the expectation of these profits being much more probable than the risk of loss in case of misfortune, the estimate of the expectation of the said profits, subject to the deduction of the value of the risk of loss which he may fear, and from which the father is discharged, might fairly amount to the interest of the money.

A proof that this agreement is not inequitable to the son, is that, among tradesmen, these kinds of arrangements are regarded as advantageous for the son. If the father consulted only his own interest, he would much rather admit his son into the partnership only for a fifth than admit him for a moiety on this condition; and it is ordinarily the family of the bride which requires this arrangement as a condition of the marriage.

FOURTH CHAPTER.

As to the Persons who can enter into, and the Forms required by our Law for, the Contract of Partnership.

FIRST ARTICLE.

Of the Persons who can enter into the Contract of Partnership.

77. With respect to the persons who can enter into the contract of partnership, I refer to the general principles

A universal partnership can only take place between persons respectively capable of giving and receiving to or from each other, and to whom it is not forbidden to derive advantage to the prejudice of other persons. Civ. Cod. of France, 1840.

In England, the principles applicable to ordinary contracts decide in general who may or may not enter into the contract of partnership. Hence all persons sui juris, unless prohibited by law from doing so, may enter into such contract. Even in the case of an infant, as it may turn out for his benefit, it is not void, but only voidable; for if, after having attained his majority, he either expressly intimates his desire to remain a partner, or does so impliedly, by his neglect, within a reasonable time, to repudiate the contract, he will be considered to
established in my "Treatise on Obligations," Part I. chap. i. § 1. art. 4., where I have treated of the persons who can or cannot enter into a contract, there being nothing peculiar in this respect in the contract of partnership.

I will only observe, with respect to minors who are traders or bankers by profession, that the Ordonnance of 1673, tit. i. art. 6., considering them of age as far as regards the carrying on of their trade and banking without their being able to claim restitution, on the grounds of their minority, they are consequently of capacity to contract partnerships for the carrying on of their trade without the expectation of restitution.

SECOND ARTICLE.

Of the Forms required for the Contract of Partnership.

78. The contract of partnership being a contract of natural right, governed only by the principles of natural law, and a consensual contract, formed solely by the consent of the parties, it is not in itself subject to any form. Those which our have affirmed it; and his liability as a partner, for partnership contracts entered into by the firm during his minority, will attach. (Holmes v. Blogg, 8 Taunt. 35.; Goode v. Harrison, 5 Barn. & Ald. 147. 156.; and see Baylis v. Dinely, 3 Mau. & Sel. 477.; Keane v. Boycott, 2 H. Black 511. 514, 515.); but in all events an infant would be liable to third parties, if he should fraudulently hold himself out as a partner when he was not so (Goode v. Harrison, 5 Barn. & Ald. 147. 152. 157, 158.); or if, being a partner, he should fraudulently hold himself out to the world as being of full age.

Married women, by Common Law, are disabled from entering into the contract of partnership, unless by some special custom, as by that of London (Beard v. Webb, 2 Bos. & Pull. 93. ; Burke v. Winkle, 2 Serj. & Rawle, 189.); or by the civil death of the husband in consequence of profession, or abjuration of the realm (Beard v. Webb, 2 Bos. & Pull. 93. 105.; Lean v. Schutz, 2 Wm. Bl. 1195.); or by the suspension of his marital rights by transportation for a term of years (Sparrow v. Carruthers, cited 2 Wm. Bl. 1197.; 1 T. R. 6, 7. ; 1 Bos. & Pull. 359.; Carroll v. Blencow, 4 Esp. 27.; S. C. cited 11 East, 303. ; Marsh v. Hutchinson, 2 Bos. & Pull. 291, 232, 233.) or if she be the wife of an alien who has never come within the realm. De Gaillon v. L'Aigle, 1 Bos. & Pull. 357.; Kay v. Duchesse de Pienne, 3 Camph. 129.

In Equity, however, if a woman is possessed of separate property, she may, it is conceived, enter into a contract of partnership, so as to bind such property, although it would not be binding as against her personally. See Hulme v. Tenant, 1 Lead. Cas. Eq. 324., and note; Cecil v. Juxon, 1 Atk. 278.; Laphir v. Creed, 8 Ves. 599.
Law requires for this contract are required only for its proof, and not for its substance.

It is necessary, in this respect, to distinguish universal from particular partnerships; and amongst particular partnerships, those which are commercial from those which are not.

§ 1. Of the Forms required for Universal Partnerships.

79. By the ancient French law partnerships were not subject to any forms. Not only was it unnecessary that a written deed (gu'il en fut dressé) should be prepared, it was not necessary even that there should be an express agreement for it; the parties were presumed to have tacitly entered into this partnership when they had dwelt and lived in common for a year and a day.

Many customs have yet retained the use of these partnerships, which are called (sociétés taisibles) tacit partnerships; there is one which is presumed from cohabitation alone (à pot commun) at the same table for a year and a day.

That of Berry, tit. 8. art 10., provides that in order to raise a presumption of such partnership, beyond habitation and common expenses for a year and a day, the parties should, during that time, have shared each other's losses.

80. Besides these customs, which have, by express dispositions, admitted tacit partnerships, we do not admit in our jurisprudence any other tacit partnerships, except the community of goods which is contracted by marriage between a man and a woman, and the continuation of community which sometimes takes place in default of the survivor having made an inventory, of which I shall treat in my Treatise on the Contract of Marriage.

This jurisprudence is founded on the Ordonnance of Moulins, art. 54., which has ordained that all agreements of which the object shall exceed 100 livres shall be reduced into writing, and that the proof thereof by witnesses shall not be admitted.

Even before the Ordonnance of Moulins many customs had rejected these tacit partnerships. The ancient custom of Orleans (rédigée) digested in 1509, art. 80., says: "Part-
Pothier on Partnership.

Pothieron Partnership. 57

Partnership is not contracted between any persons who are not united by marriage, unless there is an express agreement between them;” and the new custom, conformable to the Ordonnance of Moulins, has added (passée) “reduced into writing in the presence of notaries, or under their signatures,” art. 213.

81. Writing, as we have already said, is only required for proof of the contract of partnership, where one of the parties should not admit it; but the contract of partnership, formed by the sole consent of the parties, although not reduced to writing, is nevertheless binding in itself, and obligatory upon the parties in foro conscientiae, and even in strict law, when they have admitted it; and the decisory oath (serment décisoire) may be also put to the party who may not be willing to do so.

Observe, that the deed of partnership, whilst it has only been (passé) executed under the private signatures of the contracting parties, establishes the proof of the contract of partnership between them only, and not with respect to a third party. For this reason the custom of Orleans in the article above cited, adds, “Whenever it shall not have been executed (passée) before notaries, it can only prejudice the contracting parties.” For example, I should not be able, in virtue of a deed of partnership, executed between you and myself under our private signatures (seigns-prives), to urge as against your separate creditors who have seized your effects, that there is a partnership between us to which the said effects belong, and upon which (j'ai privlege) I have a prior claim for what is due to me by that partnership. This is founded upon the principle established in my “Treatise on Obligations,” n. 750., that deeds under private signatures, being liable to be ante-dated, (ne font pas foi) are not considered evidence as to their dates against third parties, unless, indeed, the date of it has been (constatée) verified, for instance, by the decease of one of the parties who had signed those deeds.
§ II. Of the Form required for Commercial Partnerships.

82. The Ordonnance of Commerce of 1673, tit. 4. art. 1., provides, that every partnership, whether general or en com-

ponent, the capital of the anonymous partnership is divided into shares, and even into coupons of a share of equal value. Comm. Cod. of France, 34. The share may be established under the form of a certificate to the bearer. In that case the transfer is made by the delivery of the certificate. Ib. 35.

The property in shares may be established by an inscription in the registers of the partnership.

In that case, the transfer is made by a declaration of transfer inscribed in the registers, and signed by him who makes the transfer, or by one acting under a power. Ib. 36.

The anonymous partnership can only exist with the authority of the King, and with his approbation of the Act which constitutes it. This approbation must be given in the form prescribed by the regulations of the public administration. Ib. 37.

The capital of partnerships en commandite may also be divided into shares without any derogation to the rules established for that kind of partnership. Ib. 38.

The partnership en nom collectif or en commandite must be verified by public acts, or under private signature, conforming in the latter case to the Article 1325. of the Civil Code. Ib. 39.

The names of the partners in a partnership en nom collectif can only be made use of in the designation of the firm. Ib. 21.

Anonymous partnerships can only be formed by public acts. Ib. 40.

No proof by witnesses can be admitted against or beyond the contents of the acts of partnership, nor as to what may be alleged to have been said before, at, or since the execution of the acts, although the question may be concerning a sum below 150 francs. Comm. Cod. of France, 41.

The extracts from the acts of partnership en nom collectif and en commandite must be transmitted within a fortnight from their date to the Registrar of the Tribunal of Commerce of the district in which the house of (commerce social) partnership business is established, to be transcribed in the Register, and posted up in the hall of audience during three months. If the partnership has several houses of business in different districts, the transmission, transcription, and the posting up of the extract, must be performed at the Tribunal of Commerce of each district. Each year, in the first fortnight of January, the Tribunal of Commerce shall designate one or more journals at the chief place of their jurisdiction, in one or more newspapers; and in default of such, at the nearest town, in which shall be inserted, within a fortnight from their date, the extracts from acts of partnership en nom collectif or en commandite, and shall regulate the tariff for the printing of these extracts. This insertion may be proved by a copy of the journal certified by the printer, legalised by the mayor, and registered within three months from its date. These formalities must be observed under pain of nullity with regard to the parties interested; but the default of any of them cannot be set up by the partners against third parties. Ib. 42.
mandite, should be reduced into writing before notaries, or under private signature; and that no proof of it could be

The extract must contain the names—Christian names—condition and dwellings of the partners, except the shareholders, or commanditaires; the commercial style of the firm; the designation of those of the partners authorised to act, manage, and sign for the partnership; the amount of the capital furnished or to be furnished, by shares or en commandite; the period for the commencement and termination of the partnership. Ib. 43.

The extract from the acts of partnership is signed, as concerns the public acts, by the notaries; and as to the acts under private signature by all the partners, if the partnership be en nom collectif, and by the managing partners (solidaires) jointly and severally liable, if the partnership be en commandite, whether it be divided or not into shares. Ib. 44.

The ordinance of the King, authorising anonymous partnerships, should be posted up with the act of partnership and during the same time. Ib. 45.

Every continuation of a partnership, after the expiration of its term, must be verified by a declaration of the co-partners. This declaration and all acts dissolving the partnership before the term fixed for its duration by the act which establishes it, every change or retirement of partners— all new stipulations or clauses, all changes in the style of the partnership, are subject to the formalities prescribed by the articles 42, 43, 44. In case of the omission of these formalities, the penal provisions of the last paragraph of article 42, will become applicable. Ib. 46.

Associations in participation may be established by what appears from the books, correspondence, or by testimony, if the Tribunal decides that it is admissible. Ib. 49.

The commercial associations in participation are not subject to the formalities prescribed for other partnerships. Ib. 50.

Troplong, in order the better to explain the nature of the association in participation, has shown in what different combinations it is generally in use. One may be here given:— A ship arrives from America at Bordeaux, laden with merchandise. A merchant at that port sends to his correspondent at Bayonne a detail of the cargo, and proposes to buy with him a lot of coffee, likely to be resold at great advantage, asking him to say, in case he answered in the affirmative, what share he would take in that speculation. The Bayonne merchant answers, that he will take a third, and will bear that proportion in the profits and losses. The Bordeaux merchant then makes the purchase in his own name, and thereby an association in participation is formed, which is also called compte en participation, because it resolves itself into an account between the two merchants. Troplong observes in this case: "It is clear that the Bordeaux merchant who purchased the lot of coffee from the master will be alone liable to him; the Bayonne merchant, on the contrary, will have contracted no obligation; and if the former happen to fail, the seller can have no recourse against his participant. In like manner, in case of the failure of the Bordeaux merchant, as against his personal creditors, the correspondent at Bayonne cannot lay claim to the merchandise bought in participation. He will have no more right than the others, and will come with them (au marc le franc); and as such an association does not interest the public, it has no need of being
received against or beyond the contents of the deed, even if it should be of a value less than 100 livres.

It ordains, moreover, that an extract of the deed of partnership should be registered at the registry of the consulate; or if there be no consulate in the town, in the registry of the Hôtel de Ville, or in that of the ordinary jurisdiction, and that it should be inserted on a tablet and posted up in a public place; (art. 2.).

This extract ought to contain the names, surnames, rank, and dwellings of the partners, the extraordinary clauses for the signature of deeds, if there be any (suppose, for instance, that a certain one only among the partners has power to sign the deeds in order to bind the partnership); the time at which the partnership is to commence and terminate (art. 3.).

These extracts ought to be signed by the parties, or by those (qui auraient souffert la société) who have assented to the partnership, by the instrumentality of persons with powers of attorney who have contracted for them (art. 3.). This is the explanation that Savary, who drew the plan of the Ordonnance, gives of these terms. Deeds containing a change of partners, or novel clauses, are subjected by the Ordonnance to the same formalities.

These formalities, according to Savary, were prescribed to obviate frauds, and, in case of the insolvency of any of the partners, to prevent the others concealing themselves from the knowledge of the creditors, and avoiding payment of the debts of the partnership by which they are bound.

The Ordonnance requires these formalities, under penalty of nullity of the deeds, as well between the partners as with regard to their creditors (art. 2.); and it provides, that the partnership should only have effect with regard to the part-
Pothier on Partnership.

ners, their widows, heirs, and creditors, from the day of registration (art. 6.).

Although the provisions of the Ordonnance are so precise, the author of the notes upon Bornier tells us, that these formalities of registration at the registry, and the posting up on a tablet, have fallen into disuse, and are no longer observed.

§ III. On particular Partnerships which are not Commercial Partnerships.

83. Particular partnerships, which are not commercial, are only subject to the law common to all agreements, which requires that they should be reduced into writing, and that testimonial proof thereof cannot be received when the object exceeds the sum of 100 livres.

For this reason, if there were a partnership of a particular thing whose value does not exceed 100 livres, it would not be necessary that there should be a deed in writing.

FIFTH CHAPTER.

Of the Right each of the Partners has to the Property belonging to the Partnership.

§ I. General Principles.

FIRST MAXIM.

84. Each of the partners can use the things belonging to the partnership, provided he does so according to the uses for

Every partnership must be reduced to writing when the object is of a value exceeding one hundred and fifty francs.

Testimonial proof is not admitted against or beyond what is contained in the act of partnership, nor touching that which shall be alleged to have been said before, at the time of, or subsequent to such act, although the question be concerning a sum or value less than one hundred and fifty francs. Civ. Cod. of France, 1834. See Stor. Partn. 119.

In default of special stipulations, each partner may make use of the things belonging to the partnership, provided he employ them for the purposes fixed by usage, and that he do not make use of them contrary to the interest of the partnership, or in such a manner as to hinder his partners from making use of them according to their right. Civ. Cod. of France, 1859. 2. Our Law is
which they were intended, and in such a manner as not to hinder his partners from using them in their turn in like manner.

85. Nevertheless, if these things were intended to be let out to hire, in order to draw an income therefrom, and it was the interest of the partnership to let them all together for that purpose; he cannot hinder his partners from so letting them, nor can he make use of his share except whilst waiting until they have found some one to hire them.

For example, if there be a town house in a partnership, one partner would not be allowed, to prevent the others leasing it at a rent to a stranger, by claiming a right to occupy a part of that house proportioned to his share in the partnership, and by leaving the remainder to his partners; he would be bound to consent to the lease or to make a better bargain, or to obtain a higher rent in a short time which would be allowed to him.

But if it were a house not intended to be let; for instance, a country chateau or even a town house, which had been, by a clause of the contract, put into the partnership in order to serve as a dwelling for the partners; one partner could not be prevented by the others from occupying a part proportioned to his share in the partnership.

In like manner, if, amongst the effects of the partnership, there were a horse intended for the journeys necessarily made in the business, a partner could not be prevented, at the time when there were no journeys to be made, from himself using the horse for an airing, he leaving to his partners the right of using him, in their turn, if they think proper.

**SECOND MAXIM.**

86. Each of the partners has the right of obliging the others to join with him in incurring the expenses necessary much the same in this respect: if, for instance, one partner seeks to exclude another from having access to or using the books of the partnership, or prevents him assisting in the management and control of the partnership concerns, a court of equity will give relief. Coll. Partn. 127.; Stor. Partn. 280.

**In default of special stipulations, each partner has a right to oblige his co-partners to concur with him in the expenditure necessary for the preservation**
for the preservation of the property belonging to the partnership.

For example, if the buildings need repair, if there be a lot of wine of which the casks want new hoops, each of the partners can obligate his copartners to join with him in making these repairs and rehoopings, and for this purpose to consent to the bargains which he has entered into with the workmen to make them, unless they prefer, in a short space of time, such as the judge will allow them, to make a better bargain by performing the works at a more reasonable cost. The partners are also obliged to concur in defraying the expenses of the works, according to their shares in the partnership.

**THIRD MAXIM.**

87. A partner cannot make any change or innovation upon the estates belonging to the partnership, even if that innovation should be advantageous to it: *In re communi neminem dominorum jure facere quicquam invito altero posse. In re enim pari potiorem causam esse prohibentis; 1. 28. ff. Comm. Divid.* (Dig. lib. x. tit. 3. l. 28.)

Therefore, if one of the partners, without the consent of his copartners, has sent workmen to make certain buildings upon their common property, the other partners would have good grounds for preventing him: *quia ille, qui facere conatur, quodammodo sibi alienum quoque jus præritit, si, quasi solus dominus, ad suum arbitrium uti jure communi velit:* 1. 11. ff. *Si Serv. Vendic.* (Dig. lib. viii. tit. 5. l. 11.)

88. But after the partner has finished the work which he began upon the common estate, without any hindrance from his associates, they cannot oblige him to demolish it, but only to indemnify the partnership for the injury which it may have received thereby; unless the partnership has a great interest in not permitting the work to remain, and it was made during of the property of the partnership. *Civ. Cod. of France, 1859. 3. See Coll. Partn. 127.; Stor. Partn. 281.

"*In default of special stipulations, one of the partners cannot make alterations in immovables belonging to the partnership, even though he alleges them to be advantageous to such partnership, if the other partners do not consent thereto. *Civ. Cod. of France, 1859. 4. See Coll. Partn. 127.; Stor. Partn. 281."
the absence and without the knowledge of the other partners. This is what Papinian points out: *Etsi in communi prohiberi socius à socio, ne quid faciat potest, ut tamen factum opus tollat, cogi non potest, si, cum prohibere poterat, hoc prætermisit; et ideo per communi dividundo actionem damnum sarciri poterit. Sin autem facienti consensit, nec pro damno habet actionem. Quod si quid absente socio, ad lacionem ejus fecit, tunc etiam tollere cogitur. Dict. Leg. 28. ff. Comm. Div. (Dig. lib. x. tit. 3. l. 28.)*

**FOURTH MAXIM.**

89. A partner cannot alienate or bind the property belonging to the partnership, except as to his own share. *Nemo ex sociis plus parte suë potest alienare, et si totorum bonorum socii sint.* l. 68. ff. pro Soc. (Dig. lib. xvii. tit. 2. l. 68.)

He is not able to do it in the mere capacity of partner; but can he if he were the manager of the partnership property? See upon that question what has been said in the preceding chapter, § 2.

90. In commercial partnerships the partners are considered to have given each other the power of managing the *ordinary*

The powers and authorities of a partner, as before remarked, must be exercised in relation to the ordinary business of the firm, otherwise they will not be binding upon it. For instance, if one partner should make purchases of goods not connected with the trade (Stor. Partn. 168.), or should give letters of guarantee or credit, when it was not within the common course of the business of the partnership, the firm would not be bound thereby. Coll. Partn. 279, 280.; Hope v. Cust, 1 East. 53.; Duncan v. Lowndes, 3 Camp. 478.

Although, however, the dealings of one of the partners may not be within the ordinary scope of the partnership business, the firm will be bound, where proof is given of the previous course of dealing or practice of the partners which might be sufficient to prove a mutual authority, or of the usage of similar partnerships, or if there is a recognition or adoption by the other partners, the same effect will follow. Crawford v. Stirling, 4 Esp. 207.; Payne v. Ives, 3 Dowl. & R. 664.; Sandilands v. Marsh, 2 B. & Ald. 629.; Brettel v. Williams, 4 Excheq. 623.

Upon the same principle, the firm will be bound by an acknowledgment, admission, (Gray v. Palmers, 1 Esp. 155; Hodenpyl v. Vingerhoed, Chit. Bills, 321. n. 7 ed.; Wood v. Braddock, 1 Thun. 104.; Pritchard v. Draper, 1 Russ. and Myl. 199.; Cheap v. Cramond, 4 Barn. & Ald. 663.), promise (Lacy v. McNeil, 4 Dow. & Ryl. 7.), or undertaking (—— v. Layfield, 1 Salk. 291.), or even by the fraudulent acts (Willet v. Chambers, Comp. R. 814.; Stone v. Marsh, 1 Ryan & Mood. 364.; 6 Barn. & Cres. 561.; Hume v. Bolland, 1 Ryan and Mood. 371.; Keating v. Marsh, 2 C. & F. 250.), or statements (Rapp v. Latham, 2 Barn. & Ald. 795.) of one of their number, done or said in a partnership transaction, or with respect to the affairs of the partnership. Although, as we have before seen, he can release a debt due to the firm (anté, and see Metcalfe v. Rycroft, 6 M. & S. 75.; Coll. Partn. 171.; Stor. Partn. 169.),
even upon the shares of his copartners, without his having obtained their consent. But if, at the time when one of the partners is about to make a bargain and before it is concluded, another partner offers opposition he cannot conclude it, according to that rule of law already above cited: *in re pari potior causam esse probidentis constat*; l. 28. ff. *De Comm. Divid.* (Dig. lib. x. tit. 3. l. 28.)

This decision is not contrary to what we have before said, n. 71., that such one of the partners, who by the contract of partnership had been named manager, could do, contrary to the wishes of the other partners, all acts of management as he should think proper. The reason of the difference is, that in the latter case the other partners have no share in the management, which they have entirely given up to him whom they have chosen by the contract to be the manager; in the former case the partner who opposes has an equal power in the management with the partner who wished to make the bargain. They are both equally managers of their partnership; it is for this reason a proper case for the application of the rule, *in re pari potior causa probidentis*.

§ II. Whether one partner can associate a third party in the partnership, or only as to his own share; and of the effect of his doing so.

91. Each one of the partners having only a right to dispose of the effects of the partnership as to his own share, he can a partner cannot bind the firm by a submission to arbitration (Stead v. Salt, 3 Bing. 101.; Adams v. Bankart, 1 Cromp. Mees & Ross, 681.; Strangford v. Green, 2 Mod. 228.), nor by deeds or instruments under seal, even though he may have executed them during the course of, and with reference to, the business of the partnership. Stor. Partn. 173.; Coll. Partn. 308.

In our law, differing in this respect from the French, in the absence of any stipulation in the partnership contract, which is, of course, obligatory, the majority of a number of partners, whatever may be the extent of their shares, will have power and authority to do all acts within the scope of the business, notwithstanding the dissent of the minority. Const. v. Harris, T. & R. 496. 517, 518. 524, 525. Where, however, there are only two persons in a firm, the dissent of one of them to a transaction will not only be binding upon his partner, but also upon all persons who have proper notice of it. Willis v. Dyson, 1 Stark. R 164.

91 Every partner may, without the consent of his copartners, connect himself with a third person in reference to his own share in the partnership: he cannot
consequently, without the consent of his partners, take a third party as a partner in his own share in the partnership, but he cannot, without the consent of his partners, bring him into the partnership.

For this reason, if after having contracted with you a partnership, whether universal or particular, I consider it proper to associate with myself a third party, that third party will be a partner in my own share, but not having any right to take him into partnership without your consent, except as to my own share, he will not be your partner. Hence this rule of law: socii mei socius, meus socius non est; 1.47. § fin. ff. De Reg. Jur. 1.20 ff. Pro Soc. (Dig. lib. xvii. tit. 2. l. 20.)

92. Hence it follows that if we are several partners who have contracted a partnership together, and one of us has afterwards taken into partnership with himself a third party; if that third party has made any gain, although it arise from the effects of our partnership, he is only obliged to account for and share it with the one who has taken him into partnership, and not with us, who are not his partners: Quid-quid fuerit de societate nostrâ consecutus, cum illo, qui eum assumpsit, communicabit; nos cum eo non communicabimus; l. 21. ff. Pro. Soc. (Dig. lib. xvii. tit. 2. l. 21.)

We have not on this account any action against such third party who is not our partner, but only against our partner, without their consent, connect such person with the partnership, even though he has the management thereof. (Civ. Code of France, 1861.)

"I take it," says Lord Eldon, "to have been long since clearly established that a man may become a partner with A. where A. and B. are partners, and yet not be a member of that partnership which existed between A. and B. In the case of Sir Charles Raymond, a banker in the city, a Mr. Fletcher agreed with Sir Charles Raymond, that he should be interested so far as to receive a share of his profits of the business, and which share he had a right to draw out from the firm of Raymond & Co. But it was held that he was no partner in that partnership, had no demand against it, had no account in it, and that he must be satisfied with a share of the profits arising and given to Sir Charles Raymond." Per Lord Eldon in Exparte Barrow, 2 Rose, 254.

So in case of the bankruptcy of the partner who takes a stranger into partnership in his own share, if the latter prove against the separate estate. Exparte Dodgson, Mont. & M'tA. 445., and see Coll. 128., 2 Bell. Comm. 536.; Brown v. De Tastet, Jac. 294.
in order that he may account to our partnership for what he has taken therefrom to put into the hands of that third party.

93. If that third party, whom one of our partners has mixed in the affairs of our partnership, by taking him as a partner in his own share, has caused by his default some damage to our partnership, we have no direct action for the reparation of that damage against that third party, since he is not our partner. But he, who has taken him into partnership, is liable to us, as if he himself had done the damage, because having mixed him in the affairs of our partnership, by taking him as a partner in his own share he is bound by his acts, factum ejus prestabitur societati: Dict. Leg. 21.; (Dig. lib. xvii. tit. 2. l. 21.); without prejudice to our partner, who has taken such third party into partnership, bringing an action against him, in order to make him account for the fault which he has committed. He may even commence this action against him before putting in his defence to ours: Certum est, nihil vetare, prius inter eum, qui admiserit, et eum qui admissus fuerit societatis judicio agi, quam agi incipiat inter caeteros et eum qui admiserit; l. 22. ff. Dict. Tit. (Dig. lib. xvii. tit. 2. l. 22.).

According to our French practice, with respect to the action which we bring against a partner for the damage caused by the third party whom he has taken into partnership, he can demand that such third party should be made a party to the cause. Moreover, the partner is liable to the partnership for the damage caused to it by the third party whom he has taken into partnership in his own share, even if that third party should be insolvent, and he could consequently have no recourse against him, because it is his fault in having mixed him in the affairs of the partnership, by taking him into partnership with himself. Difficile est negare culpae ipsius admissum; l. 23. ff. Dict. Tit. (Dig. lib. xvii. tit. 2. l. 23.)

But with respect to the partner, from whom an account is demanded of the damage caused by the third person whom he has taken into partnership with himself, cannot he at any rate put forward a claim that he ought to set off the amount
of profits that such third party had, in other respects by his industry, procured for the partnership?

Pomponius holds the affirmative, for which he is blamed by Ulpian, who says that there should be no such set off, and that it is not allowable to say to his partner who has demanded from him an account of the damage caused by the third party; abstine commodo, si damnun petis. He adds that the Emperor Marcus Aurelius had thus adjudicated in a similar matter; Dict. Leg. 23. § 1. (Dig. lib. xvii. tit. 2. 1. 23.).

The reason is, that the deed of that third party whom one of the partners has taken into partnership with himself and mixed in the affairs of the partnership, ought to be regarded as his own deed, whether for profit or loss, for it is himself who has appointed him. But if that partner, by his own deed, had caused a loss to the partnership, he can not set off against the reparation which he owes, the profit which he has otherwise gained for the partnership by his work and his industry, as we shall see in the following chapter.

94. It remains to be observed that when any one who is in a partnership with several others has taken into partnership a third party in his own share in the partnership, in the account that he and such third party will have to render one to the other, in the same way as such third party will be bound to account for the loss which he has caused by his fault to the property of the partnership (because that partner is liable for it with respect to his partners), so that partner will be bound to account to such third party, not only for the loss caused by his own fault, but also for that caused by his partners, to the property of the partnership, as to the share that such third party suffers from it; because the action which that partner has, on account of the loss, against his partners who have caused it, is an action dependent on the right which he has to his share in the partnership, as to which he has taken that third party into partnership, and which falls consequently into the particular partnership which he has contracted with that third party. This is what Gaius points out in the law 22. ff. Pro Soc.: Ex contrario factum quoque 3.
sociorum debet si præstare, sicuti suum; quia ipse adversus eos habet actionem. (Dig. lib. xvii. tit. 2. 1. 22.)

95. What we have so far said that one partner cannot take a third party into the partnership without the consent of the others, holds good even where that partner should have the management of the property of the partnership; because it is a thing which appears to me to pass the bounds of a simple management of the partnership property to give to his partners an associate whom they have not themselves chosen. If the survivor of two joined together by marriage has that power with regard to the partnership which has been contracted by default of an inventory, (as we shall see in my "Treatise on Marriage," it is because the management is not a simple management, but a management cum liberâ and without bounds.

SIXTH CHAPTER.

Of the Debts of Partnerships; and the Liability of each of the Partners for them.

With respect to this, it is necessary to distinguish between partnerships in trade and those which are not partnerships in trade; and amongst partnerships in trade, between those which are called partnerships en nom collectif and those which are called partnerships en commandite and partnerships termed anonymes.

§ 1. Of the Debts of Partnerships EN NOM COLLECTIF.

96. In partnerships of commerce en nom collectif each of the partners is bound (solidairement) in solido, that is to say,

The partners en nom collectif, mentioned in the act of partnership, are jointly and severally liable for all the engagements of the partnership, although only one of the partners has signed, provided it be (sous la raison sociale) in the name of the firm. Comm. Cod. of France, 22. See Pothier on Obligations, n. 83. Our law is essentially the same as the French. See anté, 90. note, and Troplong, Contract de Société, 297.
jointly and severally by the debts of the partnership. (Ordonnance of 1673, tit. iv. art. 7.)

This provision of the Ordonnance is an exception to the general principle of Law, according to which, when several persons contract an obligation together, each is considered to have contracted it only with respect to his own share, unless it has been expressly declared that the obligation is joint and several; l. ii. § 2. de Duobus Reis. (Dig. lib. xlv. tit. 2. l. 11. § 2.)

That exception is founded upon the favour shown to commerce, in order that traders in partnership might obtain more credit. It is founded also upon the principles of our French law (differing in this respect from those of the Roman law in the law 4. ff. De Exerc. Act.), that partners in trade are considered to be agents and managers for each other of the business of the partnership. But an agent or manager who enters into a contract binds all his employers, jointly and severally; l. 1. § fin. et l. 2. ff. De Exerc. Act. l. 13. § 2. ff. De Inst. Act.

With regard to the heirs of a partner, they are collectively liable for the whole of the debts of the partnership as representing the deceased who was liable for the whole of them; but each of them is only liable to the extent of the share that he is entitled to as heir of the deceased.

97. In order that a debt may be considered a partnership debt, so as to bind each of the partners jointly and severally, it is necessary that two things should concur; first, that it should have been contracted by some one who had the power of binding all the partners; secondly, that it should have been contracted in the name of the partnership.

FIRST CONDITION.

98. In order that a debt may be a partnership debt, binding upon all the partners, it is necessary that he who has contracted it should have the power of binding all the partners.

For one of the partners to have this power, it is necessary that his copartners should have given to him, either expressly or by implication, the power of managing the affairs of the
partnership, or that the person who has contracted with him, had grounds for believing that he had that power. If this be not the case, the debt contracted by him, although in the name and for the affairs of the partnership, does not bind the other partners, except in so far as the partnership has profited by it.

In order that the public might know whether a partner has that right, the Ordonnance has wisely prescribed the registration (au greffe) at the Registry, and the inscription in a public place of an extract of contracts of partnership, which extract should contain those clauses of the contract of partnership which concern the public, as we have seen, suprâ, ch. 4.

If that provision were observed, it would be easy for those who contract with a person who professes to be in partnership with others to know, by consulting this extract, whether he had or had not the power of managing the partnership, and of binding his copartners; and those who should have contracted with a person who had not this power would be to blame for not having informed themselves on the subject.

That provision of the Ordonnance having fallen into disuse, as we have before seen, how can I know that a partner with whom I contract has the power of managing the affairs of the partnership? And when am I to be considered to have grounds for believing that he had that power?

When the partner with whom I have contracted was already in the habit of entering into contracts in the name of the partnership in the presence and with the knowledge of his copartners, it is clear in such case that this would give me a just ground for believing that he had power to manage the affairs of the partnership. Therefore the debt which he contracts with me binds his partners, even if he had been formally excluded from the management by a clause in the partnership contract; for if they are not bound, in such case, by virtue of a power given to him to enter into contracts for the partnership, they are bound ex dolosâ suâ dissimulatione; or, even without accusing them of fraud, it may be said, that by allowing him to contract in the name of the partnership in their presence and with their knowledge, they ought to be presumed to have given to him tacitly the power
which they had at first refused to him by the contract of partnership.

There is more difficulty in the case where a partner, who has contracted in the name of the partnership, was not already in the habit of doing so, and was effectually excluded by the contract of partnership from the power of managing the affairs of the partnership.

On one side it may be argued, against the person who has contracted with him, that he ought to have informed himself whether that partner with whom he contracted had power of managing the affairs of the partnership. *Qui cum aliquo contrahit vel est, vel debet esse non ignarus conditionis ejus cum quo contrahit;* l. 19. ff. De Reg. Jur. (Dig. lib. l. tit. 17. l. 19.) On the other side it may be argued, that the Ordonnance of 1673, in saying that “all partners shall be bound by the debts of the partnership, even if there has been a signature of only one, provided the signature be for the company,” since it does not draw any distinction as to whether such one has or has not the power of management, appears to suppose that each of the partners ought to be presumed to have that power, whilst the contrary is not known. The reason is, that it being the practice in trading partnerships for the partners reciprocally to give each other power to contract and to do the business of the partnership for each other, he who has contracted with one of the partners has just grounds for believing that such partner had that power, when the clause of the partnership contract, which took it away, was not known either to him or to the public.

That being an extraordinary clause, and one which concerns the public, the partners ought to make it public, according to the requirement of the Ordonnance; and in default of having done so, it ought to be of no effect with regard to third parties, and the firm ought to be bound by contracts entered into by their partner, although he was deprived of the management by a clause of the partnership, and in the same manner as if he had had the power of management, the clause which took away from him this power being of no effect with regard to third parties, for the reasons above given.
Not only has one of the partners the power in contracting to bind all his copartners jointly and severally, but a factor or (instituteur) agent who has been entrusted by all the partners with the management of the affairs of the partnership, although he is not a partner, has in like manner the power of binding all his employers, jointly and severally, according to the principles which I have established in my "Treatise on Obligations," Part. II. chap. vi. sect. 8. art. 2.

Second Condition.

100. Whatever power one of the partners may have to bind the others by a debt which he has contracted, it is necessary that it should be contracted in the name of the partnership.

The Ordonnance of 1673, tit. 4. art. 7., declares when it ought to be considered as contracted in the name of the partnership. It is, says the Ordonnance, when the partner adds to his signature, that he signs "for he company, and not otherwise."

101. When the debt has been contracted in the name of the partnership, it binds all the partners, even when the partnership has derived no benefit therefrom. For example, if one of the partners has borrowed a sum in the name of the partnership, although he has employed it in his own private affairs, and not in those of the firm, the creditor who has his note signed "and company," can demand its payment from all the partners; for the creditor could not foresee how he would employ the sum lent to him for the partnership: the other partners must blame themselves for having taken a faithless partner, in the same manner as, in a like case, an employer ought to blame himself for having committed the management of his affairs to a faithless person; l. 1. § 9. ff. De Exercit. Act. (Dig. lib. xiv. tit. 1. l. 1. § 9.)

But if, by the nature of the contract which I have entered into with another person who was in partnership in trade with others, it appears that the object of the contract did not concern the affairs of the partnership; if, for instance, the contract was a bargain for works to be done to a house which that person possessed unconnected with the partner-
ship; although he may have signed the bargain "and company," the debt will not, on that account, be considered a debt of the partnership, since, by its object, it appears that it did not concern the affairs of the partnership.

On the contrary, when one of the partners does not appear to have contracted in the name of the partnership, but in his own name alone, although the partnership has derived a profit from the contract—for instance, if, having borrowed a sum of money in his own name only, for his own affairs, he employs it in the affairs of the partnership,—the person who contracted with that partner will not, on account thereof, have an action against the other partners; because, according to the principles of law, a creditor only has an action against him with whom he has contracted, and not against those who have profited by the contract; l. 15. Cod. Si certum petatur et passim: the creditor, with regard to the other partners, has only the means of seizing in their hands what they owe to his debtor, on account of that transaction.

§ II. Of the Debts of Partnerships en commandite, and of anonymous Partnerships.

102. Since in partnerships en commandite, the principal partner, and in anonymous partnerships the known partner, alone

---

In a partnership en commandite, when there are several partners jointly and severally responsible by name, whether all manage together, or one or more manage for all, the partnership is at the same time a partnership en nom collectif with respect to them, and a partnership en commandite with respect to those who are merely holders of funds or shareholders. Comm. Cod. of France, 24.

The name of a partner en commandite cannot form part of the style of the firm. Ib. 25.

The partner en commandite is only liable for losses to the amount of the funds which he has contributed, or ought to contribute, to the partnership. Ib. 26.

The partner en commandite can do no act of management, nor be employed in the business of the partnership, even under a power of attorney. Ib. 27.

In case of contravention of the prohibition mentioned in the preceding article, the partner en commandite is responsible, jointly and severally, with the partners en nom collectif, for all the debts and liabilities of the partnership. Ib. 28.

An anonymous partnership is indicated by the designation of the object of its enterprise. Ib. 30.
makes, and each in his own name the contracts of the partnership, it follows that he renders himself alone liable, and

It is managed by temporary directors, who are revocable, and are either partners or not partners, with or without salaries. Ib. 31.

The directors are only liable for the execution of the powers confided to them. They do not contract by reason of their management any personal or joint and several obligation with relation to the engagements of the partnership. Ib. 32.

The partners are only liable for losses to the amount of their interest in the partnership. Ib. 33.

With regard to partnerships en commandite it will be observed that the partners whose names appear to the world are, like partners en nom collectif, jointly and severally liable for all the debts, while the partners en commandite whose names do not appear, if they comply with the provisions of the code, as to registration and non-interference with the management of the affairs of the partnership, will only be liable to the extent of their capital. This species of partnership does not exist in England, because it is here a maxim of the law that all persons entitled to a share in the profits of a partnership, even dormant or concealed partners, are, as regards third parties, notwithstanding any stipulations among themselves, liable in solido for all the debts of the partnership. (See Blundell v. Winsor, 8 Sim. 601.; Walburn v. Ingilby, 1 My. & K. 61. 76.; Stor. Partn. 254.) So likewise if a person advance money to a firm at a rate of interest varying with the profits of the concern, he will be liable as a partner. Partnerships of this kind exist in all parts of the Continent of Europe, and have been adopted in many of the States of North America; and it appears to be the opinion of mercantile men, and of lawyers in those countries, that they have greatly contributed to commercial prosperity, and towards bringing capital, which would otherwise have remained dormant, into active and useful circulation.

The introduction of partnerships en commandite into this country has been recommended by many persons whose opinions are entitled to great consideration; and as it is believed that here as well as elsewhere they would promote the prosperity of small capitalists, and especially of the working classes, it is to be hoped that the commission now sitting for the purpose of taking into consideration the mercantile laws of England, Scotland, and Ireland, with a view to their assimilation, will not pass over without notice a subject of such deep importance. The principle of limited liability, as in partnerships en commandite, has been long since recognised and adopted in this country, where Acts of Parliament or Charters have constituted companies for public undertakings, such as for railways, gas, or waterworks, docks, &c. The Irish Anonymous Partnership Act (21 & 22 Geo. 3. c. 46.), passed so far back as the year 1781–2, adopts the principle of limited liability, but as it interferes too much with what ought to be left to the discretion of the parties, its success has not been very encouraging.

One of the objections which might formerly have been raised to partnerships en commandite was, that they were merely the means of obtaining a rate of interest varying with the profits of the concern, and were therefore within the mischief of usury; but as the laws against usury (except where land forms part of the security) have been repealed, this objection can now have no weight.

Another objection is, that these kinds of partnership would lead to undue speculation. To this we may answer that in private undertakings the owners of
that the partners *en commandite*, as well as the unknown partners, are not, according to the principles established *supra*, n. 101., liable for the debts of the partnership to the creditors with whom the principal or known partner has contracted. They are only liable for them to their principal or known partner who has contracted them; they ought to acquit him from them according to the share which each has in the partnership; that is to say, the anonymous partner indefinitely, and the partner *en commandite*, only to the amount of the capital which he has put into the partnership.

§ III. *Of the Debts of Partnerships not Partnerships in Trade.*

103. The Ordonnance of 1673 having been promulgated for capital are in general the best judges as to whether they would or would not be productive, and that the Legislature which confers the privilege of limited liability upon companies formed for carrying out undertakings of a *public* character, might depend upon individuals exercising ordinary prudence in their own affairs.

Another objection is, that it is not right that the partner with limited liability should participate in the profits and throw the losses upon innocent parties. There is, however, no weight in this objection, for if a partner *en commandite*, contracts with third parties (as he does in all cases), that he will be liable only to the extent of his capital in the concern, those parties who, after full notice, deal with the partnership, have no natural or equitable right to more than what they have contracted for.

That creditors are better circumstanced when part of the capital to carry on a business is subscribed by partners *en commandite*, than when it is borrowed by a firm, is clear. Thus, if a firm carries on business with a capital of 20,000L., 10,000L. of which is borrowed, in the event of ill success the lender, after obtaining perhaps a far higher rate of interest than the average rate of profits, either obtains a preference over the other creditors, or proves as a creditor for what remains unpaid of the 10,000L., whereas a partner *en commandite* would only be entitled to a share of the profits, if there were any, and would be liable to the extent of his 10,000L. embarked in the concern to its creditors.

The principal opponents of partnerships with limited liability will most likely be found amongst the large capitalists, who perhaps naturally fear that a combination of small capitalists, by bringing dormant capital into active competition with their own, would thereby diminish their profits.

103 In partnerships other than those for commerce the partners are not bound
the purposes of commerce, which appears to be the object of all its provisions, it can no longer be doubted that its title "Of Partnerships" is applicable only to partnerships in trade: for this reason, when it is said "that partners are bound, jointly and severally, by the debts of the partnership," it holds good with respect to these partnerships only. That joint and several liability being an exception from the common law, founded upon a reason peculiar to commercial partnerships (supra, n. 96.) ought not to be extended to others; and when two partners (who are not partners in trade) enter into contracts, although for the affairs of their partnership they do not bind themselves jointly and severally towards the creditor, but each for his share only, unless a joint and several liability be expressed.

104. Is that for an equal share, or for the share each has in the partnership? The answer must be, in the absence of any expressed intention, that it is for an equal share; the creditor with whom they have contracted not being bound to know what share they each have in their partnership. For ex-

jointly and severally by partnership debts, and one of the partners cannot bind the others, unless they have given him that power. Civ. Cod. of France, 1862. 104 Partners are bound towards the creditor with whom they have contracted, each in an equal sum and share, although the share of one of them in the partnership should be less, if the act have not specially confined the obligation of the latter to the footing of the latter share. Civ. Cod. of France, 1863. A stipulation, that the obligation is contracted on account of the partnership, binds only the partner contracting, and not the others, unless the latter have given him authority, or the thing have turned to the profit of the partnership. Ib. 18. 64. See 2 Stor. Partn. 257. According to our law, it seems that partners, although not in trade, would be liable (in solido) for the debts of the partnership, provided they were properly contracted, and within the scope of the business of the partnership, according to the rules before laid down. But it must be remembered that a partner in a non-trading partnership would frequently be held to have no power to bind his copartners, when he would be able so to do in a partnership in trade. For instance, one of several persons jointly interested in a farm has no power to bind the others by drawing or accepting bills, because it is not necessary for the purposes of carrying on the farming business, that bills should be drawn or accepted; per Littledale, J. 10 B. & Cres. 139.; and it would be the same as to a mining concern. Dickinson v Valpy, 10 B. & Cres. 128; Mullet v. Huchison, 7 B. & Cres 639. Thicknesse v Bromilow, 2 Crompt. & Jerv. 435; Greenslade v. Dower, 7 Barn. & Cres. 635; Stor Partn. 190.
ample, suppose two neighbours at Paris agree to buy at their common cost a carriage and horses, and to keep the equipage at their common cost, for their use in Paris: they contract together a partnership in that equipage, and it is a partnership unius rei, not for the purposes of trade. If, during that partnership, they make a bargain with a person who sells them a certain quantity of hay for a certain price, which they each bind themselves to pay within a certain period, although they are partners, and the debt which they have contracted for the price of the hay which is to serve for the keep of the horses of their common equipage is a debt contracted for the affairs of the partnership; nevertheless their partnership, not being a commercial partnership, they will only owe each a moiety of the price of the hay to the seller, unless by the bargain a joint and several liability was expressed.

But even if, by their contract of partnership, they should have agreed that one of the two, who used the equipage less frequently than the other, should only have a third share in it, each of them would, nevertheless, be liable for the moiety of the price of the hay towards the seller, who has sold it to both, without prejudice to the partner who has only a third share, making the other account to him for what he has paid more than his third.

105. When the debt has been contracted by one of the partners only, he alone is liable to the creditor, without prejudice to his making his partner account to him for it.

This will be the case, even when by the contract he should have expressly stated that he contracted as well in his own as in the name of his partner: the provision of the Ordinance of 1673, which says, "that a partner, in that case, binds his copartners," is applicable only to commercial partnerships. If, nevertheless, he was justified, or his partner had effectually given him power, or the debt had turned to the profit of the partnership, the other partner would be liable to the creditor, according to his share in the partnership.

When one of the partners has contracted in his own name
alone, it is clear, in such case, that he alone is liable to the creditor with whom he has contracted, in the same way as we have seen with regard to commercial partnerships (supra, n. 101.) without prejudice to his obtaining an indemnity for that debt from his partners according to the share which they ought to bear of it, when it has turned to the profit of the partnership.

106. With regard to universal partnerships, it must in like manner be decided that the partners not being commercial partners, when they contract together, render themselves liable towards the creditor with whom they contract together, each for his share only, as we have seen with regard to particular partnerships not being commercial partnerships. But in these universal partnerships, each of the partners being unable to contract for his own profit, is readily presumed, when he contracts, although alone, to contract in the name of the partnership; and he consequently binds each of his partners, according to their respective shares in the partnership.

With regard to the manner in which each of the partners is bound in that kind of universal partnerships which takes place between husband and wife, and in that which the survivor of two persons united by marriage contracts in default of an inventory, see what is said in my introduction to the "Title of Community," chap. 7., and in that to the "Title of Partnership," sect. 1. § 7. and sect. 2. § 6.
SEVENTH CHAPTER.

The respective Obligations of Partners; and the Action Pro Socio.

108. The contract of partnership forms between the partners who are the contracting parties, reciprocal obligations,—whence arises the action called, in the Roman law, pro socio, which each partner can bring against the others in order to compel their performance.

The principal objects of these obligations are, 1. That each partner is bound to account to his copartners for whatever he owes to the partnership, after deducting what is due to him by it: 2. That each partner is bound, according to his share in the partnership, to account for what is due to his partners, by the partnership, after deducting what they owe to it. We shall treat, in the two first articles of this Chapter, of these two principal objects: we shall bring together in the third, some other objects of the obligations which partners contract towards each other: then we shall treat, in the fourth, of the action Pro Socio, which arises from these obligations.

First Article.

As to the different Things which each of the Partners can owe to the Partnership, and for which he is obliged to account to his Copartners.

109. These things are, 1st. what each of the partners has agreed, by the contract of partnership, to contribute thereto, whilst he has not yet done so; 2nd. what each of them has drawn from the common funds for his private use; 3rd. compensation for the damage which by his own fault he has caused to the property or the affairs of the partnership.
§ I. As to what a Partner has agreed to contribute to Partnership.

110. It is evident that each of the partners is debtor to the partnership for all that he has promised to contribute thereto.

But when the things he has promised to contribute are certain and specific, if they happen to perish without his fault, and before he has been (constitué en demeure) put into default by his partner in bringing them into the partnership, he is discharged from his obligation in the same manner as if he had brought them in. This is conformable with the principles of the law established in my "Treatise on Obligations," part 3. chap. 6., according to which, in all debts of a specific character, the thing due is at the risk of the creditor to whom it is due, and the debtor is released if it has perished, without his fault, and before he has been put into default, in discharging it.

This will be made clear by an example. James proposes to his friend Peter, a retail wine merchant, to enter into partnership with him in the wine trade; in consequence, they execute a contract of partnership, to which Peter brings a hundred casks of wine which he has in his cellar. James, on his side, agrees to contribute thereto, and to place in Peter’s cellar a hundred other casks of wine, arising from the vintage of a certain (maison de vignes) vineyard-house of the said James, and which was yet in the cellar of that house, where Peter had tasted them; and the parties agree to share in moieties the sum which should arise from that partnership, after first deducting the expenses, and a certain sum which it is agreed Peter shall have for his trouble. Afterwards, before James is put into default in carrying the hundred casks of wine into the cellar of the partnership, the cellar where they are is struck by lightning, and the greater part is destroyed. That loss having arisen (par une force ma jeure) from unavoidable accident, without James's fault, and before he is put into delay, ought to fall upon the partnership, and not upon James alone, who, by carrying into the
partnership cellar what escaped from the lightning, will discharge his obligation in the same way as if he had carried the whole. But if that accident of the lightning does not happen until after James is put into delay, by a judicial summons which Peter serves upon him, to carry into the cellar of the partnership the hundred casks of wine which he binds himself to carry there, the loss, in that case, will not fall upon the partnership, which ought not to suffer from the wrongful delay of James; and, notwithstanding the accident, James remains debtor towards the partnership for the hundred casks of wine which he agrees to contribute thereto. See my "Treatise on Obligations," n. 649.

111. It is only in the shape of damages for the loss which the partner occasions to the partnership by his delay in contributing certain things thereto according to his agreement that he remains a debtor for those things, although they have perished by unavoidable accident. It is for this reason that he ought to remain a debtor in that case only, in which the thing either has not entirely perished, or has not perished, until after the partnership would have had time to resell it, if he had not been in delay in satisfying his obligation; as in the preceding case, in which the hundred casks of wine which the lightning destroyed in the cellar of James would not have perished if they had not been there, and they had been in the cellar of the partnership, where James had been put into default in bringing them.

But if the loss of specific things which a partner has agreed to bring to the partnership (although it has happened after he has been put into default in bringing them into it) would have been sustained by the partnership, even although he should have fulfilled his obligation, the partnership, in that case, not suffering from the delay, the loss of the thing ought not to fall upon that partner alone, but upon the partnership to which it was owing. For example, if I enter into a commercial partnership with several persons for a trade in the refining of sugar, to which, amongst other things, I agree to furnish a certain warehouse belonging to me, to be the common property of all the partners, and after I am put into default, in delivering the keys of it to the manager of the
partnership, the warehouse is burnt by lightning, that loss, although it has happened since my delay in fulfilling my obligation, will fall upon the partnership, which would equally have sustained the loss if I had fulfilled my obligation, and I shall be discharged from it by putting the partnership in possession of the place and the materials which remain, in order that the warehouse may be rebuilt at the expense of the partnership.

112. Nothing that has been said as to the extinction of things which a partner has agreed to bring to the partnership has any application except when these things are certain and specific subjects.

But when that which a partner has agreed to bring to a partnership is a certain sum of money, or a certain quantity of wheat, wine, &c., or indefinite subjects, as so many cows, without mentioning what cows, it is clear, that such questions cannot arise, as there can be no extinction of that which is indefinite; *genus nunquam perit.* See my "Treatise on Obligations," n. 658.

This will be sufficient for deciding the following case. Suppose that we entered into a partnership to go and buy in different provinces certain merchandise, which we propose to bring here to resell, and we each of us agree to contribute a thousand crowns to that partnership. If before fulfilling that agreement thieves forced open your strong box, and robbed you of the thousand crowns which you destined for the partnership, that loss will not fall upon the partnership, because the moneys of which you have been robbed not only did not belong to the partnership, but it cannot even be said that you were robbed of those very moneys of which you were debtor to the partnership. Hence the robbery which has befallen you cannot procure you a discharge from the thousand crowns which you have agreed to bring into the partnership.

But if, having set out to trade, in execution of your contract of partnership, you had taken that sum with you, and a person had robbed you on the way, the loss will fall on the partnership; for you will be considered to have paid the partnership the sum of one thousand crowns which you owed
to it by carrying with you those moneys for the journey made on account of the partnership. These moneys thereby became the moneys of the partnership, the robbery of which ought consequently to fall upon it. *Celsus tractat: si pecuniam contulissemus ad mercem emendam, et mea pecunia perisset, cui perierit ea? Et ait: si post collationem evenit ut pecunia periret, quod non fieret nisi societas coit esset, utrique perire; ut puta, si pecunia, cum peregre portaretur ad mercem emendam, perit: si vero ante collationem, posteaquam eam destinasses tunc perierit, nihil eo nomine consequeris, inquit; quia non societas perit; l. 58. § 1. ff. Pro Soc. (Dig. lib. xvii. tit. 2. l. 58. § 1.)

113. Although a partner has brought things into the partnership according to his agreement, if, afterwards, the partnership (en a été evincée) has been dispossessed of them, he remains its debtor, as though he had not brought them into it; arg. l. 3. ff. De Act. Empt. (Dig. lib. xix. l. 3.); for the contract of partnership, like that of sale, being commutative or bilateral, the partner who thereby agrees to contribute some certain and specific object, contracts towards the partnership the same obligation of warranty, in case of the dispossession of that thing which he has brought into the partnership, as a vendor contracts towards a purchaser. See what I have said in my “Treatise on the Contract of Sale,” 2, 3, and 4.

114. In universal partnerships of all goods, there is no warranty in case of eviction from any of the estates of which one of the partners was possessor at the time of the contract, for in these partnerships, it is his property in general, and not any specific estate, which each partner binds himself to bring into the partnership.

115. When the things which one partner has agreed to bring to the partnership produce fruits or profits, he is debtor to the partnership not only for such things, but also for all the fruits which he has taken from them since the time when they ought to have been brought into the partnership. *In

113 Each partner is debtor to the partnership for all that he has promised to bring therein: when such contribution consists of a certain thing, and the partnership is evicted therefrom, the partner is surety therefor to the partnership, in the same manner as a vendor is to his purchaser. Civ. Cod. of France, 1845.
societatibus fructus communicandi sunt; l. 38. § 9. ff. De Usur.
(Dig. lib. xxii. tit. 1. l. 38. § 9.)

As long as he has not been put into default in bringing the things which he has promised into the partnership, he is only bound to account for such of their fruits as he has taken. But after he has been put into delay, he is bound to account even for those which he has not taken, and which the partnership had the right to take. Because it is an effect of the default to oblige the debtor to indemnify his creditor for all that he has suffered by his delay.

116. When a partner has agreed to bring a sum of money into partnership, he will owe interest to the partnership from the day he was put into default by his partners in bringing it in, in the same manner as any other debtor.

117. When a partner has not promised to bring property itself into a partnership, but only its use and enjoyment, it is clear that he is not, in such case, debtor for it to the partnership; but only for the fruits or interest, according to the distinctions above set forth.

§ II. As to what each of the Partners has withdrawn from the common Funds.

118. Each of the partners ought to restore to the common

117 The partner who is bound to contribute a sum to the partnership, and who has not done so, becomes, absolutely and without demand, debtor for the interest of such sum, computing from the day on which it ought to have been paid.

It is the same with regard to sums which he has taken from the partnership chest, computing from the day on which he took them for his private use.

The whole without prejudice to more ample damages, if there be any grounds.

Civ. Cod. of France, 1846.

So, according to our law, a partner is debtor to the firm for what he has agreed to contribute thereto; thus, in Akhurst v. Jackson, 1 Swanst. 85., a sole trader having agreed, in consideration of a sum payable by instalments, to take two persons into partnership with him for a period of eighteen years, and having become bankrupt five months after the commencement of the partnership, when only one instalment was due, his assignees were held to be entitled, at the respective periods, to receive the remaining instalments. And see Coll. Partn. 141.; Stor. Partn. 302.

118 See Civ. Cod. of France, 1846, ante, 117. note. According to our law each partner has a specific lien on the present and future property of the partnership, for all debts due to the firm for moneys abstracted by any other partner
stock all that he has withdrawn from it; and he is consequently answerable for it to the partnership.

For example, if one of the partners has taken from the partnership chest a sum of money, in order to employ it in his private affairs, it is clear that he is a debtor for that amount to the partnership.

119. He owes also interest for it, according to the law, 1. § 1. ff. De Usur. (Dig. lib. xxii. tit. 1. § 1.) Socius si idem condemnandus erit, quod pecuniam communem invaserit, vel in suos usus converterit, omnimodo, etiam morá non interveniente, præstabuntur usura.

In universal partnerships, into which all the revenues of the property of each of the partners fall, although the ownership is not common, such as is that which takes place between persons joined by marriage, the interest of the sums which one of the partners has taken from the common chest for his private affairs only commences to run from the day of the dissolution of the community; as long as it lasts, there is a confusion of that interest, which is a charge on the revenues of the property of that partner, which fall into the partnership.

120. Each of the partners obliging himself to bring into

from such stock and funds beyond his own share, and the stock and funds so taken, if identified, are applicable to the payment of what, upon an account taken, is due from him to the partnership, before any of it can be applied to the payment of his debts due to his private creditors. West v. Skip, 1 Ves. 139. 240. 242.; Skip v. Harwood, 2 Swanst. 586.; Croft v. Pyke, 3 P. Wms. 180.; Coll. Partn. 77. 178.; Stor. Partn. 137.

The partners who are under an obligation to bring in their industry to the partnership, owe to it an account of all the profits which they have made by the kind of industry which is the object of such partnership. Civ. Cod. of France, 1847. Our law is similar, and a Court of Equity will prevent partners from thus failing in their duties to each other. "The principles of Courts of Equity," observes Sir John Leach, "will not permit that parties, bound to each other by express or implied contracts to promote an undertaking for the common benefit, shall any of them engage in another concern which necessarily gives them a direct interest averse to that undertaking. For example, there is necessarily some danger of rivalry between a morning and an evening paper, especially in the country. It might clearly, therefore, be made a question, whether it would be a due act of management in the partnership concern of a morning paper to assist, with its property and its labour, the publication of any other newspaper so as to enable the majority of the partners in that respect to bind the minority."
the partnership his industry, the industry of each becomes a common capital; and all the gains that each has made thereby ought to be accounted for and brought into the common fund.

In universal partnerships, each of the partners ought to account to the partnership for all the honest gains which he has made by his industry of every kind; but in particular partnerships, each partner being considered to bring into the partnership that kind of industry only which has relation to the object of the partnership, he ought to account to the partnership for the gains only which arise from that kind of industry, and not for those which may arise from any other.

For example, if two shoemakers contract together a partnership in their craft for a certain time, each of these partners will be bound to account to the partnership for all the profits which he may have made by his craft as shoemaker. But if one of them were possessed of the talent of teaching birds to sing, he will not be obliged to account to the partnership for the gains which he may have made thereby whilst he worked, because it is not this kind of industry, but only that which has relation to his craft of shoemaker, which he has promised to bring into the partnership.

121. When one of the partners has a debt due to him in his private capacity from a person who is also a debtor of the partnership, he ought to appropriate what he receives to the credit of the partnership and himself, in proportion to the amount of each debt.

For example, if the partnership was a creditor of Peter for

Glassington v. Thwaites, 1 S. & S. 133. In this case, however, it was held that a temptation to abuse the partnership property was not sufficient to induce the Court to interfere by injunction. See also Burton v. Wookey, 6 Madd. 367.; and see England v. Curling, 8 Beav. 129.; Coll. Partn. 121.

21 When one of the partners is, on his own private account, a creditor for a sum due from a person who also owes to the partnership a sum equally due, what he receives from such debtor must be appropriated in payment of the debt due to the partnership and to himself, in the proportion of the two debts, although he may in his receipt have directed the whole sum to be appropriated in payment of the debt due to himself; but if he have expressed in his receipt that it shall be appropriated entirely in payment of the debt due to the partnership, such stipulation shall be executed. Civ. Cod. of France, 1848.
a sum of 2000 livres, and one of the partners was the private creditor of the same Peter for another sum of 1000 livres, the debt due to the partnership being double the private debt due to that partner, he ought to account to the partnership for two-thirds of what he may receive from Peter, as he will be considered to have received these two-thirds on account of the debt of the partnership; even if, by the receipt which he may have given for it, he have appropriated it entirely to the account of his own private debt; for as he owes to the affairs of the partnership the same care as to his own private affairs, it is not allowable for him to obtain payment of his own debt preferably to that of the partnership.

122. When one of the partners has obtained payment from a debtor of the partnership of the whole of his share of the debt, and has given him a receipt for his share; if that debtor afterwards becomes insolvent, and the other partner cannot be paid his share in full, will the partner who has received the whole of his share be bound to bring into the common stock what he has received more than the other? For the negative, it may be said that what that partner has received from the debtor of the partnership does not come to him from the common stock, but from his share in one of the effects of the partnership: _non de medio tulit, sed tantummodo quod sibi pro parte socii debebatur recepit_; the other partner ought to blame himself for not having been equally vigilant in requiring his.

Notwithstanding these reasons, _Ulpian_, in the law 63. § 5. _ff. Pro Soc._ (Dig. lib. xvii. tit. 2. l. 63. § 5.) decides that such one of the partners who has received the whole of his share ought to bring into the common stock what he has received more than the other partner, _quasi iniquum sit, ex eadem societate, alium plus, alium minus consequi._

This appears contrary to what is decided between coheirs in the law 38. _ff. Fam. Ercis._ (Dig. lib. x. tit. 2. l. 38.); but there is no analogy between the two cases. In supposing,

122 When one of the partners has received the whole of his share of a common debt, and the debtor has subsequently become insolvent, such partner is bound to bring back what he has received to the common stock, although he may have specially given a receipt for his share. _Civ. Cod. of France, 1849._
in the case of the former law (63.), that the partners had a reciprocal power (as is often the case) to act one for another in the affairs of the partnership, and to compel, one on behalf of the other, payment by debtors; in that case, a partner ought to bring into the common stock what he has received from that debtor, because, it being his duty to require it on account of the partnership, he ought not to have preferred his own private interest to that of the partnership. In the case of the law 38., the coheirs had not contracted a similar engagement between themselves. For the same reason, if one of the partners meeting with an opportunity of selling advantageously the goods of the partnership, instead of making a bargain on account of the partnership, makes one on his own private account, by selling his share in the goods of the partnership, he will be obliged to bring back into the common stock what he has sold for his own share more than the other partner has sold of his.

It would be otherwise, if one of the partners had sold his share in a thing belonging to the partnership which was not intended to be sold for its profit; although the other partner had sold less of his than he has, he will not be obliged to account to him for what he has sold more than such partner has.

123. Each of the partners is bound to bring to the common stock the profits only which come to him from the partnership, and not those of which the partnership has been only the accidental cause. For example, if one of the partners, in doing the business of the partnership, has formed an acquaintance with a rich and liberal person, whom he would not otherwise have known, and such person whose friendship he has gained, confers upon him some donation or legacy, he will not be obliged to bring it into the common stock, although the partnership has been the accidental cause of his obtaining it. *Sed nec compendium quod propter societatem ei contigisset, veniret in medium, veluti si propter societatem heres fuisset institutus, aut quid ei donatum esset; l. 60. ff. § 1. Pro. Soc.* (Dig. lib. xvii. tit. 2. l. 60. § 1.)
§ III. Of the Loss that one Partner has caused to the Partnership.

124. Among the liabilities for which a partner is accountable to the partnership, there must be comprehended the sums to which the estimate of the damages caused by his fault to the effects or affairs of the partnership amounts.

Each of the partners is bound in this respect only for an ordinary fault, and not for the lightest fault. There can only be required from him the care of which he is capable and which he applies to his own affairs. If he has not the same foresight which the most able men display in their affairs, his partners cannot impute blame to him, but rather to themselves for having entered into partnership with him: *Culpa non ad exactissimam diligentiam dirigenda est; sufficit etenim talem diligentiam communibus rebus adhibere, qualem suis rebus adhibere solet; quia qui parum diligentem sibi socium adquirit, de se queri debet dict. leg. 72. ff. Pro Soc. (Dig. lib. xvii. tit. 2. l. 72.)*

A partner is moreover liable even for faults of omission, as if, for example, by an inexcusable fault, he has failed to make a purchase advantageous to the partnership: *Si qui societatem ad emendum coierint, deinde res alterius dolo vel culpâ empta non sit, pro socio esse actionem constat; l. 52. § 11. ff. Dict. Tit. (Dig. lib. xvii. tit. 2. l. 52. § 11.)*

Can a partner excuse himself even for gross negligence, if it is clear that he is equally negligent in his own affairs? No: if there is not required from a partner, for the affairs of the partnership, the most exact care such as the most able men (*pères de famille*) display in their affairs, it is because he is incapable of such care. But each person is presumed to be capable of that ordinary care which the least intelligent persons exhibit in the management of their own affairs; and when he does not exercise such care it is presumed that it is from voluntary and culpable indolence, for which, in truth, he is not accountable to any one with regard to his own private affairs, but for which he is accountable to his partners, when he has been guilty of that indolence in their common affairs.
125. It remains to observe that a partner cannot excuse himself from accounting to the partnership for the loss which he has caused by his fault in any affair, by setting off against it profits to a more considerable amount which he has made for the partnership by his industry in other affairs: *Non ob eam rem minus ad periculum socii pertinet quod negligentid ejus perisset, quod in plerisque aliis industriâ ejus societâ aucta fuisset et hoc ex appellatione Imperator pronuntiavit;* l. 25. ff. Dict. Tit. (Dig. lib. xvii. tit. 2. l. 25.). *Et ideo, si socius quaedam negligentâ in societate egisset, in plerisque autem societatem auxisset, non compensatur compendium cum negligentid:* l. 26. The reason is, that as such partner owes to the partnership his industry, he has only discharged his duty by bringing thereto the profits which he has made by his industry; the partnership owes him nothing which he can set off against what he owes to it.

Second Article.

As to the Things for which a Partner may be Creditor of the Partnership, and for which the other Partners are obliged to account to him, according to his Share in the Partnership.

126. When a partner has put things into the partnership the enjoyment or use whereof alone he owed by the Contract of Partnership, he is creditor of the partnership for such things which ought to be restored to him at the dissolution of the partnership.

Each partner is bound towards the partnership for damages occasioned by his own fault, without being able to set off against such damages the profits which his skill shall have procured for it in other affairs. Civ. Cod. of France, 1850. See Stor. Partn. 261—264.

If things of which the enjoyment only has been put into the partnership are certain and determinate objects, which do not consume by use, they are at the risk of the partner who is the owner.

If such things do consume by use, if they deteriorate by keeping, if they were intended to be sold, or if they were put into the partnership at a valuation contained in an inventory, they are at the risk of the partnership.

If the thing was valued, the partner can only recover the amount of the valuation. Civ. Cod. of France, 1851.
If they consisted of certain and specific things which are not consumed by use, nor intended to be sold, and which he has a right to receive in kind at the dissolution of the partnership, these things remain at his risk, and not at the risk of the partnership. If, without the fault of his partners, they have deteriorated, he will receive them in the state in which they are, and if they have entirely perished by (force majeure) unavoidable accident, the partnership will be discharged of the obligation of restoring them to him.

On the contrary, if the things a person has put into a partnership are such as consume or deteriorate by keeping, or were intended to be sold, and had been put into the partnership, at a certain estimate contained in some inventory, the partner who has put them into it, in order that the partnership should have only the enjoyment thereof, is creditor, not for the things themselves, but for the sum at which they have been valued; and these things are not at his risk, but at that of the partnership.

127. A partner moreover may be creditor of the partnership for sums which he has disbursed in its affairs; for instance, for the expenses of journeys which he has made for the said affairs: l. 52. § 15. ff. Dict. Tit. (Dig. lib. xvii. tit. 2. l. 52. § 15.)

Not only if he has made disbursements, but if he has contracted any obligation for the affairs of the partnership, he ought to be indemnified by the partnership.

For example, if one of the partners sell to any one property belonging to and on account of the partnership, he ought to be indemnified by it from the obligation of warranty which he has contracted towards the purchaser; l. 67. ff. Dict. Tit. (Dig. lib. xvii. tit. 2. l. 67.)

128. A partner ought to be indemnified by the partnership, not only for the disbursements which he has made and the obligations which he has contracted directly and as

127 A partner can maintain an action against the partnership, not only on account of sums which he has disbursed for it, but also on account of obligations which he has contracted bona fide in the affairs of the partnership, and for risks inseparable from their management. Civ. Cod. of France, 1852. See Stor. Partn. 282.; Coll. Partn. 130. 142. 151.; Thornton v. Proctor, 1 Anst. 94.
principal for the affairs of the partnership; he ought equally to be indemnified from the risks and hazards which he has incurred, when they were unavoidable, in carrying on the affairs of the partnership, and he only incurred them for the said affairs: because the partnership, being entitled to all the profits which result from his exertions, it is equitable that it should bear all the risks: *ubi lucrum, ibi et periculum esse debet.* This has given rise to the question, which has been agitated among the jurisconsults of the two sects,—namely, whether one of the partners, having been wounded by the slaves whom he took to sell at a market on account of the partnership, in endeavouring to hinder them from escaping, ought to be indemnified by the partnership for the expense of dressings and medicaments made use of for his cure. *Labeo,* chief of the school of the *Proculeans,* held the negative, because these expenses were not incurred for the affairs of the partnership, which have been only the accidental cause of them; "*quia,*" says he, "*id non in societatem, quamvis propter societatem, impensum sit;*" 1.60. § 1. (Dig. lib. xvii. tit. 2. l. 60. § 1.)

On the contrary, *Julianus,* who was of the school of the *Sabinians,* held the affirmative, and his opinion has prevailed: *Secundum Julianum tamen, et quod medicis pro se datum est, recipere potest; quod verum est;* l. 61. ff. Dict. Tit. The reason is, that the risk incurred by that partner of being maltreated by the slaves, was a risk inseparable from their convoy, which he only incurred for the affairs of the partnership, and from which he ought consequently to be indemnified by the partnership.

For the same reason, the same *Julianus* decides that if a partner, in a journey which he makes for the affairs of the partnership, has been attacked by robbers, who have robbed him and wounded his servants, the partnership ought to indemnify him for what he has lost, and the expense which he has incurred for the cure of his servants; l. 52. § 4. ff. *Pro. Soc.* (Dig. lib. xvii. tit. 2. l. 52. § 4.)

129. Observe that the partnership, being bound only by the risks which are inseparable for the carrying on of its affairs, it is liable in the above-mentioned case only to indemnify the partner for the robbery of what it was abso-
lutely necessary, having regard to his condition, that he should take with him on his journey. If he had taken with him more money than was necessary, and things which he might have dispensed with, the partnership ought not to bear the risk of that superfluity, or to indemnify the partner if he has been robbed of it.

In like manner, if he has taken with him too great a number of servants, the partnership is only bound for the cure of the wounds of those who were necessary to him for his journey.

130. If the partner, who had taken with him more money than he needed for the journey, has saved a part of it from the hands of the robbers, shall he reckon what he has saved as that part of his money which was necessary for the journey, and which was at the risk of the partnership, or as the superfluous part which was at his own risk? I think that there being no reason for considering it to be one rather than the other, it ought to be reckoned as part of each in proportion. For example, if a partner who had only need of ten pistoles for his journey took thirty with him, and saved six of them, the partnership, which was only charged with the risk of a third of the thirty pistoles, ought to profit only by the third of what has escaped the robbers, and it ought consequently to indemnify that partner for eight pistoles.

131. The partnership is, in fact, bound to indemnify a partner for the losses which he has suffered, when they are a natural consequence of certain hazards inseparable from the carrying on of the affairs of the partnership, to which his partners would be exposed in like manner if they had charged themselves therewith; but it is not obliged to indemnify him for losses which he has suffered, and of which the carrying on of the affairs of the partnership has only been a purely accidental cause. For example, if the partnership has had a lawsuit with a person who was a friend of one of the partners, and that person, being provoked by it, revoked a legacy.

181 So in our law, unless, under some special agreement, a partner can claim no compensation for his care and trouble in the affairs of the partnership. Whitle v. McFarlane, 1 Knapp. 312.; Burden v. Burden, 1 V. & B. 170.; Coll. Partn. 130. 142. 151.; Stor. Partn. 183. 282.
which he had bequeathed to him, or caused him to lose a commission which he had procured for him, although that partner has suffered these losses in consequence of the partnership, there is no ground for any claim of indemnity from the partnership.

In like manner a partner cannot claim an indemnity from the partnership, upon the ground that the care which he has taken in the affairs of the partnership has caused him to neglect his own private affairs, because he owed to the affairs of the partnership the care which he has brought to it, and he has been paid for it by the share which he has had, or might have had, in the profits of the partnership. This is conformable to what Labeo decides in the law 60. § 1. (Dig. lib. xvii. tit. 2. l. 60. § 1.) that it is not due for the indemnity of a partner: si propter societatem eum hæredem quis instituere desisset; aut legatum prætermisisset, aut patrimonium suum negligentius administrasset.

132. It remains to be observed, with regard to what is due from the partnership to any one of the partners, that each of his co-partners is bound to him only according to his share in the partnership, when they are all solvent. But if there are any of them insolvent, the equality which ought to exist between partners does not allow that the partner who is creditor of the partnership should bear alone the loss resulting from their insolvency, and it ought to be apportioned between him and his solvent partners: Proculus putat hoc ad ceterorum onus pertinere, quod ab aliquibus servari non potest . . . . quoniam societas quum contrahitur tam lucri quam danni communio initur; l. 67. (Dig. lib. xvii. tit. 2. l. 67.) For example, amongst four partners, each for a fourth, one is creditor of the partnership for 1200 livres, another is insolvent; each of the two solvent partners owes in that case the sum of 300 livres in respect of the fourth, for which he is liable (de son chef) on his own account, and 100 livres for his third of the share for which the insolvent is bound.
Third Article.

As to other kinds of Obligations which arise from the Contract of Partnership.

133. It is, moreover, one of the obligations which arises from the contract of partnership, that each of the partners is obliged to allow the others the enjoyment and use of the common property, to which they are entitled according to the regulations and agreements of the partnership; l. 52. § 13. ff. Pro Soc. (Dig. lib. xvii. tit. 2. l. 52. § 13.)

For example, when at Paris, two neighbours enter into partnership, in order that they may have in common an equipage, each of them is obliged to allow the enjoyment of it to the other in his turn. If on the day when it is my turn my partner had need of it for business which could not be put off, and I had need of it only for business which could easily be put off, I ought to allow my partner to use it, upon condition that I should use it another day when it was his turn. The laws of fraternity and of friendship which ought to exist among partners require this.

It is also one of the obligations which arise from the contract of partnership, that each of the partners is obliged to contribute to the repair and preservation of the common property. They may, nevertheless, discharge themselves therefrom by offering to abandon it. See what has been said supra, n. 86.

Lastly, one of the principal obligations which each partner contracts by the contract of partnership, is to submit to the distribution of the partnership effects at the termination and dissolution of the partnership. We shall treat of that distribution infra, in the ninth chapter.

Fourth Article.

Of the Action Pro Socio.

134. From the obligations which arise out of the contract of
partnership arises the action pro socio, which each of the partners can maintain against his copartners, in order to compel their fulfilment.

This is a personal action: it passes to the heirs and other universal successors of each of the partners, who can maintain that action; and it may be brought against the heirs and other universal successors of the partners, who are bound by it.

We have seen in the preceding articles who were the objects of that action.

135. That action, with regard to its principal object, namely, the distribution of the capital of the partnership, can only be maintained from the time of the dissolution of the partnership; and it is of that the law says, Actione societas solvitur.

It can be maintained, with regard to particular objects, during the time that the partnership lasts, for instance, against such one of the partners who retains all the profits of the partnership, to make him share it with the others.

136 The proceedings in Equity in partnership matters are in many respects similar to those under the action pro socio. Stor. Partn. 324. note.

In the first place every application to a Court of Equity by one of the partners for an account against his copartners, must be made either on a dissolution having already taken place, or upon grounds sufficient for demanding the dissolution of the partnership, and consequently of the distribution of the partnership effects. Stor. Partn. 325.; Coll. Partn. 174. 193.

But a Court of Equity will interfere during the continuance of the partnership, for particular purposes, not contemplating a dissolution or distribution of the effects. It will, for instance, decree the specific performance of an agreement to enter into a partnership for a fixed and definite term (Anon. 2 Ves. 629.; Buxton v. Lister, 3 Atk. 385.; England v. Curling, 8 Beav. 129.) but it will not where no term has been fixed, for such decree would be useless, as either of the parties might dissolve the partnership immediately afterwards. Hercy v. Birch, 9 Ves. 357. It has, however, been suggested by Mr. Swanston, in his learned note to Crawshay v. Maule, 1 Swanst. 513., that in many cases, although the partnership could be immediately dissolved, the performance of the agreement, like the execution of a lease, after the expiration of the term (Nisbett v. Meyer, 1 Swanst. 296.), might be important as investing the party with the legal rights for which he contracted. But even where there has been an agreement for a partnership for a fixed and definite term, the Court cannot enforce it, when the amount of capital, and the manner in which it is to be provided, is undefined, and the mode of carrying on the business is discretionary.
Pothier on Partnership.

l. 65. § 15. *ff. Pro Soc.* (Dig. lib. xvii. tit. 2. l. 65. § 15.); and that he may be compelled, for that purpose, to give a short statement of the accounts, as also to allow the enjoyment of the common property, and to contribute to necessary repairs.

136. It is peculiar to the action *pro socio*, whether it be commenced during the partnership or after its dissolution, that each of the parties, whether the plaintiff or one of the defendants, has a right to demand that the cause and the parties should be sent before arbitrators, to settle all the disputes with regard to the accounts and the distribution of the partnership effects, and generally with regard to all the objects of that action.

For this end, the Ordonnance of 1673, *tit. 4. art. 9.*, provides that all contracts of partnership should contain the clause of submission to arbitration upon all disputes which may arise amongst partners on account of the partnership, and that where that clause has been omitted, it should be supplied.

These arbitrators must be agreed upon, and named by the parties; and in default of one naming them, the Judge will name one for him. *Ordonnance of 1673, ibid.*

If, before the arbitrators have given their award, one of the arbitrators happens to die, the Ordonnance provides that the party who has named him shall name another in his place, or the Judge, on his refusal. (*Art. 10.*)

137. When the arbitrators do not agree, they can, without
the consent of the partners, take a third; and if they cannot agree in their choice, the Judge will name one. (Art. 11.)

The arbitrators can give their judgment on the documents and (memoires) written statements or pleadings of the parties in their absence. (Art. 12.)

These sentences ought to be (homologueés) registered at the consulate, when the partnership is a trading or banking partnership; if not in the ordinary jurisdiction. (Art. 3.)

The parties produce their documents and memoranda, without any legal formalities, to the arbitrators. Ib. 56.

The partner who delays to produce the documents and memoranda, shall be summoned to do so within ten days. Ib. 57.

The arbitrators, according to the exigency of the case, can extend the time for the production of documents. Ib. 58.

If the time be not extended, or if the extended time have expired, the arbitrators adjudicate upon the documents and memoranda produced. Ib. 59.

In cases of distribution (of the partnership effects) the arbitrators nominate an umpire, if he has not been nominated by compromise. If the arbitrators cannot agree in their choice, the umpire is to be nominated by the Tribunal of Commerce. Ib. 60.

The adjudication of the arbitrators must (motive) set forth its grounds. It must be deposited with the registrar of the Tribunal of Commerce. It is rendered executory without any modification, and transcribed in the registers, by virtue of an order of the president of the Tribunal, who is bound to issue it, without any reserve, within three days from the deposit with the registrar. Ib. 61.

The above-mentioned provisions are applicable to the widows, heirs, or assigns of partners. Ib. 62.

If minors are interested in a dispute on account of a commercial partnership, the tutor cannot renounce the right of appeal from the award of the arbitrators. Ib. 63.

In England a Court of Equity will not decree specific performance of a covenant to refer disputes to arbitration (Price v. Williams, cited 6 Ves. 818.; Street v. Rigby, 6 Ves. 818.; Wilks v. Davis, 3 Mer. 507.); and a plea of an agreement to refer to arbitration would not constitute a valid objection to a bill, either for discovery or relief (Wellington v. Mackintosh, 2 Atk. 569.; Street v. Rigby, 6 Ves. 815., overruling Halfhide v. Fenning, 2 Bro. C. C. 336.); nor will the Court substitute the Master for the arbitrators; “for this,” observed Sir J. Leach, M. R., “would be to bind the partners contrary to their agreement.” Agar v. Macklew, 2 S. & S. 418.

It seems to be doubtful how far an action will lie at law for breach of such a covenant (Kill v. Hollister, 1 Wils. 129.), or, at any rate, how other than nominal damages can be obtained (2 Bos. & Pull. 186.). Covenants, however, to refer to arbitration may be made effectual by naming a sum as liquidated damages, to be paid by the party refusing to submit to arbitration. Street v. Rigby, 6 Ves. 818.; Astley v. Weldon, 2 Bos. & Pull. 346.
EIGHTH CHAPTER.

The different Modes in which a Partnership is dissolved.

138. A partnership is dissolved in the following ways:—
1. The expiration of the time for which it has been contracted;  
2. The extinction of the thing or the completion of the business which constituted the object of the partnership;  
3. The death natural or civil of one of the partners; his insolvency;  
4. lastly, The wish of being no longer in the partnership.

§ I. As to the Expiration of the Time.

139. When the partnership has been contracted for a

1. Partnership is dissolved,
2. By the expiration of the time for which it was contracted.
3. By the extinction of the object, or the completion of the business.
4. By the natural death of one of the partners.
5. By the civil death, interdiction, or embarrassment of one of them.

According to our law a partnership for a limited time terminates at the expiration of that time. It is not, however, necessary, as in the French law, if the partners are desirous of continuing the partnership, though it may be advisable, to signify their intention of prolonging it by any instrument or writing, executed with the same formalities as the original contract. The question, however, arises, when parties carry on the partnership business after the expiration of the time for which it was contracted, upon what terms is it to be considered as carried on? It has been decided that a presumption arises, in the absence of all acts and circumstances to vary and control it, that it is intended to be a new partnership upon the same terms as the original partnership, but for an indefinite period, and therefore determinable immediately at the will of any of the partners, although under the original partnership contract, notice of a dissolution was requisite; and the mere fact of there being unexpired leases of the premises, or contracts subsisting with workmen or others, is no sufficient ground for any presumption that the new partnership is intended to last either until the expiration of the leases or the completion of the contracts. Featherstonhaugh v. Fenwick, 17 Ves. 299. 307.
certain limited time, it terminates (de plein droit) at once by the expiration of that time.

The parties may agree to prolong it beyond that time; but that prolongation can only be proved by a written deed, which the Ordonnance of 1673 subjects to the same formalities as the deed by which the partnership was contracted.

§ II. The Extinction of the Thing which constitutes the Object of the Partnership, and of the Completion of the Business.

140. When a partnership has been contracted in a certain thing, it is evident that it must end by the extinction of such thing.

For example, if two peasants buy in common an ass to carry their goods to market for sale, it is clear that, if the ass dies, their partnership in that ass will be at an end. Neque enim ejus ret quae jam nulla sit, quisquam socius est; l. 63. § 10. ff. Pro Soc. (Dig. lib. xvii. tit. 2. l. 63. § 10.)

141. When partners have contracted a partnership, not in things themselves, but in the fruits arising from certain things belonging to one of them, in order that they may receive them in common, and make thereof a common profit during the continuance of the partnership; if such things perish, the partnership will be at an end; for, it being essential to the partnership, that each of the partners should contribute thereto, it can no longer exist when one of them has no longer anything wherewith to contribute thereto.

For example, when two neighbours, who have each a cow, contract a partnership of all the produce and profits which should arise from them during a certain time; if, before its expiration, the cow of one of the partners dies, the partner-

---


141 When one of the partners has promised to put in common the property in anything, a loss occurring before the contribution thereof has been effectuated, operates as a dissolution of the partnership with reference to all the partners.

The partnership is in like manner dissolved in all cases by the loss of the thing, when the enjoyment only has been put in common, and when the property thereof has continued in the hands of the partner.

But the partnership is not terminated by the loss of the thing of which the property has already been brought into the partnership. Civ. Cod. of France, 1867.
ship will terminate, because that partner has no longer anything to contribute thereto.

When two persons have contracted a partnership to sell in common certain things belonging to them, and they have not put the things themselves into the partnership, but the produce to arise from the sale; if, before the sale, the things belonging to one of the partners perish, the law 58, of which an instance has been given, supra, n. 54., decides that the partnership is extinguished. The reason is, that such partner, having no longer anything to contribute thereto, it cannot exist.

142. Suppose a timber merchant has entered into partner-

142 The conclusion that Pothier has arrived at, that a party who has contracted to contribute his personal skill to a partnership, gives a just ground for its dissolution when he is unable, in consequence of illness, as paralysis, to fulfil his engagement, seems to be correct, and to be analogous in principle to the relief which a Court of Equity gives by terminating a partnership when one of the partners becomes incurably insane, although, in the latter case, there is an additional reason why a dissolution should take place. Lord Kenyon has well observed, "When there are two partners, both of whom are to contribute their skill and industry in carrying on the trade, the insanity of one of them, by which he is rendered incapable to contribute that skill and industry on his part, is a good ground to put an end to the partnership, not by the authority of either of the partners, but by application to a Court of Justice, and this for the sake of the partner who is rendered incapable, as well as of the other; for it would be a great hardship upon a person so disordered, if his property might be continued in a business, which he could not control or inspect, and be subject to the imprudence of another." Sayer v. Bennet, Mont. Part. vol. i. Appendix, p. 18. 1 Cox, 107. Upon the same principles partly, when a war breaks out between two different states, it will dissolve a partnership entered into between the subjects of those states. This has been decided in the United States, in the case of Griswold v. Waddington, 16 Johns. 438. Mr. Chancellor Kent, in his learned and able judgment, says, "The principle here is, that when one of the parties becomes disabled to act, or when the business of the association becomes impracticable, the law, as well as common reason, adjudges the partnership to be dissolved. Pothier, in his Treatise on Partnership, says, that every partnership is dissolved by the extinction of the business for which it was formed. This he illustrates in his usual manner, by a number of easy and familiar examples. Thus, if a partnership be formed between two or more persons, for bringing together and selling on joint account the produce of their farms, or of their live stock, and the produce or the stock of one of them should happen to fail, or be destroyed, the partnership ceases of course, for there can be no longer any partnership when one has nothing to contribute. So if two persons form a partnership in a particular business, and the one engages to furnish
ship with a cooper to make and sell casks, to which partnership the merchant is to bring the wood, and the cooper his labour only in making the casks. The cooper having afterwards become paralytic, and consequently incapable of making casks, will the partnership in that case cease, and can it be said that the cooper has no longer anything to contribute thereto? No; because by undertaking by the contract to make casks, he undertook to make them not himself only, but either himself or by his workmen; he can, therefore, although paralytic, cause them to be made by his workmen; and he has it in his power, consequently, to contribute to the partnership what he has agreed.

Suppose, however, the merchant, who entered into the partnership solely from the confidence which he had in the skill of that workman, had inserted a clause in the partnership contract that the cooper should not cause any casks to be made by any persons except himself? In that case it may be said that the partnership is extinct, since that which such partner agreed to contribute thereto is extinct; being capital, or the raw materials, and the other his skill and labour, and the latter becomes disabled by palsy; the partnership is extinguished, because the object of the partnership cannot be fulfilled. So, again, if two or more persons form a partnership to buy and sell goods at a particular place, the partnership is dissolved whenever the business is terminated. (Pothier, Trait du Cont. de Soc. No. 140—143.) _Extineto subjecto, tollitur adjunctum_, is the observation of Huberus, when speaking on this very point.

We can easily perceive with what force their doctrines apply to this case, for a partnership, formed between alien friends, must at once be defeated, when they become alien enemies. They can no more assist each other than if they were palsied in their limbs, or bereft of their understandings by the visitation of Providence. I have selected these principles of partnership from the treatise of Pothier because his reputation and great authority are known in this country. He has treated of the law of partnership, as he has of other civil contracts, with a clearness of perception, a precision of style, and a fulness of illustration, above all praise, beyond all example. If it should be asked, why is Pothier silent, like the English law, concerning the effect of war on a partnership between the subjects of two belligerent states? the answer may be given, that the possibility of such a question never could have occurred to a French lawyer, since it has been the law of France, for ages, that all intercourse, communication, and commerce between the subjects of France and her enemies, was prohibited, upon pain of death.” Per Kent, Chancellor, in Griswold v. Waddington, 16 Johns. 490.
Pothier on Partnership.

not only the mere manufacture of the casks, but also his personal labour, which he has agreed to contribute to the partnership, and which he can no longer contribute thereto. The merchant, nevertheless, would act prudently in giving him notice of a renunciation of the partnership.

143. When two or more persons enter into partnership for a certain business, that partnership will terminate when the business has been completed. For example, when two merchants have contracted a partnership to buy together a certain parcel of goods to sell at the fair of Guibray, it is clear that such partnership will terminate when they have sold all there.

§ III. As to the Death of one of the Partners, and his Insolvency.

144. The partnership, whether it be universal, particular, indefinite, or for a certain limited time, is dissolved at once by the death of one of the partners.

This dissolution of the community, which takes place by the death of one of the partners, has two effects. The first is, that the heir succeeds to the share which the deceased had at the time of his death in the partnership property, and to the share of the debts of the partnership by which the deceased was bound; but he does not succeed to the future rights of the partnership, save only to such as are necessary consequences of what has been done during the life of the partner to whom he succeeds; and even with regard to these he does not become a partner of the partners of the deceased, for he does not take his place, he is only in community with them.

144 See ante, n. 138. Civ. Cod. of France, 1865, 4. So, according to our law, a partnership, although it may be entered into for a definite period, will be dissolved before its expiration, by the death of one of the partners, unless there be an express stipulation to the contrary. Gillespie v. Hamilton, 3 Madd. 234.; Crawshay v. Maule, 1 Swanst. 495. 509. One effect of the dissolution of the partnership by the death of one of the partners is, that his representatives, although entitled to his share, do not succeed him in the partnership. See Coll. Partn. 5, 6. 118.
According to these principles, if, after the death of one of the partners, the survivor has made some new advantageous bargain having relation to the commerce for which the partnership was contracted, the heir of the deceased partner can have no claim to any share of it; and if the bargain was disadvantageous, he cannot be compelled to bear any part of the loss.

145. The Roman jurisconsults have carried this principle so far, as to decide, that a person could not even when contracting a partnership enter into a valid agreement that the heir of such of the partners who happened to die during the continuance of the partnership should become a partner in the place of the deceased: adeo morte soci solvitur societas, ut nec ab initio pacisci possimus, "ut hares etiam succedat societati;" l. 59. ff. Pro Soc. (Dig. lib. xvii. tit. 2. l. 59.)

The reason of this decision was, that the partnership being a right which is founded upon the friendship of the parties for each other, and upon the reciprocal confidence which each has in the fidelity and good qualities of the other,. it is contrary to its nature that it could be contracted with an uncertain and unknown person, and consequently with the heirs of the contracting parties, who at the time of the contract were uncertain, the partner not being able even to engage himself to adopt a certain person as his heir; l. 65. § 9. ff. Dict. Tit. (Dig. lib. xvii. tit. 2. l. 65. § 9.)

This reason does not appear to me be very conclusive,

If it has been stipulated that in case of the death of one of the partners the partnership shall continue with his heir, or only between the surviving partners, such arrangements shall be followed; in the second case, the heir of the deceased has a right only to a distribution of the partnership effects, regard being had to the situation of such partnership at the time of the death, and he has no right to participate in any ulterior claims, except so far as they are necessary consequences of what was done before the death of the partner whom he succeeds. Civ. Cod. of France, 1868.

Our law, according to the doctrine contended for by Pothier, and adopted by the French Civil Code, in opposition to the Roman law, lays no restraint on the period of partnership, or the description of persons to whom, on the death of the original partners, the benefit of the contract is reserved. 1 Swanst. 510. n.; Stuart v. Earl of Bute, 3 Ves. 212., 11 Ves. 657., 1 Dowe, 73.; Balmain v. Shore, 9 Ves. 500.; Warner v. Cunningham, 3 Dowe, 76.; Coll. Partn. 5, 6.; Stor. Partn. 7.
and I believe there is more subtilty than solidity in it; I think, therefore, that in our law, although the partnership regularly terminates by the death of one of the partners, and his heir does not succeed him in the future rights of the partnership, nevertheless, a stipulation that he shall succeed is binding.

This is the opinion of the old practitioner Masuer, "On Partnerships," 28. n. 33. The Roman jurisconsults themselves admitted this agreement in partnerships for farming the public revenues. Why not admit it equally in ordinary partnerships? Despeisses is of the contrary opinion.

146. The second effect of the dissolution of community by the death of one of the partners is, that it dissolves it even between the surviving partners, unless, by the contract of partnership, it has been agreed to the contrary: *Morte unius socii societas dissolvitur, et si consensu omnium coita sit, plures verò supersint; nisi in cœunda societate aliter convenerit*; l. 65. § 9. *ff. Dict. Tīt.* (Dig. lib. xvii. tit. 2. l. 65. § 9.)

The reason is, that the personal qualities of each of the partners are taken into consideration in the contract of partnership. I ought not then to be obliged, when one of my partners is dead, to remain in partnership with the others, because it may happen, that it was only in consideration of the personal qualities of the one who is dead, that I was willing to enter into it.

This principle admits of an exception with regard to partnerships for the farming of the public revenues, which continue to subsist between the survivors when one of the partners happens to die: *Hæc ita in privatis societatibus ait. In societate vectigalium manet societas et post mortem alicujus;* l. 59. (Dig. lib. xvii. tit. 2. l. 59.)

147. All that has been said of the case of the natural death of one of the partners, applies to the case of his civil death.

---


According to our law a dissolution takes place when a person has lost his capacity to act *sui juris*, in consequence of his being outlawed or convicted and
108 Potkieron Partnership.

Dissociamur renunciatione, morte, capitis diminutione; 1. 4. § 1. ff. Dict. Tit. (Dig. lib. xvii. tit. 2. 1. 4. § 1.)

148. The insolvency of one of the partners also dissolves the partnership, in the same manner as his death. Dissociamur egestate; Dict. Tit. § 1. Bonis à creditoribus venditis unius socii, distrahi societatem Labo ait; 1. 65. § 1. ff. Dict. Tit. According to our law, it suffices that the insolvency be (ouverte) apparent.

attainted of felony or treason; and moreover the Crown thereupon becomes entitled, not merely to the share of the offending, but also of the innocent partner; for by an absurd doctrine, still existing, though practically obsolete, it is held that, as it is beneath the dignity of the Crown to become a tenant in common or joint tenant with a subject, it is therefore entitled to the whole by virtue of its prerogative. See Watson Partn. 377. 378.; Stor. Part. 433.

It may be here mentioned that, according to our law, the marriage of a female partner will of itself operate as a dissolution of the partnership, because, in the absence of any contract reserving the wife's personal property to her separate use, it will belong to her husband absolutely; and, moreover, upon her marriage, except as regards property settled to her separate use, she becomes incapable of binding herself by any contracts. Nerot v. Burnard, 4 Russ. 247. 260.


So, according to our law, the insolvency or bankruptcy of one or more of the partners will of necessity operate as a dissolution of the partnership, for as the property of a bankrupt passes to his assignees he becomes unable to fulfil the partnership contract, and with regard to the assignees the solvent partners are not obliged to admit them into, and their duties will not allow them to carry on, the partnership. Fox v. Hanbury, Cwp. 445.; Exparte Smith, 5 Ves. 295.; Wilson v. Greenwood, 1 Swanst. 471. 482, 483.; Crawshay v. Collins, 15 Ves. 217. 223. And in the event of bankruptcy the dissolution which takes effect immediately upon the adjudication of the bankruptcy will have relation back to the act of bankruptcy. Barker v. Goodair, 11 Ves. 78. 83.; Dutton v. Morrison, 17 Ves. 194. 203.

A general assignment of all interest in the partnership property by one or more of the partners will, it seems, operate as a dissolution of the partnership: the person to whom the assignment is made, by that act, as we have seen, merely has a community of property with, but does not become a partner of, the other partners. If they do not consent to admit him to the partnership, he cannot compel them to do so; if they consent, then a new partnership is formed. See Stor. Partn. 438.

An assignment by a partner to his copartner of all his interest in the concern from which the profits of the business (if any) are to arise, operates as a dissolution of the partnership, because the former thereby ceases to have a right to participate in the profits; and since a partnership, as between parties, results from the agreement to share in the profits, it ceases as soon as such right is determined. Per Lord Denman, in Heath v. Sansom, 4 Barn. and Ad. 175.
§ IV. As to the Wish to be no longer a Partner.

149. It is clear that the partnership can be dissolved by the mutual consent of all the partners.

Can one of them dissolve it by his sole will, on giving notice to his partners that he does not for the future intend to be in partnership? Is it necessary, with respect to this, to distinguish between partnerships which have been contracted without any limitation of time, and those which have been contracted for a certain limited time.

With regard to the first, any one of the parties can dissolve the partnership by giving notice to his partners that he no longer intends to remain in the partnership. Dissociamur renunciatione; l. 4. § 1. ff. Pro Soc. (Dig. lib. xvii. tit. 2. l. 4. § 1.)

150. For this effect, it is necessary that two things should concur; 1st, that the renunciation of the partnership should be made in good faith; 2ndly, that it should not be made at an unseasonable time. Debet esse facta bonâ fide, et tempestive.

The renunciation is not made in good faith, when the partner renounces in order to appropriate to himself alone the profit the partners had proposed to make when they entered into the partnership.

For example, if two booksellers enter into partnership to buy together a library, from which there was a profit to be made, and before it has been bought on the partnership account, one of the partners, in order to buy it on his own private account, and alone to obtain the profits therefrom, gives notice to the other that he does not intend any longer to be in partnership with him; that renunciation of the partnership is made in bad faith, and does not discharge him who has made it from his obligation towards his partner, who can demand his share of the profits.

But, if that partner has renounced the partnership only
because he had a dislike to the speculation, to carry out which they had become partners, his renunciation is made in good faith, and is valid, the business being yet untouched. In this case the other partner can claim no damages against him.

This is what Paulus lays down:— *Si societatem ineamus ad aliquam rem emendam, deinde solus volueris eam emere, ideoque renunciaveris societati, ut solus emeres; teneberis, quanti interesse mea; sed si ideo renunciaveris quia emptio tibi displicebat, non teneberis, quamvis ego emero, quia hic nulla fraud est;* l. 65. § 4. (Dig. lib. xvi. tit. 2. l. 65. § 4.)

Paulus gives another example:— During the continuance of a universal partnership, which I have contracted with you, one of my friends, being on his deathbed, gives me notice that he has instituted me his heir. I go quickly to give you notice that I intend no longer to be in partnership with you. That renunciation being made with the view of appropriating to myself the succession of my friend, which ought to have fallen into our partnership, is void, as being made in bad faith, and will not prevent that succession, if it be beneficial, from falling into the partnership. (Dict. l. 65. 93.)

In like manner, if two neighbouring seigniors had contracted a partnership together to receive in common the revenues of their seigniories, and one of them having intelligence that a very considerable estate, held in fief of his seigniory, was upon the point of being sold, signifies to his partner his renunciation of the partnership, in order to appropriate to himself the gross profit of the fifth to which that sale would give a right, that renunciation is made in bad faith; and it ought to be declared void, and that the partnership has continued, and the profit accrued to it.

151. For the renunciation, which one of the partners has

---

1 Dissolution of partnership by the desire of one of the partners is applicable only to partnerships of which the duration is unlimited, and is effected by a renunciation, of which notice is given to all the partners, provided that such renunciation be *bonâ fide*, and not made at an unreasonable time. Civ. Cod. of France, 1869.; and see Ib. 1865. 5. antè, n. 138.

The renunciation is not *bonâ fide* when a partner renounces in order to appropriate to himself alone a profit which the partners had proposed to make in common.
made of the partnership, to be valid, it is necessary in the second place, that it should not be made at an unseasonable time; that is to say, at a time when things no longer remain in statu quo, and when it is the interest of the partnership to wait for a more favourable time to complete the business constituting the object of the partnership; as if, having contracted a commercial partnership with you, I should wish to dissolve the partnership at a time when it is the interest of the partnership to reserve the stock in trade which we have bought in common, and to wait for a more favourable time of sale. Si emimus mancipia, initiæ societate deinæ renuncies mihi eo tempore, quo vendere mancipia non expedit, hoc casu, quia deteriorem causam meam facis, teneri te pro socio judicio. Dict. l. 65. § 5. (Dig. lib. xvii. tit. 2. l. 65. § 5.)

Observe that, in order to judge whether a renunciation is made at an unseasonable time, it is necessary to consider the common interest of the partnership, and not the private interest of him who opposes that renunciation, unless there be some agreement in the contract of partnership, which is op-

It is made unseasonably when objects are no longer entire, and it is the interest of the partnership that the dissolution should be deferred. Ib. 1870.

According to our law it is clear that, although a partnership may have been entered into for a limited period, it may be dissolved by the consent of all, but not, it seems, by the mere will of one of the parties (Peacock v. Peacock, 16 Ves. 56.; Crawshay v. Maule, 1 Swanst. 495.); where, however, no time has been fixed for its duration, it is considered to be a mere partnership at will, and may consequently be dissolved upon one or more of the partners giving notice to the others, without reference to the distinction of the notice being seasonable or unseasonable. Master v. Kirton, 3 Ves. 74.; Miles v. Thomas, 9 Sim. 606. 609.; Nerot v. Burnard, 4 Russ. 247. 260. “I have always,” observed Lord Eldon, “taken the rule to be, that in the case of a partnership not existing as to its duration by a contract between the parties, either party has the power of determining it when he may think proper, subject to a qualification I shall mention. There is, it is true, inconvenience in this; but what would be more convenient? In the case of a partnership expiring by effluxion of time, the parties may, by previous arrangement, provide against the consequences; but where the partnership is to endure so long as both partners shall live, all the inconvenience from a sudden determination occurs in that instance as much as in the other case.” Peacock v. Peacock, 15 Ves. 56.

But Mr. Swanston, in his note to Crawshay v. Maule, 1 Swanst. 512., has observed that in one instance the Court of Chancery seems to have assumed jurisdiction to qualify the right of renunciation. See Chavasy v. Van Sommer, 3 Woodes, Lect. 416. note.
posed to the renunciation. *Hoc ita verum esse si societatis non intersit dirimi societatem: semper enim non id, quod privatim interest unius ex sociis, servari solet, sed quod societati expedit; dict.* § *Hæc ita, accipienda sunt, si nihil de hoc in coëunda societate convenerit.* (Dig. lib. xvii. tit. 2. l. 65. § 5.)

152. We now pass to partnerships which are contracted

Dissolution of partnership for a term cannot be demanded by one of the partners before the period agreed on, except so far as there shall be just grounds therefor, as when another partner fails in his engagements, or when habitual infirmity renders him inadequate to the business of the partnership, or other similar cases, of which the lawfulness and importance are left to the determination of the judge. Civ. Cod. of France, 1871.

According to our law a partnership for a limited time may, upon sufficient cause being shown, be dissolved by the decree of a Court of Equity, although it may not be dissolvable either by mere operation of law, or by the parties themselves. In the first place, it may be dissolved from its commencement, when it originated in fraud, or misrepresentation, or oppression. Colt v. Wollaston, 2 P. Wms. 154.; Green v. Barrett, 1 Sim. 45. Another ground upon which the Court will dissolve a partnership, in its origin unobjectionable, is the gross misconduct of one of the partners, amounting to a want of good faith, which is necessary to carry on the partnership concern (Chapman v. Beach, 1 J. & W. 594.); as, for instance, when a partner raises money for his private use on the credit of the partnership firm (Marshall v. Coleman, 2 J. & W. 266.); or his conduct amounts to an entire exclusion of his partner from his interest in the partnership (Goodman v. Whitcomb, 1 J. & W. 593.); or if he receives monies and does not enter the receipts in the books, or if he does not leave them open to the inspection of his partners (lb.); or if, contrary to the opinion and wish of his partners, he allows a person to draw bills upon the partnership, and directs them to be paid out of the joint effects of the partnership (Master v. Kirton, 3 Ves. 74.). So when the conduct of one of the partners is such as to prevent the concern from being carried on according to the contract (Waters v. Taylor, 2 V. & B. 304.); and it is stated in 7 Jarman's Conveyancing, p. 83., upon the authority of a MS. case, De Berenger v. Hamel, cor. Sir L. Shadwell, V.C., 13 Nov. 1829, that violent and lasting dissension, as when the parties refuse to meet each other upon matters of business—a state of things which precludes the possibility of the partnership from being conducted with advantage—will be a sufficient ground for a Court of Equity to decree a dissolution. But the Court will not decree a dissolution for slight misconduct, especially if there has been acquiescence, on the ground of mere ill temper on the part of one of the partners. "Where parties differ," says Lord Eldon, "as they sometimes do when they enter into a different kind of partnership, they should recollect that they enter into it for better and worse, and this Court has no jurisdiction to make a separation between them because one is more sullen or less good-tempered than the other. Another Court, in the partnership to which I have alluded, cannot, nor can this Court, in this kind of partnership,
for a certain limited time. In these partnerships the partners, by agreeing upon the time for which the partnership is to continue, are considered to agree not to dissolve it until after the expiration of that time, unless there happen some just cause for dissolving it sooner. Therefore one of them cannot, without just cause, dissolve the partnership before the time, to the prejudice of his partners: *Qui societatem in tempus coit, eam antè tempus renunciando, socium à se, non se à socio liberat;* l. 65. § 6. (Dig. lib. xvii. tit. 2. l. 65. § 6.)

But if the partner has a just cause for quitting the partnership before the time, his renunciation of which he gives notice to his partners, is valid, and dissolves the partnership, even when there is an express clause in the contract of partnership, that the partners shall not be able to withdraw themselves from the partnership before the time. *Pomponius terfere, unless there is a cause of separation, which in the one case must amount to downright cruelty, and in the other must be conduct amounting to an entire exclusion of the other partner from his interest in the partnership. Goodman v. Whitcomb, 1 J. & W. 592.; and see Wray v. Hutchinson, 2 My. & K. 235.*

Moreover, the Court will dissolve a partnership in some cases where no personal blame attaches upon any of the partners, as, for instance, where it has become impossible to carry it on according to the intent and meaning of the contract. *Baring v. Dix, 1 Cox, 213.* Thus, where the partnership was originally entered into for spinning cotton under a patent which totally failed, and was entirely given up, Lord Kenyon decided, that if, on a reference to the Master, it was reported that the partnership could not be carried on, he would direct the premises to be sold, and would dissolve the partnership. And see *Pearce v. Piper, 17 Ves. 1.; Buckley v. Cater, cited 17 Ves. 11. 15, 16., and 3 V. & B. 180, 181.; Reeve v. Parkins, 2 J. & W. 390.* Another ground upon which the Court will dissolve a partnership, is the incurable, and not merely temporary, insanity of one of the partners (Sayer v. Bennett, 1 Cox, 107.; Kirby v. Carr, 3 Y. & C. Exchq. Ca. 184.; Wrexham v. Huddleston, 1 Swanst. 504. n.; Jones v. Noy, 2 My. & K. 125.), of which proof of a person having been found a lunatic, under a commission, will be conclusive evidence (Milne v. Bartlett, 3 Jur. 358.); but in the absence of a stipulation for a dissolution in such an event at a particular time (Bagshaw v. Parker, 10 Beav. 592.), the dissolution will only take place from the time of the decree. *Besch v. Frolich, 1 Ph. 172.*

A partnership may be dissolved by the award of arbitrators, provided their powers are sufficient, for two reasons, either because it is the forum which the parties have themselves chosen, and by whose decision they must consequently be bound, or because such dissolution may be considered to have been made with the consent of the parties. *Heath v. Sansum, 4 Barn. & Ad. 172; Street v. Rigby, 6 Ves. 815.; Stor. Partn. 430.*

I
therefore observes, that such a clause is superfluous, because even if it had not been expressed, one of the partners could not before the time withdraw himself from the partnership without a just cause, and if he has a just cause that clause cannot prevent his withdrawal: *Quid tamen si hoc convenit "ne abeat ur," an valeat? Eleganter Pomponius scripsit, frustra hoc convenire, nam etsi non convenit, si tamen intempestive renuncietur societati, esse pro socio actionem; sed etsi convenit "ne intra certum tempus societate abeat ur," et antė tempus renuncietur potest rationem habere renunciatio; 1. 24. ff. Pro Soc. (Dig. lib. xvii. tit. 2. 1. 14.) Ulpi an gives many examples of the just causes a party may have for renouncing before the time; for instance, if his partner did not execute the conditions of the partnership; if he has proof that his partner refuses to allow him to enjoy in his turn the thing which they have put in partnership; if he has proof of the bad conduct of his partner in the management of the affairs of the partnership: *Non tenebitur pro socio, qui ideo renunciavit, quia conditio quaedam, quâ societas erat coita, ei non præstatur; aut quid si ita injuriosus et dannosus socius sit, ut non expediat eum pati; 1. 14. ff. Dict. Tit. (Dig. lib. xvii. tit. ii. 1. 14.)

Moreover, a partner will have just cause for renouncing the partnership before the time, when, in consequence of his being obliged to be absent during a long time on the service of the State, he can no longer give his attention to the affairs of the partnership, unless, indeed, the affairs of the partnership are such that there is no need of his being present. L. 16. Dict. Tit.

The same may be said in case of an inveterate infirmity which has seized upon one of the partners. It might be a just cause for his renouncing the partnership, if the affairs of the partnership were such as to require his personal attention.

153. In order that a renunciation of a partnership should operate as a dissolution, the partner, when so renouncing should give notice to all the partners. This notification, in case it is not admitted by the partners to whom it has been made, ought to be proved by writing, either by a notice
served by a huissier on them personally, or at their domicile, or by a deed under private signature, by which they acknowledge that such notice has been given to them. But that deed not being evidence against third parties having an interest in the continuance of the partnership (see Pothier on "Obligations," n. 750.), it is more prudent to give such notice by a huissier.

154. When the renunciation of the partnership is likely to be the subject of contest, it will be prudent for the party who has made it to summon his partners before the Court in order to establish its validity.

For if, after his renunciation, the partners to whom it has been made incur losses, they can object to him the defects of his renunciation, and if it is found to be made in bad faith, or unseasonably, he will be compelled to bear his share of the losses; while, on the contrary, if after the renunciation they have acquired profits, the partner who has made it cannot claim a share, it not being allowable for him to insist on the nullity of his own renunciation, and to oppose to it its defects. Hence the jurisconsults say, that the partner who renounces with bad faith, or unseasonably disengages his partner from himself, and does not disengage himself from his partner, $\textit{Ante tempus renunciando, socium à se, non se à socio liberat;}$ 1. 65. § 6. (Dig. lib. xvn. tit. 2. 1. 65. § 6.)

154 It will be observed, that in the case of partnerships for a limited time, there exists a difference in the mode in which a dissolution of a partnership may be affected under the French law and our own. According to the former the partner may, by his own act, primarily insist upon a dissolution, which, however, is not valid, unless it be for a just cause, and is affirmed to be so by a court of justice; whereas our law does not allow the dissolution to be complete or effective until a court of justice has itself decreed the dissolution for a just cause. In substance, therefore, the rule is the same in both laws, although it is varied in its actual application. The rule of our law is, to say the least of it, quite as convenient as that of the French law, if, indeed, it be not more appropriate, just, and equitable. Stor. Partn. 400, 401.

The dispositions of the present title only apply to commercial partnerships in the points which contain nothing contrary to the laws and usages of commerce. Civ. Cod. of France, 1873.

1 2
NINTH CHAPTER.

The Effect of the Dissolution of Partnerships, and the Distribution of the Effects.

FIRST ARTICLE.

As to the Effect of the Dissolution of Partnership.

155. The effect of the dissolution of partnership is, that thenceforth and for the future, all contracts, which each of the former partners may enter into, will be on his own account only, unless they were necessary consequences of the affairs of the partnership.

According to our law the effect of dissolution, from whatever cause it may arise, puts an end, as between themselves, to the joint powers and authorities of all the partners, who can thenceforth create no new contracts or obligations binding upon the former partners, or those who represent them, and this will be the effect of dissolution, as to third parties, either when they have notice of it, or even in some cases, as where dissolution is caused by death or bankruptcy, there has been no notice.

The partnership, however, in one sense, is not determined; it continues for the purpose of winding up the partnership affairs; whatever, therefore, is consistent with that duty, every partner has authority to do; he may, for instance, collect and give receipts for the debts of the partnership, apply the joint funds in payment of the partnership debts, adjust and settle the unliquidated debts of the partnership, or receive any property belonging to it. Coll. Partn. 75. 130.; Stor. Partn. 458.; Exparte Williams, 11 Ves. 5.; Peacock v. Peacock, 16 Ves. 49. 57.; Wilson v. Greenwood, 1 Swanst. 489.; Crawshay v. Maule, 1 Swanst. 506.; Crawshay v. Collins, 15 Ves. 218. 226.; Cruikshank v. M'Vicar, 8 Beav. 106. It had even been held that an acknowledgment or promise to pay made by one of the partners, after dissolution, will bind a firm and take a case out of the statute as to the other partner. 3 Kent. Coms. 49—51.; Stor. Partn. 460.; Coll. Partn. 421. But if any person in possession of the partnership property acts in a manner inconsistently with the duty of winding up the affairs,—as by making improper sales, misappropriating the funds, excluding another partner from taking that part in the management of the concern which he is entitled to take,—the Court will restrain him by injunction, and, if necessary, will appoint a manager or receiver for that purpose, and direct inquiries in what manner it can be wound up most beneficially to those interested. A manager or receiver will not, however, be appointed except in urgent cases. See Harding v. Glover, 18 Ves. 251.; Crawshay v. Maule, 1 Swanst. 507.; Heathcote v. Hulme, 1 J. & W. 122. 128.; Wilson v. Greenwood, 1 Swanst. 481.; Daicie v. John M'Clel, 206., 19 Price, 446.; De Tastet v. Bordenave, Jac. 516.; Allen v. Kilbre, 4 Madd. 464.; Stor. Partn. 475.
For example, if two grocers of Orleans think proper to dissolve a partnership in the grocery trade, all the new purchases made by either of them of grocery stock in trade, after the dissolution of the partnership, will be on his sole account. If there be profit, he alone will have it; if, on the contrary, there be a loss, he alone must bear it.

But if, before the dissolution of the partnership, one of the partners had bought at Genoa a certain number of flasks of oil, in order to re-sell them at Orleans for the profit of the partnership, the bargains which he may make after the dissolution of the partnership, for their carriage to Orleans, being a necessary consequence of a purchase made during and on account of the partnership, and, therefore, a necessary consequence of its affairs, will be at the risk of all the former partners, as being done in a partnership transaction.

It is for this reason that, although a partnership be dissolved by the death of one of the partners, and his heir does not become a partner in his stead, nevertheless the heir, who cannot in truth commence new transactions on account of the partnership of which the deceased was a member, not only has power, but it is his duty, to complete those which had been commenced by the deceased on account of the partnership: *Hæres socii, quamvis socius non est, tamen ea quæ per defunctum inchoata sunt, per hæredem explicari debent*; 1. 40., *ff. Pro Soc.* (Dig. lib. xvii. tit. 2. l. 40.)

156. Although, after the dissolution of the partnership, none of the former partners can undertake any new transactions on account of the partnership, which no longer subsists, nor, consequently, bind his former partners, by contracting either in his own name or theirs: nevertheless, if a partner, having good grounds for being ignorant of the dissolution of the partnership (suppose, for instance, the death of a partner, which effected the dissolution, had not yet come to his knowledge) has entered into some transactions relative to the partnership trade, the bargains which he may have made in the name of the partnership of whose dissolution he was ignorant, will bind his former partners and their heirs. The good faith with which that partner acted renders, in this case, these
contracts binding, in the same manner as the good faith of a mandatory renders valid whatever he has done in execution of a mandate after the death of the mandant, when the mandatory was ignorant of his death, which extinguished the mandate.

For example, if a merchant of Orleans has contracted a partnership with a merchant of Marseilles to buy in common a certain quantity of flasks of oil, which they were to convey to Orleans, to re-sell in common; and the merchant of Marseilles, after the death of the merchant of Orleans (by which the partnership was dissolved), not having yet intelligence of it, purchased this oil on account of the partnership, the heirs of the merchant of Orleans will be obliged to abide by it, as if it had been done during the life of the deceased, and during the partnership. This is what Ulpian lays down in the law 65. § 10. ff. Pro Soc. (Dig. lib. xvii. l. 65. § 10.) *Si integris omnibus manentibus, alter decesserit, deinde tunc sequatur res, de qua societatem coierunt tunc, eadem distinctione utemur, qua in mandato: ut si guidem ignota fuerit mors alterius, valeat societas; si nota, non valeat.*

157. For the same reason, although parties who, during
the partnership, had power to manage for each other the affairs of the partnership, and to receive all the debts, they have no longer this power after the dissolution of the partnership; nevertheless, the payment made by a debtor of the partnership to one of the former partners of all that he owed, although after the dissolution of the partnership, will be valid, if he were bonâ fide ignorant of it.

For the same reason, if traders or artisans who were accustomed to furnish supplies to the partnership, have bonâ fide, after the dissolution of the partnership, of which they were ignorant, continued to furnish these supplies to one of the former partners, on account of the partnership, all the former partners or their heirs will be bound.

The debtors who have paid, and the traders or artisans who have furnished the supplies after the dissolution of the partnership, will be considered to have been bonâ fide ignorant when they paid what they owed, or furnished supplies before the expiration of the time limited for the duration of the partnership. Suppose, for instance, they were in ignorance of the death of one of the partners, which was not yet known in the place where they made the payment or furnished the supplies, or they were ignorant of the renunciation of the

It is often a difficult question to determine what is sufficient notice of dissolution. No notice, however, is necessary in case of a dormant partner whose liability ceases on the dissolution, except as to persons who knew him to be such. Evans v. Drummond, 4 Esp. 89. With regard to ostensible partners, notice in the "London Gazette" is sufficient, to such as never dealt with the firm (Godfrey v. Turnbull, 1 Esp. 371.); but to persons who have so dealt express notice should be given, which is generally done by a circular letter (Jenkins v. Blizard, 1 Stark. 418.); and in a banking firm a change in the printed cheque will be sufficient (Barfoot v. Goodall, 3 Camp. 147.). A partner permitting his name to be used by the firm, after a mere advertisement of the dissolution in the "Gazette," will continue liable to third parties (Williams v. Keats, 2 Stark. 290.); but not if his name is used wrongfully by the partners carrying on the business of the old firm, after he has given notice in the "Gazette" and to the persons who had formerly dealt with the old firm (Newsome v. Coles, 2 Camp. 617.); but in all cases after as well as before dissolution, the partnership will not be bound by one of the firm, unless the engagement be legal, or such as is warranted by the nature of the business of the firm.

It may here be mentioned that the rights of third parties as to previous contracts and transactions with the firm, will not be affected by the dissolution of the partnership. Stor. Part. 480. 508.
partnership made by one of the partners; notice of that re- 
nunciation not having been given to them, and not having 
been made public.

But when the debtors, or the traders, or artisans, have 
furnished the supplies, after the expiration of the time for 
which the partnership had been contracted, they cannot be 
heard to allege that they were ignorant of its dissolution; 
because those who have business with persons who are in 
partnership, ought to inform themselves of the terms of the 
partnership.

This is the opinion of Gomez, Resolutionum tom. ii. tit. 5. 
n. 6.

158. It is another effect of the dissolution of a partnership, 
that when the partners have put into a universal partnership 
the enjoyment of all their property, or in a particular partner- 
ship the enjoyment of certain property, that enjoyment ceases 
to be common from the day of the dissolution of the partner- 
sip; and all the produce of the property received after the 
day of the dissolution of the partnership, will entirely belong 
to the partner who was the owner of it.

This takes place, even when such produce, at the time of 
dissolution of the partnership, was ungathered and fit to cut;
upon the terms only, that such one of the former partners 
who may receive them, shall reimburse his copartners at the 
distribution of partnership effects, according to their share in 
the partnership for the expense of the labour and sowing.
This is what is decided in the Custom of Paris, art. 231., with 
respect to the partnership between husband and wife; and 
the same decision holds good with regard to all other partner- 
ships, whether universal or particular, there being the same 
reason for it.

Our custom of Orleans (art. 208.), has a similar provision. 
That article of the custom of Paris being of the number of 
those added at the time of its reformation, which contain 
different points that jurisprudence had decided, ought to be 
followed in the customs which are silent respecting it.

Some customs have followed different principles. That of 
Blois (art. 185.) provides, that if at the time of the dissolu-
tion of the partnership, the lands were sown and the vines.
hoed and pruned, the crops, although gathered after the dissolution of the partnership, are common.

159. In this diversity of customs, which is to be followed? If the former partners, when contracting the partnership, have declared by which custom they intended it should be governed, that custom should be followed. If they are silent upon the subject, they are considered to have intended it to be governed according to the law of the place where they have entered into the contract, and where they have their domicile, according to that rule of law: _in contractibus tacitè veniunt ea quæ sunt moris et consuetudinis in regione in quà contrahuntur._

It is to be presumed and understood in this rule of law, that the place where the parties contract is the place of their domicile. But if the instrument has been executed in the place where they happened to be temporarily, other than that of their domicile, they ought to be considered to have intended to contract according to the law of their domicile, rather than according to that of the place where the instrument was executed, and where they happened to be only temporarily.

May it not be said, that the law of the place where the estates which have been put into partnership are situated, ought to be followed? No; for the laws, which govern agreements and personal engagements which arise from them, are personal rules, which exercise their authority principally and directly, not over things, but over persons which are subject to them, by reason of the domicile which these persons have in their territory.

What then must be the decision, if the parties were domiciled each under different customs? When it is a partnership between persons about to be married, it must be presumed that they wish to contract according to the law of the domicile of the intended husband, which will also become that of the intended wife.

Suppose the partnership has been contracted between other persons besides those about to be married, and who would, after the contract of partnership, continue to reside separately in different domiciles?

I think that the law of the domicile of him at whose residence
the instrument has been executed should be followed, there
being more reason for presuming that the other party intended
to submit himself to the law of the person whom he has gone
to find at home, than that there is reason for believing that
he who remained at home intended to submit himself to
the law of the domicile of the other.

But, suppose the contract has been executed in the place
which was the domicile of neither? The law of the domicile
of the partner who has the greatest share in the partnership
may be preferred, and if they have equal shares, there being
in that case no reason for preferring the law of the domicile
of the one to that of the other, I think that then the decision
must be in favour of the law most conformable to Common
Law.

160. With regard to the things which the partners have
put into the partnership, not only for enjoyment, but for the
purpose of being common between them; as the dissolution
of the partnership does not prevent such things, as well as
those acquired during the partnership, from continuing com-
mon among the former partners, until a distribution or
division takes place, whatever may arise from them, until the
distribution, although after the partnership has been dissolved,
will be common between them.

In like manner the dissolution of the partnership does not
put an end to the debts of each of the former partners to the
partnership, and those of the partnership to each of the
former partners or to their obligation of respectively ac-
counting for them on the winding up of the partnership.

SECOND ARTICLE.

As to the Distribution or Division of the Partnership Effects.

161. In order to dissolve the community which subsists,
after the dissolution of the partnership between the former
partners, and to discharge the respective debts for which
they may be liable to each other, each of the former part-
ners, or his heir, has a right to demand of his partners or
their heirs to proceed to an account and distribution of the
partnership effects.
To effect this they can each maintain the action *pro socio*, or the action *communi dividundo*, at their option.

I have already spoken in general of distribution in my Treatise on the Contract of Sale, Part vii. Art. 6.; and I have said there, that, according to our jurisprudence, distribution was nothing more than an act determining the indeterminate share of each of the joint owners of the common stock, by awarding to him those things only which are assigned for his lot.

We shall examine in this article; 1st, when, by whom, and from whom, the distribution ought to be demanded; 2ndly, how parties should proceed; 3rdly, what are the different obligations arising from it.

§ I. *By whom, against whom, and when, the Demand for Distribution can be made.*

162. Each of the former partners can alone demand a distribution against the others, and compel them to make a distribution of the effects which remain in common after the dissolution of the partnership.

Their heirs and other successors can in like manner make that demand; even a successor to whom one of the former partners may have sold or given his share.

163. He who demands a distribution ought to seek it against all his partners or their heirs. If he has only sought it against one, he against whom it is sought will have grounds for demanding by exception that the plaintiff is bound to make all the others parties to the cause, it being proper that the division should take place amongst all those who have a share in the community.

162 So, according to our law, on a dissolution, each of the former partners, or the representatives of a deceased partner, may, in case of improper delay, danger of loss, or neglect of duty, proceed in Equity by a bill strongly resembling the action *pro socio*, to compel an account and a distribution of the partnership effects, and, if necessary, the other or surviving partners will be restrained by injunction from disposing of the joint property, and from collecting the outstanding debts.

163 So, in our law, all the partners, and the representatives of deceased partners, must be made parties to the cause.
The other partners who have not been summoned can intervene without waiting for a summons.

164. When there are immovable amongst the property of which the community is composed, minors cannot demand a distribution thereof, but persons of full age can do so, even against the minors, and with them obtain an order for that purpose.

The reason is, that the distribution of immovable on the part of the person who demands it, is a voluntary disposition which he makes of his immovable rights; because it is at his option not to seek for the distribution, but minors are not permitted to dispose of their immovable goods during their minority.

Distribution, however, with regard to him from whom it is demanded, is a compulsory disposition, since he could not prevent it. But the laws, which forbid the alienation and disposition by minors of their immoveables, do not comprehend compulsory dispositions and alienations.

The person of full age who has a joint interest with a minor, ought not to suffer on account of his minority. Ad divisionis causam provocante tantummodò majore socio, ejus alienationem et sine decreto fieri jam pridem obtinuit; l. 17. Cod. de Præd. min. (Cod. lib. v. tit. 71. l. 17.)

165. Ordinarily the demand for a distribution can be made immediately after the dissolution of the partnership. Nevertheless, if the parties have agreed to delay the distribution during a certain period, and to postpone it until a time which they believe will be more convenient to dispose of their common property, such agreement ought to be executed, although an indefinite agreement not to make a distribution would not have been binding. Si conveniat “ne omnino divisio fiat,” hujusmodi pactum nullas vires habere, manifestissimum est. Sin autem “intra certum tempus,” quod etiam ipsius rei qualitati prodest, volet; l. 14. § 2. ff. Comm. Divid. (Dig. lib. x. tit. 3. l. 14. § 2.)

This agreement does not prevent a former partner from selling in the meantime, to a third party, his undivided share in the community; but it can be set up against the purchaser (who ought not to have any greater right than the
Pothier on Partnership.

125

partner), if he seek for a distribution before the time. Emptor quoque communi dividundo agendo, eadem exceptione sum-movebitur quâ auctor ejus summoveretur: dict. l. § 13. (Dig. lib. x. tit. 3. l. 14. § 3.)

166. As long as partners or their heirs possess in common the common property, although they have possessed it more than a hundred years, no prescription can be set up in order to exclude the action for distribution. But a prescription of thirty years may take place, if they have had a separate possession for more than thirty years; for it will be presumed that there has been a distribution then, of which the act has been lost.

§ II. How Parties should proceed to a Distribution.

167. Before proceeding to distribution the account of what each of the parties owes to the community to be distributed,

167 In taking the account between the partners upon any dissolution, each becomes chargeable with all the debts and claims which he owes, or is accountable for, to the partnership, with all interest accruing upon the same debts and claims, and with all profits which he has made out of the partnership effects during the partnership, or since the dissolution, either rightfully or by misapplication thereof. Stor. Partn. 497.

The creditors have, during the continuance and solvency of the partnership, no lien upon its effects. They can only proceed at law, either against the firm, if their debts be joint, or against one or more of the creditors if they be separate, and, upon obtaining judgment, levy execution, either upon the partnership effects, or the share of the partner, as the case may be. Stor. Partn. 509. Hence, on a dissolution, it may be agreed by the partners that the partnership property shall thenceforth belong to one of them, and if such agreement be bona fide, and for valuable consideration, the property will not be liable to the joint creditors (Exparte Ruffin, 6 Ves. 127.; Exparte Fell, 10 Ves. 347.; Exparte Williams, 11 Ves. 3.; Exparte Rowlandson, 1 Rose, 416.; Campbell v. Mullett, 2 Swanst. 575.); and a similar stipulation in the deed of partnership, to take effect on the dissolution of the partnership, by death or other personal incapacity, but not in cases of forfeiture for felony or by bankruptcy, will be valid. Stor. Partn. 509.

But inasmuch as on a dissolution each partner has a right to have his share ascertained, and has a lien on the partnership effects for it, and as it cannot be ascertained until the creditors of the firm are satisfied, the creditors by this means, and through the medium of the equities of the partners, may obtain payment of their debts in equity.

The joint creditors have a primary claim upon the joint property of the partnership, whether it be administered in equity or bankruptcy, the separate cre-
and of what is due to each by the said community, ought to be entered into. There should be comprehended in this account not only what is owing to the partnership at the time of its dissolution but what has become due to the community since the dissolution, either on account of what each has drawn from the common funds, or on account of the loss which he may, by his default, have occasioned to the effects of the community.

In like manner, there must be comprehended in the account what is due by the community to each of the parties, not only what was due to him by the partnership at the time of its dissolution, but what may since have become due to him from the community, on account of disbursements which he may have made without any profit for the common affairs, or for the property of the community after the dissolution of the partnership.

The amount of the sums for which each of the parties is debtor to the community ought to be set off against those for which he is creditor, and what remains, after such set-off, should be put to the debit or credit of the community. Observe that in the account of what has been received or expended for the partnership, the book of the partnership kept by one of the partners is proof between them. (Lauterback.)

168. After that account has been taken, the common stock is set forth, that is to say, a detailed account of all the different things of which the community is composed; and there is comprehended in this stock, amongst the (dettes actives) debts due to the community, the sums which each of the parties (after the set-off has been made) owe to the community; and on the distribution of the community their own debt is to be deducted from their share.

An account also of the (dettes passives) debts due from the community is prepared, and there is comprehended in it the
sums which (after a set-off has been made) are owing to each of the parties by the community.

These sums ought to be taken by them before the partition of the community.

Each of the things of which the community is composed, whether moveables or estates, is put down in that stock at a certain valuation.

The parties may themselves make this valuation when they are in a position to do so — as when they are all agreed, and are all of age: if not, the valuation will be made by one or more valuers whom they agree upon; and if they cannot agree, the judge appoints a person for that office.

169. After the stock has been taken, the distribution may be proceeded with, commencing with that of the moveables.

Each of the parties has a right to demand that his share in the effects to be distributed shall be delivered to him in kind, and for such purpose, that they shall be made into parcels to be drawn by lots, and the other partners cannot oblige him to submit to a sale, unless there were debts of the partnership which could only be discharged by the produce of the sale of the moveables; in which case, so much of the moveables ought to be sold, as would be sufficient to discharge them, beginning with the perishable moveables.

Each of the parties can demand a sale of the moveables, not only up to the amount necessary for paying what the community owes to strangers, but also for paying the sum which is due to him by the community, and which he has a right to receive before the distribution.

If his copartners were creditors of the community as well as himself, they will set off their credits together, and he will only have to receive first the sum for which he was creditor to a greater amount than they are.

170. After the distribution of the moveables, they proceed next to the immoveables, if there are any; and in like manner lots are made of the property which is to be divided.

It is seldom that these lots can be equal, and precisely of the amount coming to each of the joint owners from the stock. In order to remedy this, and to effect equality among the joint owners, the lot which is too great is charged in
favour of that which is too small. For example, if the mass of the property which is to be distributed between two joint owners is worth 20,000 livres, and the share that each ought to have in it is 10,000, if one of the two lots is of the value of 12,000 livres, and the other 8000, the lot worth 12,000 livres will be charged with 2000 livres in favour of that worth the 8000 livres. By this method the lots will be equal; that of the 12,000 livres being reduced to 10,000 livres, by means of the charge of 2000 livres, and that of the 8000 livres being augmented to 10,000 livres by means of the charge of 2000 livres, which it will receive from the other.

When one of the former partners finds in specie in the mass of the property of the community the things which he has put into it, whether moveables or estates, he has no ground for having them in preference to his partners, by allowing them to take other effects of equal value; he has no more right to them than they have.

171. Sometimes the parties licitate, or put up to auction between themselves the things which are to be distributed, especially the estates, instead of distributing them; and this licitation will take the place of the distribution.

To licitate a thing, is to adjudge it to the one who offers most, and is last bidder, in order that it may belong to him entirely, upon condition of his paying the price for which it was adjudged to him; and the price will be distributed amongst the joint owners, according to the share which each of them had in the thing. See what I have said about licitation in my "Treatise on the Contract of Sale," part 7.

Each of the parties can oblige the others to submit to licitation when the distribution cannot take place otherwise, and there is not a sufficiency of estate to make as many lots as there are joint owners: above all, when there is only one single estate which cannot be divided without depreciating its value.

Infants, even, can be compelled to submit to licitation, but it is necessary to show first that the distribution could not be made otherwise.

When it can be made otherwise, and there is a sufficiency of estates to make as many lots as there are joint owners,
none of the parties, whether they are of full age or minors, can be compelled, contrary to his will, to submit to licitation

When there are some minors among the licitant parties, the licitation can only take place in the presence of a judge, and the biddings of strangers ought to be admitted.

When all the parties are of full age the bidding of strangers are not admitted, except upon the demand of one of the parties; and it is not necessary to go before the judge in order to make the licitation.

172. With respect to the debts due to the community, although they are divided by mere operation of law (nomina ipso jure dividuntur), and in consequence have no need of a distribution; 1. 6. Cod. Fam. Ere.; l. 4. ff. Dict. Tit.; nevertheless, as it would be too embarrassing a procedure for each of the former partners to obtain payment of his share from each of all the debtors of the community, it is customary to divide into lots the good debts, as well as the other effects of the community.

By the Roman law, it was necessary that he to whose lot they had fallen should obtain an assignment from the others of their rights of actions for the shares which they each had in them, and should sue for them as well in his own name as in theirs; l. 2. § 5. ff. Fam. Ere. In our law such an assignment is not necessary; and he to whose lot the debts due to the community have fallen may, by serving the debtors with an extract of his allotment in the distribution, require payment in his own name alone.

With regard to the bad or doubtful debts, they are not divided into lots; but one of the parties is charged with the recovery of them, or even sometimes a stranger, who must account for whatever he may receive, to each of the parties, according to his share therein.

173. It is clear that the debts due from the community do

172. The rules relating to the distribution of successions, the form of such distribution, and the obligations which result therefrom between coheirs, are applicable to distributions between partners. Civ. Cod. of France, 1872.

The rules relating to the distribution of successions in the Code (see Arts. 815. 883.) are in effect the same as those laid down in the text by Pothier for the distribution of the partnership effects.

Our Courts of Equity differ in a striking manner from the French in the
not come within the distribution. Nevertheless, where the price arising from the sale of moveables has not been sufficient to discharge them, they are often distributed amongst the copartners, who each undertake to pay certain debts. But this undertaking does not discharge the other partners from the debts as regards the creditors (l. 25. Cod. De Pact.); it only binds him who has entered into it with regard to his co-partners.

The expenses of the act of distribution, and of all those which take place preparatory to it, ought to be taken from the company; that is to say, that they ought to be first taken from the common monies, if there be any; if not, each of the joint owners ought to contribute thereto, in proportion to his share in the stock.

174. It remains to be observed, with regard to distributions of partnership effects, and other acts which are substituted for them, that equality is more scrupulously required than in commutative contracts, such as contracts of sale, exchange, &c. In those, a person of full age cannot be heard to demand a recission of a contract, solely on account of the loss which

mode of proceeding to a distribution of the partnership effects, which seems to be exceedingly complicated, and liable to many objections, for the usual rule is, that the whole of the partnership property, whether real or personal, should be sold, so that after satisfying the claims of all the creditors of the firm, each partner may, without any further trouble, receive the share to which, on taking the account between them, he may be entitled. Stor. Partn. 501.; Coll. Partn. 206. 211. In Scotland the mode of distribution which, like that of France, was borrowed from the Roman law, has been abandoned, and the more simple and practical mode of a sale, as in our law, has been adopted. 2 Bell. Comm. p. 632, 633. 645. 5th edit.

Upon the dissolution of a partnership the question arises between the real and personal representatives of the deceased partner, whether real estate belonging to the partnership, or its proceeds when sold by the order of the Court, are to be considered as real or personal estate. The result of the authorities appears to be this: that, in the absence of any agreement, and except for the purpose of the payment of probate duty, real estate purchased with partnership capital for the purposes of partnership in trade, will in Equity be converted into personality; but, where real estate belongs to the partners, or has been acquired by them out of their private monies, or by gift, although it is used for partnership purposes, in trade, or if, although it is used for partnership purposes in trade, or if although paid for out of the partnership capital, it is not purchased for the purposes of partnership in trade, it will, in the absence of any agreement, or direction for its sale, retain the character of realty. 1 Lead. Cas. Eq. 130. 137. Bisset, Part. 48.
he has suffered, if it is not more than a half: but in distributions and other acts which are substituted for them, it is sufficient that it exceeds a fourth of what ought to belong to him who complains of the distribution, as we have seen in my Treatise on Obligations, n. 35.

§ III. As to the Obligations which arise from the Distribution.

175. The partner whose allotted share is made subject to a charge, contracts, by the distribution, the obligation of paying it.

These charges consist either of a sum of money or of a rent, according as the parties have agreed.

When the charge consists of a sum of money charged upon one lot in favour of another, that charge is a personal debt of the sum so charged; he to whom the lot so charged falls, contracts that debt towards him to whose lot the charge has fallen: he cannot discharge himself from it by offering to abandon entirely his lot.

In distributions of immoveables, and even of productive moveables, such as cattle, stock in trade of a shop, &c., these charges will, by operation of law, carry interest from the day of the distribution. But, when the joint stock is only composed of unproductive moveables, I think it is otherwise, and that the interest upon the charge is only due ex morâ,—that is to say, only from the day of the demand or decree for payment made to the debtor.

The person to whom the charge is due has a primary lien (hypothèque privilégiée) over all the immoveables of the lot liable to it, and a privilege over the moveables of the said lot, similar to that of a vendor on credit.

176. When, in the partition of immoveables, the charge upon one lot in favour of another, consists of a rent; for instance, when it is said that the first lot shall pay to the second a rent of 100 livres, or a measure of wheat, for rent, that rent is a ground-rent or rent-charge upon the estates composing that lot.

These rents are of the same nature and entirely similar to those which are created by lease of an estate.
They are a real charge on the estates comprised in the lot which is charged therewith; they are primarily due from these estates; he, to whose lot they have fallen, is only the debtor on account of the said estates which he possesses, and he can free himself from them by alienating (déguerpissant) or releasing them, unless the exercise of this power has been interdicted by a clause (de fournir et faire valoir la rente) to provide and pay the rent, or by some other clause which excludes a release. See my treatise on the contract of "Bail à Rente."

He to whom the charge has fallen has, for enforcing the payment of it, the same rights as owners of rent-charges. These rents, created as a charge, where a distribution takes place, are not redeemable, unless the power of redemption has been expressly granted at or after the distribution; and that power is liable to prescription. In a word, all that I have said of rent-charges in my treatise on the contract of "Bail à Rente," is applicable to these.

177. All that has been said only takes place when the lot has been charged immediately with a rent.

But if it was said that such a lot shall pay to the other such sum, for the price of which he will give to him such a rent, that rent would not be a (rente foncière) rent-charge; it would be (rente constituée) an annuity for the price of the payment, always redeemable, according to the nature of annuities. It would be a personal debt of the person to whom the lot should have fallen which is charged with it; but it would not be a real charge upon the estates of that lot, which would only be hypothecated for it.

178. Another obligation, which arises from distribution, is the obligation of guarantee, that each of the joint owners reciprocally contracts towards each of his fellows, for the guarantee of the property comprised in their respective lots. I have treated fully, in the Treatise on the Contract of Sale, part. 7. art. 6., and afterwards in n. 633., to the end of that article, on all that concerns this guarantee; and I have observed there that it differs in four respects from that which arises from the contract of sale. I refer to it in order to avoid repetition.
§ IV. As to the Effect of Distribution.

179. The effect of distribution is to dissolve the community which remained between the former partners after the dissolution of the partnership.

There is a great difference between our French law and the Roman law, as to the effect of the distribution. By the Roman law, the distribution was a kind of exchange; *divisio instar permutationis obtinet*; each of the joint owners was considered to acquire from his fellows the shares which they had before the distribution in the effects comprised in his lot, and to cede to them in lieu thereof what he had, before the distribution in the effects comprised in theirs. On this account, the things which fell to the lot of one of the joint owners remained subject to the charges of the creditors of his copartners, according to their shares therein before the distribution. L. 6. § 8. *Comm. Div.* (Dig. lib. x. tit. 3. l. 6. § 8.)

According to our French law, on the contrary, a distribution is not regarded as a title of purchase, but as an act which solely converts the indefinite shares which each of the joint owners previous to the distribution, was entitled to, in the community which existed between them, into the property alone fallen to the lot of each.

These acts of distribution have, according to our French law, a retrospective effect. In consequence, the property fallen to each lot is considered to have always alone composed the share which he to whose lot it is fallen had in the community. He is considered to have been the sole proprietor thereof since it has been put into or acquired on account of the community, and never to have had any share since it had been contracted, in the property fallen to the lot of the other joint owners. The distribution, according to these principles, is not a title of purchase; and each of the joint owners acquires nothing by the distribution from the others.

It is for this reason that distribution affords no claim to seigneurial rights. It is also for this reason that no part of
the estates fallen to the lot of each of the joint owners is subject to the liens of the private creditors of the others.

For example, if, by the distribution which we make of a community composed of estates which we have each put therein, and others which we have acquired on account of the partnership, the estates which fall into my lot are those which I have brought into it by our contract of partnership, they will be considered never to have ceased to belong to me entirely. The contract of partnership which I have entered into with you, by which I have put them into a community, only gives to you a conditional right therein, depending upon the event of the distribution, in case only they, by the distribution, fall to your lot. The event of the distribution having caused the failure of the condition, you are considered never to have had any right to them; and, consequently, not to have been able to hypothecate them to your creditors.

If the estates which you have put into community fall to my lot, they are considered to have composed my share in the community from the time of the contract of partnership. I am considered to have acquired them from you entirely from that time by the contract of partnership, from the instant of the contract; and not solely by the distribution. For this reason you have not been able, after the contract of partnership, to hypothecate them; and they can be only subject to the charges created by you before the contract of partnership, from which you are obliged to guarantee me.

If the estates which have fallen to my lot are those which have been acquired on account of the partnership during its continuance, they are equally considered to have belonged to me entirely from the time when they were acquired on account of the partnership, which is considered to have acquired them in order to compose the share of him to whose lot they may fall; no part of them, consequently, can be hypothecated by my copartner.

180. These principles operate with regard to distributions which are made (avec retour de deniers) with a return of money, and even with regard to licitations. When an estate alone composing the community which existed between you and me has been adjudged to me by licitation, that estate,
since it has been in community, is considered to have always belonged entirely to me; and you are considered never to have had any thing for your share in the community, except the sum which I am obliged to pay you for your share in the amount of the licitation. You could not, in consequence, hypothecate any part of that estate during the community.
INDEX.

AGENCY. See Partnership.
when distinguishable from partnership, 8. n.

ANONYMOUS PARTNERSHIP, definition of, 42. 75. n.
in what respect similar to and different from partnership en commandite, 43.
forms required for, 58. n.
liability of known partner for debts of, 75.
how managed, 57. n.

APPROPRIATION of payment to one partner when debt due to partner
and partnership, 88.

ARBITRATORS, when partners can demand to be sent before, 99.
appointment of, 99.
when they cannot agree, third to be appointed, 99.
in what manner, 99.
judgment of, 100.

ASSOCIATION IN PARTICIPATION. See Compte en participation.

COMMERCE. See Partnerships en nom collectif, Partnerships en commandite, Anonymous Partnerships, Compte en Participation.
Partnerships for, 39.

COMMUNITY, distinction between, and partnership, 2, 3, 4.

COMPROMISE OF SUIT. See Partnership.

COMPTE EN PARTICIPATION, what it is, 42.
what forms required for, 59. n.

DEBTS of partnerships, en nom collectif, 70.
of partnerships en commandite, 75.
of anonymous partnerships, 75.
of partnerships not being partnerships in trade, 77.

DISSOLUTION. See Partnership.
of partnership, 101.

DISTRIBUTION OR DIVISION. See Partnership.
of partnership effects, 122.

DOMICILE, contract of partnership to be governed by laws of, 121.
place where parties enter into contract presumed to be place of, 121.
if they were there only temporarily, 121.
contract to be governed, not by law of the place where estates situated, but by domicile of parties, 121.
if instrument executed at the domicile of one party, its law is to be followed, 122.
if at the domicile of neither, of the one having the largest share, 122.
if shares equal, the law most conformable to common law must govern, 122.

DONATION. See Partnership.
when partnership consists partly of, 13.
Index.

EN COMMANDITE. See Partnerships en commandite.
partnerships in, 41, 75.

EN NOM COLLECTIF. See Partnerships en nom collectif.
partnerships in, 39, 41.

LEONINE PARTNERSHIP void as unjust, 7, 8.

LOSSES. See Anonymous Partnership, Partnership, Particular Partnerships, Partnership en commandite, Partnership en nom collectif.
of partners how to be borne by partners, 15.
of partnership, 49.

MANAGER. See Partner.

MANDATE subject to revocation not a partnership, 7.

MOMENTANEOUS PARTNERSHIP, definition of, 42.

PARTICULAR PARTNERSHIPS. See Partnership en nom collectif, Partnership en commandite, Anonymous Partnership.
may be either in things or their profits, 36, 37.
or in the produce of their sale, 37.
upon whom the loss falls if the thing brought into partnership perish 37, 38.
for the exercise of a profession, 39.
when illegal, 39.
partnerships in commerce, 39.
not commercial, what forms required for, 61.

PARTNER, how each may use partnership property, 61.
if intended to be let out to hire, 62.
if not so intended, 62.
must contribute towards preservation of partnership property as for repairs, 62.
cannot make any change or innovation on estates, 63.
as buildings without consent of other partners, 63.
where they have allowed buildings, 63.
can only alienate or bind his own share, 64.
in commercial partnerships how far one can bind others, 64, 65.
how far one partner can prevent another concluding a bargain, 66.
partner can dispose of his own share to third party, 66.
but cannot without consent bring him into the partnership, 67.
third party must account to him for gains made out of partnership property, 67.
and other partners can only proceed against their partner for an account, 67.
who is also liable for damage occasioned by third party, 68.
even if he be insolvent, 68.
may commence action against third party for an account, 68.
third party should be party to the action against a partner, 68.
profits of third party cannot be set off against damage occasioned by, 68.
partner selling share to third party, bound to account for damage occasioned by himself or partners, 69.
manager cannot take a third party into the partnership, 70.
can commence the action pro socio when, 81.
liability of, to account to partnership, 81.
for what he has promised to contribute thereto, 82.
at whose risk it is when specific property brought into partnership, 82.
when not specific, as money, 84.
is, except in universal partnership, debtor, if partnership evicted from property contributed by him, 85.
Index.

PARTNER — continued.
and for the fruits of property when, 85.
and for interest on money when, 86.
liable for fruits or interest only when enjoyment of property only to
be contributed, 86.
must restore all withdrawn from partnership fund, 86.
with interest, 87.
which in universal partnerships commences only from dissolution, 87.
must account to partnership for gains made by skill, 88.
but only for that which he has contracted to bring into the partner-
ship, 88.
how payment of a creditor to partner and partnership should be ap-
propriated by, 88.

obtaining payment of his share of the debt in full must bring it into
the common stock, 89.
so if he sells his own share of partnership goods, 90.
unless it were property not intended for sale, 90.
will not be obliged to bring to common stock profits of which part-
tnership was only accidental cause, 90.
as a donation or legacy, 90.
must account for losses caused by his faults, 91.
even of omission, 91.
but not for the lightest negligence, 91.
distinction between levissima and crassa negligentia, 91.
cannot set off profits made by his industry, 92.
putting property into partnership for enjoyment only entitled to it at
dissolution, 92.
at whose risk it remains, 93.
entitled to expenses incurred in affairs of partnership, 93.
and to be indemnified from obligations, 93.
and from unavoidable risks and hazards, 94.
as when he or his servants have been robbed or wounded on a
journey on partnership business, 94.
partnership not liable to repay money not wanted for journey, 95.
when part of money saved, 95.
partnership not liable to, for losses of which it has been only the
accidental cause, 95.
cannot claim indemnity for neglect of his own affairs for those of
partnership, 96.
to whom debt is due from partnership, must share loss when one of
the partners is insolvent, 96.
must allow others to enjoy common property, 97.
and contribute to its repair and preservation, 97.
unless they offer to abandon it, 97.
must submit to distribution on dissolution, 97.

PARTNERSHIP, distinction between, and community, 2, 3, 4.
to what class of contracts it belongs, 4, 5.
formalities requisite for, 4.
each partner must contribute something thereto, 6.
not necessarily anything of the same nature, 6.
but it must be appreciable, 6.
must be for the common interest of the parties, 7.
distinction between, and mandate, 7.
each partner in, must have a share of gain, 7.
called Leonine, void as unjust, 7, 8.
contract of valid, if each partner may probably have share of profits, 8, 9.
Mr. Justice Story's observations on, when distinguishable from agency or service, 8. n.
invalid, if business of be illegal, 11.
to be equitable (though not in strict law) shares of profits should be in proportion to contribution of partners, 11.
extcept where a partner contributing less has with knowledge of co-partner an equal share in assigned to him, 13.
or he confers an equivalent upon his copartner, 14.
fictitious contracts of, to disguise usury, void, 17.
questions supposed by casuists, 18.
different kinds of partnerships, 23.
universorurum bonorum, 23.
quae ex questu veniunt, 32.
in certain things, 36.
in the exercise of a profession, 38.
en nom collectif, 39.
en commandite, 39.
anonymous, 39.
clauses in contract of, 43.
its commencement and duration, 44.
its management, 45.
when given to one partner, 45.
like general power of attorney, 45.
what it enables him to do, 45.
in universal, 46.
in commercial, 46.
cannot compromise suit, 46.
or make a donation of effects of, 46.
except such as are usual, 46.
exception in the case of community between husband and wife, 47.
or where more extensive power is given to manager, 47.
power of management not revocable like power of attorney, 47.
partner having, can act against dissent of another, 48.
unless granted after contract, 48.
may be granted to several partners, 48.
or divided amongst them, 48.
their powers in such cases, 48.
clause, that one cannot act without another, must be observed, 49.
as to shares in profits and losses, 49.
when contribution consists of money or valued effects, share of profits and losses in proportion, 50.
if effects not valued, shares in the absence of contract equal, 50.
clause regulating shares when necessary, 50.
amount of, may be left to regulation of a third party or one of themselves, 51.
when it may be reformed, 51.
partner may be recompensed for greater contribution, 51.
as when it consists of greater skill, 51.
by bearing a smaller or no loss, 52.
by an annual or fixed sum, 52.
by withdrawal of larger sum contributed with interest at the distribution, 52.
who can enter into, 54.
PARTNERSHIP—continued.

forms required for contract of, 55.

dissolution of, 101.
effected by extinction of the object, 101, 102.
by partner becoming incapable of contributing industry thereto, as by
paralysis, insanity, 103, n. 104.
by completion of the business of, 105.
by the death of one of the partners, 101, 105.
right of his heir, 105.
does not become a partner, 106.
by the Roman law it could not be agreed that heir should become a
partner, 106.
secus by the French law, 106.
and the partnership is dissolved between surviving partners, 107.
if no contract to the contrary, 107.
exception in partnerships for farming the public revenues, 107.
dissolved by the civil death of partner, 107.
or by his insolvency, 108.
may be dissolved by mutual consent, 109.
if without limitation of time, may be dissolved by one partner, 109.
but he must renounce partnership in good faith, 109, 110, 111.
and not at an unseasonable time, 109, 111, 112.
for a certain time one partner cannot dissolve it sooner, 109.
unless for just cause, 113.
notwithstanding clause not to dissolve it sooner, 113.
what are just causes of withdrawal, 114.
bad conduct of partner, 114.
notice to be given of renunciation, 114.
who answerable for losses incurred after renunciation, 115.
dissolution of, effect of, 116.
future contracts will be on account of contracting party, 116, 117.
unless necessary consequence of the affairs of the partnership, 116.
or where partner was ignorant of the dissolution, 117.
payment by debtor, ignorant of dissolution, to one partner valid, 119.
when he will be considered to be ignorant thereof, 119.
on dissolution, property brought into partnership for enjoyment only
ceases to be common, 120.
and produce will belong to owner, 120.
as to customs of Paris, Orleans, and Blois, 121.
which is to be followed, 121. See Domicile.

things, the property of which has been put into partnership, continue
common until distribution, 122.

dissolution of, does not put an end to debts between partner and part-
nership, 122.
effects, distribution or division of, 122.
partners or heirs may demand an account, 122.
what actions they can maintain, 123.
against whom, 123.
minors cannot demand distribution of immovables, 124.
persons of full age can even against minors, 124.
when distribution takes place, 124.
may be postponed by agreement, 124.
partner may sell his share in the meantime, 124.
but third party is bound by agreement, 124.
PARTNERSHIP — continued.

mode of proceeding to a distribution of the effects of, 125.
different mode of procedure in England, 129, 130. n.
in Scotland, 130. n.
how expenses of distribution are to be borne, 130.
when acts of distribution can be rescinded, 130.
obligations arising from the distribution, 131.
community is dissolved thereby, 133.
distinction between French and Roman law, 133.
distribution by Roman law, species of exchange, 133.
   by French, is retrospective, 133.
effect of distinction, 133.

PARTNERSHIP EN COMMANDITE. See Partner, Partnership.
what it is, 41. 75.
liability of principal partner for debts of, 75.
partner en commandite, how liable for debts of, 75. n. 77.
what acts he can do, 75. n.
when liable for all debts, 75. n.
it does not exist in England, 76. n.
might be beneficially extended to, 76. n.

PARTNERSHIP EN NOM COLLECTIF. See Partner, Partnership.
definition of, 39. 41.
how contracts of each partner must be signed, 39. 41.
of what it is composed, 40.
as to things acquired by partner on private account with money of
   partnership, 40.
forms required for, 58.
liability of each of the partners in, for debts jointly and separately, 70.
heir of partner liable for, 71.
what is a partnership debt, 71.
by whom it can be contracted, 71.
partner must have had given to him either expressly or by implication
   power of managing affairs of, 71.
when presumed to have been given, 72.
factor or agent of partners can bind, 74.
debt must be contracted in the name of, 74.
and is binding on though no benefit derived therefrom, 74.
secus if contract did not concern affairs of partnership, 74.
or if debt be contracted in name of one partner, 75.
though partnership may have derived benefit therefrom, 75.
remedy of creditor in such case, 75.

PARTNERSHIP NOT IN TRADE. See Partner, Partnership.
partners in the absence of contract liable only severally, 78.
and for an equal share although partnership shares unequal, 78.
if debt contracted by one partner, although in joint names, be alone
   liable to creditor, 79.
but he may make his partner account to him, 79.
other partner liable when he has given power to other to contract
debts, 79.

PARTNERSHIPS QUE EX QUÆSTU VENIUNT. See Partner,
   Partnership.
everything acquired by commerce falls into, 32.
or by any profession, &c., 33.
when it is considered to be contracted, 32.
enjoyment of property only according to Roman law entered therein,
32. n. 33.
PARTNERSHIPS QUÆ EX QUÆSTU VENIUNT — continued.
moveable property also by French law, 32. n. 33.
profits of profession, 33.
even although contract acquiring property declares it to be made on
private account of one partner, 33.
real estate acquired prior to partnership does not fall therein, 34.
nor property accruing from cancellation of contract aliening it, 34.
nor when acquired from droit de retrait lignager, 34.
or by exchange, 34.
or by succession, 35.
not bound by the Roman law by debts of partners before contract, 35.
in French law, bound by debts affecting the moveables, 35.
bound by debts contracted for business of partnership during its con-
tinuance, 35.
forms required for, 56.

PARTNERSHIP UNIVERSORUM BONORUM. See Partner,
Partnership.
nature of, 24.
express contract for necessary, 25.
may be entered into between persons of unequal wealth, 25.
property how rendered common by contract, 25.
except as to active debts by Roman law, 26.
secur by the French law, 26.
all present and future property of partners falls into it, 27.
except legacy or donation with condition that they should not do so, 27.
similar condition in contract of purchase by partner not available,
27.
by the Code all property by succession, donation, or legacy, except
for enjoyment, does not fall into, 24. n.
or property acquired by crime, 28.
is chargeable with present and future debts and expenses of partners,
29.
except such as are extravagant, 30.
or money lost at play or in debauchery, 31.
or penalties for offences committed by a partner, 31.
unless unjustly condemned, 31.
when partner considered to be unjustly condemned, 31.
bound where partner has brought in capital arising from an offence,
31.
power of management in, given to one partner what it enables him
to do, 46.
forms required for, 56.
liability of partners in, for debts contracted by one of them, 80.
has no warranty against partner contributing estates from which it is
evicted, 85.
interest on sums withdrawn by partner commences only from dissolu-
tion, 87.

PARTOWNERSHIP, or community, distinction between, and partner-
ship, 2, 3, 4.

PRESCRIPTION, cannot be set up to exclude action for distribution,
125.
unless there has been separate possession for thirty years, 125.

PROFESSION. See Particular Partnerships.
partnerships for the exercise of, 38.
Index.

PROFITS. See Partnership.
   of partnership, 49.
   losses to be borne in proportion to, 15.
PRO SOCIO. See Partner, Partnership.
   action of, when and against whom it lies, 81, 97.
   is personal, 98.
   can generally be maintained from time of dissolution, 98.
   as to particular objects while partnership lasts, 98.
   parties may demand to be sent before arbitrators, 98.

USURY. See Partner, Partnership.
   fictitious contracts of partnership to disguise, void, 17.

THE END.

LONDON:
A. and G. A. Spottiswoode,
New-street-Square.
CATALOGUE

OF

Law Works

PUBLISHED BY

MESSRS. BUTTERWORTH,

LAW PUBLISHERS TO THE QUEEN'S MOST EXCELLENT MAJESTY,

AND

Publishers to the Public Record Department.

"Now for the Laws of England (if I shall speak my opinion of them
without partiality either to my profession or country), for the matter and
nature of them, I hold them wise, just and moderate laws: they give to God,
they give to Caesar, they give to the subject what appertaineth. It is true
they are as mixt as our language, compounded of British, Saxon, Danish,
Norman customs. And surely as our language is thereby so much the richer,
so our laws are likewise by that mixture the more complete."—LORD BACON.

LONDON:

7, FLEET STREET.

1854.
# CONTENTS

<table>
<thead>
<tr>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Archer's Index to the Unrepealed Statutes</td>
<td>10</td>
</tr>
<tr>
<td>Bainbridge's Law of Mines and Minerals</td>
<td>17</td>
</tr>
<tr>
<td>Baker's Law of Coroner</td>
<td>17</td>
</tr>
<tr>
<td>Blaxland's Codex Legum Anglicanum</td>
<td>14</td>
</tr>
<tr>
<td>Blayney's Law of Life Assurance</td>
<td>16</td>
</tr>
<tr>
<td>Brown's Chancery Cases by Belt</td>
<td>17</td>
</tr>
<tr>
<td>Bercell and Kennedy's Joint Stock Companies Act</td>
<td>13</td>
</tr>
<tr>
<td>Burn's Marriage and Registration Acts</td>
<td>9</td>
</tr>
<tr>
<td>Clark's House of Lords Reports</td>
<td>18</td>
</tr>
<tr>
<td>Chitty's Commercial Law</td>
<td>15</td>
</tr>
<tr>
<td>Cooper's Chancery Acts and Orders</td>
<td>12</td>
</tr>
<tr>
<td>Chancery Chamber Practice</td>
<td>12</td>
</tr>
<tr>
<td>Chancery Cases and Dicta, with Chancery Miscellanies</td>
<td>18</td>
</tr>
<tr>
<td>Coote's Ecclesiastical Practice</td>
<td>15</td>
</tr>
<tr>
<td>Crabbe's Conveyancing, by Christie</td>
<td>7</td>
</tr>
<tr>
<td>Davis's County Court Evidence</td>
<td>13</td>
</tr>
<tr>
<td>Edward's Laws of Gaming</td>
<td>17</td>
</tr>
<tr>
<td>Emerigon on Marine Insurances, by Meredith</td>
<td>13</td>
</tr>
<tr>
<td>Fearne's Chart of Landed Property</td>
<td>14</td>
</tr>
<tr>
<td>Fonblanque's Bankruptcy Reports</td>
<td>18</td>
</tr>
<tr>
<td>Gael on Legal Instruments</td>
<td>16</td>
</tr>
<tr>
<td>Grant's Law of Corporations in General</td>
<td>11</td>
</tr>
<tr>
<td>Greening's Forms of Pleadings, &amp;c., in Common Law</td>
<td>12</td>
</tr>
<tr>
<td>Gunning on the Law of Tolls</td>
<td>13</td>
</tr>
<tr>
<td>Hale's History of the Common Law</td>
<td>14</td>
</tr>
<tr>
<td>Hall's Municipal Elections</td>
<td>16</td>
</tr>
<tr>
<td>Hamel's Laws of the Customs</td>
<td>3</td>
</tr>
<tr>
<td>Hertslet's Commercial Treaties</td>
<td>16</td>
</tr>
<tr>
<td>Kennedy's Chancery Acts and Orders</td>
<td>7</td>
</tr>
<tr>
<td>Keyser's Law of the Stock Exchange</td>
<td>11</td>
</tr>
<tr>
<td>Leigh's Law Student's Guide</td>
<td>15</td>
</tr>
<tr>
<td>—— Law of Nisi Prima</td>
<td>13</td>
</tr>
<tr>
<td>Moore's Solicitor's Practical Forms</td>
<td>10</td>
</tr>
<tr>
<td>—— Instructions for preparing Abstracts of Title</td>
<td>10</td>
</tr>
<tr>
<td>—— Country Attorney's Pocket Remembrancer</td>
<td>10</td>
</tr>
<tr>
<td>Norman's Treatise on the Law of Patents</td>
<td>8</td>
</tr>
<tr>
<td>Oke's Magisterial Synopsis</td>
<td>9</td>
</tr>
<tr>
<td>—— Magisterial Formulist</td>
<td>9</td>
</tr>
<tr>
<td>—— Solicitor's Bookkeeping</td>
<td>9</td>
</tr>
<tr>
<td>—— Turnpike Laws</td>
<td>3</td>
</tr>
<tr>
<td>O'Dowd's New Chancery Practice</td>
<td>11</td>
</tr>
<tr>
<td>Pulling's Laws and Customs of London</td>
<td>14</td>
</tr>
<tr>
<td>—— Law and Usage of Mercantile and Joint Stock Accounts</td>
<td>15</td>
</tr>
<tr>
<td>Quain and Holroyd's Common Law Procedure</td>
<td>12</td>
</tr>
<tr>
<td>Record Publications, Catalogue of</td>
<td>17</td>
</tr>
<tr>
<td>Robinson's, T., Gavelkind</td>
<td>13</td>
</tr>
<tr>
<td>——, New Admiralty Reports</td>
<td>18</td>
</tr>
<tr>
<td>Royle's Copyhold Enfranchisement Manual</td>
<td>11</td>
</tr>
<tr>
<td>Scott's Common Bench Reports</td>
<td>18</td>
</tr>
<tr>
<td>Scliven's Law of Copyholds, by Stalman</td>
<td>12</td>
</tr>
<tr>
<td>Sewell's Law of Sheriff</td>
<td>16</td>
</tr>
<tr>
<td>Shelford's Law of Railways</td>
<td>6</td>
</tr>
<tr>
<td>Stephen's New Commentaries on the Laws of England</td>
<td>4</td>
</tr>
<tr>
<td>—— Questions on Ditto</td>
<td>5</td>
</tr>
<tr>
<td>Thomas's Hand-Book to the Public Records</td>
<td>17</td>
</tr>
<tr>
<td>Tudor's Edition of Pothier's Partnership</td>
<td>6</td>
</tr>
<tr>
<td>Warren's Manual of Election Law and Registration</td>
<td>8</td>
</tr>
<tr>
<td>—— Election Committee Practice</td>
<td>8</td>
</tr>
<tr>
<td>Whittaker's New York Codes Practice</td>
<td>15</td>
</tr>
<tr>
<td>Wharton's Articled Clerk's Manual</td>
<td>3</td>
</tr>
<tr>
<td>Wills's Principles of Circumstantial Evidence</td>
<td>14</td>
</tr>
<tr>
<td>Works Preparing for Publication</td>
<td>19</td>
</tr>
</tbody>
</table>
I.

WHARTON'S ARTICLED CLERK'S MANUAL.
Seventh Edition.
12mo., 14s. cloth.

A MANUAL for ARTICLED CLERKS: containing Courses of Study as well in Common Law, Conveyancing, Equity, Bankruptcy and Criminal Law, as in Constitutional, Roman, Civil, Ecclesiastical, Colonial and International Laws, and Medical Jurisprudence; a Digest of all the Examination Questions; with the New General Rules, Forms of Documents, Notices and Affidavits, and a List of the proper Fees—being a comprehensive Guide to their successful Examination, Admission and Practice as Attorneys and Solicitors of the Superior Courts. SEVENTH EDITION. By J. J. S. WHARTON, M.A., Barrister at Law, Author of "The Law Lexicon," &c.

II.

OKE'S TURNPIKE LAWS.
12mo. 12s. cloth.

The LAWS of TURNPIKE ROADS: comprising the whole of the General Acts now in force; the Acts as to Union of Trusts, for facilitating Arrangements with their Creditors, as to the interference by Railways with Roads, their non-repair, and enforcing contributions from Parishes, &c., &c., practically arranged. With Cases, copious Notes, all the necessary Forms, and an elaborate Index, &c. &c. By GEORGE C. OKE, Author of "The Magisterial Synopsis" and "The Magisterial Formulist."

III.

HAMEL'S LAWS OF THE CUSTOMS.
One vol., royal 8vo., 16s. cloth.

THE LAWS of the CUSTOMS, consolidated by direction of the Lords Commissioners of her Majesty's Treasury, 16 & 17 Vict. caps. 106 & 107; with a Commentary, containing Practical Forms, Notes of Decisions in Leading Customs Cases, Appendix of Acts, and a copious Index. By FELIX JOHN HAMEL, Esq., Solicitor for her Majesty's Customs.

"An elaborate Commentary on the Laws of the Customs."— The Times.

"To the Merchant it will be found an invaluable guide; to the Customs Officer a most instructive companion; and to the lawyer the only treatise deserving the name ever given to the profession on the important branch of Commercial Law which it professes to illustrate."— Law Magazine.
NEW COMMENTARIES on the LAWS of ENGLAND,
in which are interwoven, under a new and original Arrangement of the
general Subject, all such parts of the Work of Blackstone as are applicable
to the present times; together with full but compendious Expositions of the
Modern Improvements of the Law up to the latest period; the original and
adopted Materials being throughout the Work typographically distinguished
from each other. By Henry John Stephen, Serjeant at Law. Third
Edition. Prepared for the press by James Stephen, of the Middle Temple,
Barrister at Law, and Professor of English Law, &c. at King’s College, London.

"For hoping well to deliver myself from mistaking, by the order and per-
spicuous expressing of that I do proceed, I am otherwise jealous and affer-
tionate to receive as little from antiquity, either in terms or opinions, as may

From the Law Magazine.

"We have long regarded this as the most valuable law book extant. We make
no exception. We believe, moreover, the labour saved to the Student by this
work to be invaluable. Nor are we sure that any amount of labour could give him
the same comprehensive insight to the science he is about to enter upon. It is
the grammar of the law. It is sheer nonsense to talk of the worth of Blackstone
nowadays. We undertake to say that the Student who should read him now would
have to unread half the work contains, and add as much more to his information
when he had exhausted all that Blackstone knew. This results not merely from the
changes which have since taken place, but from the diffuse and often verbose style
in which Blackstone wrote his very faulty work, which it has been the fashion of a
comparatively illiterate age to laud and extol. We venture to suggest to Serjeant
Stephen to discard Blackstone altogether, and to re-write the passages he has
modestly but injudiciously interpolated in his own infinitely superior composition.
We may here allude to the great care taken by Mr. James Stephen, to whom much
credit is due for the intelligent zeal and diligence he has evinced in preparing this
edition of Stephen’s Commentaries for the press."

From the Law Times.

"Assuming that all prudent Practitioners and Students will wash their hands
of the past and begin to form small practical libraries entirely of the recent law,
they could not find a better foundation than this third and new edition of Serjeant
Stephen’s Commentaries, which has been moulded throughout to the present state
of the law and comprises all the recent alterations. Every lawyer knows the worth
of this famous work as it came from the hands of its Author; we can assure them
that it has lost none of its value in the hands of his Son, who has performed his
labourious task of editing and rewriting much, with the same care, the same
industry, the same mastery of the principles of our law, and in the same clear and
graceful style, that recommended the compositions of his father to popularity, even
more than the fulness of learning, without its parade, that distinguished these
Commentaries.

"In this manner Mr. James Stephen has yet further improved upon the work
of his Father. He has presented the law as it is now with all its many changes, so
that the Student may read it with confidence that he is not mistaking the old law for the new, and the Practitioner will find the double duty of unlearning as well as learning, which is now imposed upon him, much facilitated by the comprehensive view which such a work as this will give him of the entire domain of the law of England, changed, modified, reformed, improved, botched and tinkered as it has been by skilful and unskilful hands, by practical and by unpractical men, by those who would improve as well as by those who would destroy the goodly fabric. We heartily recommend these Commentaries as beyond measure the best book that has ever appeared to form a foundation for the study of the law of England."

From the Justice of the Peace.

"To speak in terms of approbation of a work on which the fiat of public opinion has so unmistakably set its stamp would be altogether an act of supererogation. Every one knows that the last four or five years have been a stirring time in the way of legal reform. He will, therefore, be quite prepared to learn that the present edition of the New Commentaries bears the mark of alteration, either in text or note, in almost every chapter throughout the work, if not in every page. We honestly and heartily advise him to turn to the work itself, and he will find that it not only contains the latest information upon almost every subject he may require to be informed upon, but that as in former editions, so in this, whatever is handled is treated in that perspicuous and scientific manner which has hitherto contributed to extend the reputation of the New Commentaries."

From the Legal Observer.

"We welcome a new and third edition of Mr. Serjeant Stephen's Commentaries on the Laws of England, founded on the text of Blackstone. In this edition the learned author has been ably assisted by his son Mr. James Stephen. They have, with great diligence and accuracy, digested the chief alterations in the law since the last edition of the work—a task of great difficulty, requiring no ordinary knowledge of the law as it was and as it is, with an extraordinary power of condensing and arranging the changes which have been effected in nearly all departments of our judicial system from year to year. The arduous task of this new edition has been ably performed. We know not any work which, taken as a whole, can be compared with the Commentaries as the first introduction to the Study of the Laws of England, whether for the use of the lawyer, the legislator, or the private gentleman."

QUESTIONS ON MR. SERJT. STEPHEN'S NEW COMMENTARIES.

8vo., 10s. 6d. cloth.

QUESTIONS for LAW STUDENTS on the THIRD EDITION of MR. SERJEANT STEPHEN'S NEW COMMENTARIES on the LAWS of ENGLAND. By James Stephen, Esq., of the Middle Temple, Barrister at Law, and Professor of English Law, &c., at King's College, London.

"Stephen's Commentaries is the Student's Text-book; for it is a Blackstone improved—Blackstone as the author would have written it had he lived in our day. Now the best mode of learning law is to read carefully, and then either to question yourself or to be questioned by another, as to what you have read. Thus you find out what you have mastered and in what you are deficient. But few are fortunate enough to possess friends competent to this task; and to such, a volume that plays the part of a friend, and supplies the questions, will be of great value. The Student should write his answers, and then compare them with the text; and for this purpose references are given to the page where the answers to each will be found. Mr. James Stephen has done good service to his father's fame by thus extending the usefulness of the best law book for Students."—Law Times.
SHELFORD ON THE LAW OF RAILWAYS—THIRD EDITION.

Just published, royal 12mo. 30s. cloth.


"Mr. Shelford has long since established implicit confidence in the accuracy, fullness and practical utility of every book to which his name is attached. His Law of Railways has long been among the best of his performances, and a careful examination of this edition will fully warrant his announcement that the new matter is important and extensive."—The Law Magazine.

"Mr. Shelford was one of the first to reduce this new law to the form of a treatise, and that his labours have found favour with those who are most competent to judge of their value is proved by the fact that already it has attained to the dignity of a Third Edition. It is not necessary now to describe a book that must be so well known to all our readers,—enough to state that this New Edition embodies the very latest Law, all the New Statutes and the multitudinous Decisions, so that the Volume presents, in a form conveniently arranged for reference, the entire Law of Railways as it is at this moment."—The Law Times.

"We can readily indorse Mr. Shelford’s assertion, that the new matter introduced into this edition is extensive and important. This, added to the number of forms, of considerable importance, and cases, of which there are some 1200, an ample table of contents and a very copious index, conduce to make the work all that could be desired. Those who are interested in the law on which it treats may refer to it not merely with a certainty of being able to find what they are looking for, but of finding the general law on the subject carefully collected, explained and illustrated, by a reference to almost every decision which bears upon the point at issue."—The Justice of the Peace.

"The work has now been expanded to 800 pages, comprising every statute and decision of importance. The work is valuable not only to all engaged in behalf of railway companies, who may form a comparatively small part of the Profession, but to all who have dealings with or claims upon railway companies, and in this respect the public in general and the Profession at large are interested in ascertaining as well the provisions of the Legislature as the construction put upon the enactments which affect the individual members of the community."—Legal Observer.

"Not only to the Profession but to shareholders, allottees of shares, provisional committee-men and others is this goodly digest a necessity, but all who contemplate incurring the liabilities or seeking the rights and profits accruing to railway office, may consult with advantage Mr. Shelford’s pages. It is the best arranged digest of Railway Law of the time."—Morning Advertiser.

POTHIER ON PARTNERSHIP, BY TUDOR.

8vo., 5s. cloth.

A TREATISE ON THE CONTRACT OF PARTNERSHIP, by Pothier; with the Civil Code and Code de Commerce relating to that subject, in the same order, translated from the French, with Notes referring to the Decisions of the English Courts. By OWEN DAVIES TUDOR, Esq., of the Middle Temple, Barrister at Law.
VIII.

CRABB'S CONVEYANCING.—FOURTH EDITION, BY CHRISTIE.

Just published, 2 vols. royal 8vo. 24. 2s. cloth.


"The original work needs no commendation; it is a standard book of the highest reputation and of indispensable utility. In this new edition Mr. Christie has endeavoured to curtail the work as much as possible without diminishing materially the number of precedents, and has altered those which are retained that they may be similar to the forms of drafts now in use. He has revised the Prefaces to the different Precedents according to the various changes made in the law. He has retained the alphabetical arrangement, and has not diminished the variety of subjects on which the Precedents are given. All this must largely enhance the value of the work not merely to Conveyancers but to all practical men. The new Forms are drawn with admirable precision, and reflect great credit on Mr. Christie, who is entitled to the thanks of the profession for a really valuable addition to our working libraries."—Law Magazine.

"Mr. Christie has not only ably revised this Fourth Edition of the late Mr. Crabb's work, but very materially improved it by amending, and in many instances curtailing, the length of the original precedents, and adapting them to the established forms of the present day. The introductory statements of the law relating to each class of drafts are concise and highly useful, particularly to the articled clerk and young solicitor, who it is obvious should strive to unite an accurate knowledge of the principles of law applicable to the various kinds of legal instruments with the practical forms by which the intentions of the parties are to be carried into effect, and by which means he will soon become master of his profession. The Editor has with great care in the Prefaces to each class of Deeds, and the notes thereon, noticed the various alterations in the law which have taken place since the former edition of the work."—Legal Observer.

"Crabb's Conveyancing is so well and favourably known to all conveyancers, as well as those persons generally connected with the transfer of property, that a new edition would have perhaps attracted less attention, were it not that the present is edited by so excellent a conveyancer as Mr. Christie. The circumstance of his editing the work stamps it at once with the profession as the best groundwork existing. The arrangement, the forms, selection of precedents, and general treatment of the subject were so well given in Mr. Crabb's original work, that an editor could mould them to the form and spirit of the present day, retaining all the valuable portions, and rendering them applicable to practical purposes, as altered by the statutes passed since Mr. Crabb wrote. We must award our warmest praise to Mr. Christie for producing a work so much required by the profession, and which he has given in so perfect a form, that no lawyer will feel his library to be complete without it."—Bell's Messenger.

IX.

THE NEW CHANCERY ACTS AND ORDERS, 1853.

12mo., 12s. cloth,

The CODE of CHANCERY PRACTICE. By T. Kennedy, a Solicitor of the Court. Vol. II. containing all the Orders from the year 1845 to March, 1853—Sir George Turner's Act—The Act for amending the Practice and Course of Proceeding in the Court of Chancery, with the Orders under it—The Acts for abolishing the Office of Master, and for Relief of the Suitors—a full Analysis of the Contents of the Volume—explanatory Notes, and a very full Index.

Vol. I. of the above work, containing all the Orders from the year 1814 to the 8th May, 1845, with an Index, inclusive, may also be had, price 7s. 6d. either with Vol. II. or separately; each Volume being perfect in itself.
X.

WARREN'S MANUAL OF PARLIAMENTARY ELECTION LAW.

One thick vol. royal 12mo. 25s. cloth.

A MANUAL of the PARLIAMENTARY ELECTION LAW of the UNITED KINGDOM, with reference to the Conduct of Elections, and the Registration Court; with a copious Index. By SAMUEL WARREN, D.C.L., Q.C., and Recorder of Hull.

"We are satisfied that, whether as Candidates or Members, or as Agents, Solicitors, or Counsel—all who are interested in Elections that may probably or possibly be contested, and who are engaged in the management thereof, will avail themselves of this invaluable volume."— The Legal Observer.

"A work which appears to have been executed with great care."— JURIST.

"Mr. Warren's work has the great advantage of bringing down the cases to the present period, and of giving succinctly and clearly the law as it now stands."— Law Magazine.

XI.

WARREN'S LAW AND PRACTICE OF ELECTION COMMITTEES.

Royal 12mo., 15s. cloth.


"The present volume bears internal evidence of the master hand by which, alone, so important a subject ought to be touched. The arrangement is simple but logical; the authorities are carefully collected and stated; the style is clear and precise, yet rendered agreeable by a freshness and originality which often rival those of the historian and the philosopher."— Morning Herald.

"The whole work is of the first importance to all Practitioners in both branches of the profession, in any respect engaged in business connected with the election of Members of Parliament."— Legal Observer.

"Undoubtedly the most complete and elaborate compendium of the laws relating to the structure of the House of Commons (or rather the mode of its construction) ever published. . . . Henceforth, or we are marvellously mistaken, 'Warren's Law of Elections' will be referred to as the standard authority, even within the walls of Parliament."— The Sun.

"As long as the law shall remain as it is, this very elaborate and able exposition of it, clearly arranged, and excellently illustrated by the best authorities, will remain the leading book upon the subject."— Examiner.

XII.

NORMAN'S MANUAL OF THE NEW PATENT LAW.

Post 8vo., 7s. 6d., cloth.

A TREATISE on the LAW and PRACTICE relating to LETTERS PATENT for INVENTIONS as altered and amended by Statutes 15 & 16 Vict. c. 83, and 12 & 13 Vict. c. 109, with the New Rules of Practice in the Offices of Commissioners of Patents, and in the Petty Bag Office in Chancery, and all the Cases down to the time of publication. By JOHN PAXTON NORMAN, M.A., of the Inner Temple, Barrister at Law.

"This is a very compact and useful manual."— Jurist.

"This is an ably written volume, the materials of which have been carefully collected and judiciously arranged."— Legal Observer.

"We recommend Mr. Norman's book on Patents, which is the most complete as well as the most recent work on the recent Statute."— Law Times.

"Mr. Norman's is a book that may be safely recommended; it is really a Treatise on the Law of Patents, in which principles are digested from the statutes and decisions, expressed in a terse and scholarly manner."— The Spectator.

"Of the various works on the subject of Patent Law, that before us by Mr. Norman possesses just claims upon the attention of lawyers and men of science for its full information, lucid arrangement, and unquestionable accuracy."— The Art Journal.

"Mr. Norman's book is perhaps the best on the new Patent Law, in so far as it gives a succinct account of the whole subject—we recommend the work as good, portable and cheap."— The Press.
XIII.
OKE'S MAGISTERIAL SYNOPSIS.—FOURTH EDITION.
8vo., 21s. cloth.

(Dedicated, by permission, to the Lord Chief Justice of England.)

The MAGISTERIAL SYNOPSIS: comprising Summary Convictions and Indictable Offences, with their Penalties, Punishment, &c., and the Stages of Procedure, tabularly arranged: together with all other Proceedings before Justices out of Sessions: adapted practically throughout to the provisions of Sir John Jervis's Acts; with Forms, Cases, Copious Notes and Observations, &c. Fourth Edition, enlarged and improved. By George C. Oke, Assistant Clerk to the Newmarket Bench of Justices, Author of "The Magisterial Synopsize."**In this improved edition the important Statutes and Decisions of the last two years relating to Magisterial Practice are now incorporated."

"It is not now necessary to repeat the commendations that were awarded to the earlier editions of this work, for the Profession have proved by practical trial of it that they were just; nor to describe it, for it is known to all our readers. Enough to announce the fact that a Fourth Edition has been called for, and that it contains all the law down to the present time."—Law Times.

XIV.
OKE'S MAGISTERIAL FORMULIST.
8vo., 21s. cloth.

The MAGISTERIAL FORMULIST, being a Complete Collection of Magisterial Forms and Precedents for practical use in all Matters out of Quarter Sessions, adapted to the Outlines of Forms in Jervis's Acts, 11 & 12 Vict. cc. 42, 43, with an Introduction, Explanatory Directions, Variations and Notes. By George C. Oke, Author of "The Magisterial Synopsis."**The above Work is intended as a Companion to "Oke's Magisterial Synopsis," and may be used with that or other Books of Magisterial Practice."

"Another of Mr. Oke's laborious productions which have recommended themselves by their practical character. A very copious Index gives ready access to whatever may be sought for."—Law Times.

"The same care pervades the present elaborate Work as characterized the Author's earlier labours, and the utter uselessness of old forms since the passing of Jervis's Acts, render it of paramount utility."—Britannia.

XV.
OKE'S SOLICITORS' BOOK-KEEPING.
8vo., 5s. cloth.

AN IMPROVED SYSTEM of SOLICITORS' BOOK-KEEPING, practically exemplified by a Year's supposed Business, with Directions for Posting, Balancing, Checking, &c. Adapted to small, moderate and large Offices; to Partnership and sole Concerns. By George C. Oke, Author of "The Magisterial Synopsis" and "The Magisterial Formulist."**Mr. Oke has rendered great service to the profession in compiling the above admirably arranged work. The value and necessity of such a work as this to Solicitors is obvious, and we predict for it a speedy sale."—Law Magazine.

XVI.
BURN ON THE MARRIAGE AND REGISTRATION ACTS.
12mo. 6s. 6d. boards.

The MARRIAGE and REGISTRATION ACTS, 6 & 7 Will. 4, caps. 85, 86; with Instructions, Forms, and Practical Directions for the Use of Officiating Ministers, Superintendent Registrars, Registrars. The Acts of 1837, viz. 7 Will. 4. c. 1, and 1 Vict. c. 22, with Notes and Observations; and a full Index. By John Southerden Burn, Esq., Secretary to the Commission.
XVII.

MANUALS FOR COUNTRY ATTORNEYS, &c.
12mo. 7s. 6d. cloth.

Moore's Solicitor's Book of Practical Forms, containing an Abridgment of the Stamp Acts; a variety of useful Forms and Instructions not to be found in the Text Books, but constantly required in Solicitors' Offices, especially with reference to Common Apprenticeships—Conditions of Sale—Contracts—Statutory Declarations, Powers of Attorney, and Wills—and to the preparation of Annuity, Legacy and Residuary Accounts, and applications for increase and return of Duties on Probates and Letters of Administration, with numerous Variations, Schedules, and Tables showing the different Rates of Duty, and the Amount from One Penny to £100. By Henry Moore, Esq.

"A useful collection of Forms commonly required in the office of a Solicitor; from the account of its contents it will be seen that it offers a great deal of really useful information in a small space."—The Law Times.

"The Forms selected are not only serviceable and carefully drawn, but many of them such as can be rarely met with in the ordinary way; they will undoubtedly be of considerable utility to the general practitioner."—The Justice of the Peace.

"We can confidently recommend the volume as a most useful contribution to the Solicitor's working library."—The Globe.

"We should think that the Forms and Directions concerning the Legacy Duties would be found useful to many Solicitors."—Law Students' Magazine.

12mo. 7s. cloth; or bound as a pocket book, 8s.

Moore's Country Attorney's Pocket Remembrancer: containing a Collection of useful Forms required by Country Attorneys, Land Agents, Surveyors, &c., upon a variety of occasions, when from home; with practical Instructions for Deeds, Wills, &c. &c., and variations adapting the Forms to almost every variety of circumstances: to which is added, a Collection of novel and useful Interest and other Tables, designed by the Author exclusively for this and his other Works. Second Edition. By Henry Moore, Esq.

12mo. 6s. cloth.

Moore's Instructions for preparing Abstracts of Titles, after the most improved System of eminent Conveyancers; to which is added, a Collection of Precedents, shewing the method—not only of abstracting every species of Deeds, but also of so connecting them together, by collateral Documents, as to form a complete Title. Second Edition, with considerable Additions. By Henry Moore, Esq.

---

XVIII.

ARCHER'S INDEX TO UNREPEALED STATUTES.
8vo., 5s. boards,

An INDEX to the UNREPEALED STATUTES connected with the ADMINISTRATION of THE LAW in ENGLAND and WALES, commencing with the Reign of William the Fourth, and continued up to the close of the Session 1850. By Thomas G. Archer, Solicitor.

"A laborious work, whose utility is apparent from its title."—The Law Times.

"A facility of reference to these various enactments has become a great desideratum to all those whose professional avocations or judicial functions impose on them the necessity of a frequent reference to the Statute Book. We have tested the work, and find it perfectly correct."—The Legal Observer.
ROUSE'S COPYHOLD ENFRANCHISEMENT MANUAL.  
12mo. 5s. cloth.

THE COPYHOLD ENFRANCHISEMENT MANUAL, in which the Provisions of the Act of 1853 are given, with the Act of 1852, for the compulsory Enfranchisement of Copyholds, and full Instructions as to the Practice under that Act; also a complete set of Forms in the various Proceedings, not given in any other work; practical Suggestions to Lords, Stewards and Copyholders, protective of their several Interests, and upwards of Twenty carefully prepared Rules and Tables, with Examples, applicable to all Cases of Enfranchisement. By ROLLA ROUSE, Esq., Barrister at Law, Author of "The Practical Man," &c. &c.

"The object of this useful little book is to give all the practical rules which can be anywise useful for effecting the commutations, and to enable every one, whether professional or not, to protect his own interest in the requisite negociations and arrangements whether for Commutation or Enfranchisement."—Law Magazine.

"The Work has been most carefully and accurately compiled."—Legal Observer.

GRANT'S LAW OF CORPORATIONS IN GENERAL.  
Royal 8vo., 26s. boards.

A PRACTICAL TREATISE on THE LAW of CORPORATIONS IN GENERAL, as well Aggregate as Sole; including Municipal Corporations; Railway, Banking, Canal, and other Joint Stock and Trading Bodies; Dean and Chapters; Universities; Colleges; Schools; Hospitals; with quasi Corporations aggregate, as Guardians of the Poor, Churchwardens, Churchwardens and Overseers, etc.; and also Corporations, sole, as Bishops, Deans, Canons, Archdeacons, Parsons, etc. By JAMES GRANT, Esq., of the Middle Temple, Barrister at Law.

"The object has evidently been to render the work practically useful to persons in any way, as Officers or Members, connected with any Corporation; and we think that object is eminently answered. Vast research and diligence are displayed in the execution."—The Times.

O'DOWD'S NEW CHANCERY PRACTICE.—SECOND EDITION.  
12mo. 7s. 6d., boards.

(Dedicated, by permission, to the Right Hon. the Master of the Rolls.)

The NEW PRACTICE of the COURT of CHANCERY, as regulated by the Acts and Orders for the Improvement of the Jurisdiction of Equity, 15 & 16 Vict. c. 86; for Abolishing the Office of Master, 15 & 16 Vict. c. 80; and for Relief of the Suitors, 15 & 16 Vict. c. 87; with Introduction, Notes, the Acts, together with all the New Orders in Chancery of 1852, including the latest, and a copious INDEX. By JAMES O'DOWD, Esq., Barrister at Law. Second Edition, corrected, greatly improved, and including the recent Cases.

"A nicely arranged little book which will not fail to be of service to the Practitioner in the Court of Chancery."—The Law Magazine.

"A copious Index of ready reference gives additional value to a work, which is not merely a reprint of the acts, with a few meagre notes, but a well digested, comprehensive, and luminous treatise on these important statutes."—The Law Times.

"A comprehensive, compact, and well written treatise on the New Chancery Statutes."—The Examiner.

KEYSER ON THE LAW OF THE STOCK EXCHANGE.  
12mo., 8s. cloth.

The LAW relating to TRANSACTIONS on the STOCK EXCHANGE. By HENRY KEYSER, Esq., of the Middle Temple, Barrister at Law.
XXIII.
GREENING’S FORMS OF PLEADINGS AND PROCEEDINGS IN COMMON LAW.
SECOND EDITION. 12mo. 10s. 6d. boards.

FORMS of DECLARATIONS, PLEADINGS and other PROCEEDINGS in the SUPERIOR COURTS of COMMON LAW, with the COMMON LAW PROCEDURE ACT, and other Statutes; Table of Officers’ Fees; and the New Rules of Practice and Pleading, with Notes. By HENRY GREENING, Esq., Special Pleader. Second Edition.

“This work, comprising as it does almost all the common Forms of Pleadings, is calculated to be of considerable utility to the Practitioner. The book is quite worthy of the learned Author’s reputation as a Pleader, and we can with pleasure recommend it to such of our readers as are engaged in the preparation of everyday pleadings in ordinary actions.”—The Law Times.

XXIV.
QUAIN AND HOLROYD’S COMMON LAW.
12mo., 7s. 6d. cloth,

THE NEW SYSTEM of COMMON LAW PROCEDURE according to the COMMON LAW PROCEDURE ACT, 1852. By J. R. QUAIN, of the Middle Temple, Barrister at Law, and H. HOLROYD, of the Middle Temple, Special Pleader.

“Mr. Quain and Mr. Holroyd have rendered good service to the Practitioner in their Commentary on the various sections of the Act.”—The Legal Observer.

“We have no hesitation in pronouncing this to be the best work on the recent Act which has come under our notice; the Notes are always clear and to the point, and furnish practical suggestions which will be invaluable to the Practitioner.”—The Legal Examiner.

XXV.
COOPER’S CHANCERY ACTS AND ORDERS.
SECOND EDITION.
12mo., 4s. sewed,

The New CHANCERY ACTS and the GENERAL ORDERS of 1852, complete, with copious Indexes. Edited by CHARLES PURTON COOPER, Esq., one of Her Majesty’s Counsel.

ALSO,
Mr. CHARLES PURTON COOPER’S MANUAL of CHANCERY CHAMBER PRACTICE, uniform with the Second Edition of his “New Chancery Acts and Orders.” 12mo., 1s. 6d. sewed.

XXVI.
SCRIVEN ON COPYHOLDS.—FOURTH EDITION, BY STALMAN.
2 vols. royal 8vo. £2 : 10s. boards.

A TREATISE on COPYHOLD, CUSTOMARY FREEHOLD, and ANCIENT DEMESNE TENURE; with the Jurisdiction of Courts Baron and Courts Leet; also an Appendix containing Rules for holding Customary Courts, Courts Baron and Courts Leet, Forms of Court Rolls, Deeds, Copyhold Assurances, and Extracts from the relative Acts of Parliament. By JOHN SCRIVEN, Serjeant at Law. The Fourth Edition, embracing all the authorities to the present period, by HENRY STALMAN, of the Inner Temple, Barrister at Law.
XXVII.

DAVIS'S COUNTY COURTS EVIDENCE.
12mo. 8s. boards.

A MANUAL of the LAW of EVIDENCE on the TRIAL of ACTIONS and OTHER PROCEEDINGS in the NEW COUNTY COURTS. By JAMES EDWARD DAVIS, Esq., of the Middle Temple, Barrister at Law.

"A useful and well-arranged manual."—Law Magazine.

XXVIII.

JOINT STOCK COMPANIES REGISTRATION ACT.
18mo. 3s. 6d. boards.

An ACT (7 & 8 Vict. c. 110,) for the REGISTRATION, INCORPORATION and REGULATION of JOINT STOCK COMPANIES; with Preface and Index, by JAMES BURCHELL, Esq. and an Analysis, by CHARLES RANN KENNEDY, Esq. Barrister at Law.

XXIX.

LEIGH'S NISI PRIUS.
2 vols. 8vo. £2 : 8s. boards.


XXX.

EMERIGON ON MARINE INSURANCES.—BY MEREDITH.
Royal 8vo., 30s. boards,

A TREATISE on the LAW of MARINE INSURANCES.
By BALTHAZARD MARIE EMERIGON. Translated from the French, with an Introduction and Notes. By SAMUEL MEREDITH, Esq.

XXXI.

ROBINSON'S GAVELKIND.
8vo. 18s. boards.

The COMMON LAW of KENT; or the CUSTOMS of GAVELKIND. With an Appendix concerning Borough English. By T. ROBINSON, Esq. THE THIRD EDITION, with Notes and References to modern Authorities, by JOHN WILSON, Esq. Barrister at Law.

XXXII.

GUNNING ON TOLLS.
8vo. 9s. boards.

A PRACTICAL TREATISE on the LAW of TOLLS; and therein of Tolls Thorough and Traverse; Fair and Market Tolls; Canal, Ferry, Port and Harbour Tolls; Turnpike Tolls; Rateability of Tolls; Exemption from Tolls; Remedies and Evidence in Actions for Tolls. By FREDERICK GUNNING, Esq. of Lincoln's Inn, Barrister at Law.
PULLING ON THE LAWS OF LONDON.—SECOND EDITION.
1 vol. 8vo. 18s. boards.

A PRACTICAL TREATISE on the LAWS, CUSTOMS, USAGES and REGULATIONS of the CITY and PORT of LONDON, with Notes of the various Charters, By-Laws, Statutes, and Judicial Decisions by which they are established. SECOND EDITION, with considerable Additions, and a SUPPLEMENT containing the LONDON CORPORATION REFORM ACT, 1849, and the City Election Act, 1725; with Introductory Comments, Explanatory Notes, and the Statutes verbatim. By ALEXANDER PULLING, Esq. of the Inner Temple, Barrister at Law.

HALE'S COMMON LAW.
Royal 8vo. £1 : 10s. boards.

The HISTORY of the COMMON LAW of ENGLAND, and an Analysis of the Civil Part of the Law; by Sir MATTHEW HALE. THE SIXTH EDITION, with Additional Notes and References, and some Account of the Life of the Author. By CHARLES RUNNINGTON, Serjeant at Law.

CODEX LEGUM ANGLICANARUM.
Royal 8vo. £1 : 4s. boards.

A DIGEST of PRINCIPLES of ENGLISH LAW; arranged in the order of the Code Napoleon, with an Historical Introduction. By GEORGE BLAXLAND, Esq.

WILLS ON CIRCUMSTANTIAL EVIDENCE.—THIRD EDITION.
8vo., 9s. boards.

An ESSAY on the PRINCIPLES of CIRCUMSTANTIAL EVIDENCE, illustrated by Numerous Cases. THIRD EDITION. By WILLIAM WILLS, Esq.

"I have read this Essay thoroughly and with great satisfaction. It is written clearly, strongly and elegantly, with conclusive evidence of much research and profound reflection."—The late Chancellor Kent.

FEARNE'S LEGOGRAPHICAL CHART OF LANDED PROPERTY.
On a large sheet, 6s. coloured.

A LEGOGRAPHICAL CHART of LANDED PROPERTY in ENGLAND from the time of the Saxons to the present Era, displaying at one view the Tenures, Mode of Descent, Power and Alienation of Lands in England at all times during the same period. By CHARLES FEARNE, Esq. of the Inner Temple, Barrister at Law.
XXXVIII.

COOTE'S ECCLESIASTICAL PRACTICE.
1 thick vol. 8vo. 11. 8s. boards.

The PRACTICE of the ECCLESIASTICAL COURTS, with Forms and Tables of Costs. By HENRY CHARLES COOTE, Proctor in Doctors' Commons, &c.

"Ecclesiastical Practice is now for the first time made the subject of a formal and elaborate treatise, and it has remained for Mr. Coote, by a combination of industry and experience, to give to the profession a work which has long been wanted, but which so few are competent to supply."—Law Times.

XXXIX.

LAW STUDENT'S GUIDE.
12mo. 6s. boards.

The LAW STUDENT'S GUIDE; containing an Historical Treatise on each of the Inns of Court, with their Rules and Customs respecting Admission, Keeping Terms, Call to the Bar, Chambers, &c., Remarks on the Jurisdiction of the Benchers, Observations on the Study of the Law, and other useful Information. By P. B. LEIGH, Esq. of Gray's Inn, Barrister at Law.

XL.

CHITTY'S COMMERCIAL LAW.
4 vols. royal 8vo. £6:6s. boards.


XLI.

PYE'S CHARITABLE TRUSTS.
Post 8vo. 6d. sewed.

An ESSAY on CHARITABLE TRUSTS, under the Charitable Trusts Act, 1853. By HENRY JOHN PYE, Esq.

XLII.

PULLING'S MERCANTILE AND JOINT-STOCK ACCOUNTS.
12mo. 9s. boards.

A PRACTICAL COMPENDIUM of the LAW and USAGE of MERCANTILE ACCOUNTS: describing the various Rules of Law affecting them, the ordinary Mode in which they are entered in Account Books, and the various Forms of Proceeding, and Rules of Pleading, and Evidence for their Investigation, at Common Law, in Equity, Bankruptcy and Insolvency, or by Arbitration. With a SUPPLEMENT, containing the Law of Joint Stock Companies' Accounts, and the Legal Regulations for their Adjustment under the Winding-up Acts of 1848 and 1849. By ALEXANDER PULLING, Esq. of the Inner Temple, Barrister at Law.
XLIII.

GAEL ON DRAWING LEGAL INSTRUMENTS.
8vo. 10s. cloth.

A PRACTICAL TREATISE on the ANALOGY between LEGAL and GENERAL COMPOSITION, intended as an Introduction to the drawing of Legal Instruments, Public and Private. By S. H. GAEL, Esq. Barrister at Law.

XLIV.

BLAYNEY ON LIFE ASSURANCE.
12mo. 7s. boards.

A PRACTICAL TREATISE on LIFE ASSURANCE; in which the Statutes and Judicial Decisions affecting unincorporated Joint Stock Companies are briefly considered and explained; including Remarks on the different Systems of Life Assurance Institutions; the Premiums charged, and the increased Expectations of Human Life. To which is added, a comparative View of the various Systems and Practices of Assurance Offices; with useful and interesting Tables, &c. &c. &c. SECOND EDITION. By FREDERICK BLAYNEY, Esq. Author of "A Treatise on Life Annuities."

XLV.

SEWELL'S SHERIFF AND UNDER-SHERIFF.
8vo. £1 : Is. boards.


XLVI.

HERTSLET'S COMMERCIAL TREATIES.
Vols. 1 to 8, 8vo. £8 : 5s. boards.

A Complete Collection of the TREATIES and CONVENTIONS, and RECIPROCAL REGULATIONS, at present subsisting between GREAT BRITAIN and FOREIGN POWERS, and of the Laws, Decrees, and Orders in Council concerning the same, so far as they relate to Commerce and Navigation, Slave Trade, Post-Office Communications, Copyright, &c., and to the Privileges and Interests of the Subjects of the High Contracting Parties; compiled from Authentic Documents. By LEWIS HERTSLET, Esq. Librarian and Keeper of the Papers, Foreign Office.

XLVII.

MUNICIPAL ELECTIONS.
12mo. 4s. boards.

A REPORT of the BREAD STREET WARD SCRUTINY; with Introductory Observations, a Copy of the Poll, and a Digest of the Evidence, Arguments, and Decisions in each Case. By W.T. HALY, Esq., Barrister at Law.
XLVII.

LAWS OF GAMING, HORSE-RACING, &c.
12mo. 5s. cloth.

A Treatise on the LAW of GAMING, HORSE-RACING, and WAGERS; with a Full Collection of the Statutes in force in reference to those subjects; together with Practical Forms of Pleadings and Indictments, adapted for the General or Professional Reader. By Frederic Edwards, Esq. Barrister at Law.

XLIX.

BAINBRIDGE ON MINES AND MINERALS.
Svo. 16s. boards.

A PRACTICAL TREATISE on the LAW of MINES and MINERALS; comprising a detailed Account of the respective Rights, Interests, Duties, Liabilities, and Remedies of Landowners, Adventurers, Agents, and Workmen; and of the Local Customs of Derbyshire, Cornwall, and Devon. With an Appendix of Legal Forms, relating to Grants, Leases, Transfers, Partnerships, and Criminal Proceedings. By William Bainbridge, Esq. Barrister at Law.

L.

BROWN'S CHANCERY CASES BY BELT.
4 vols. royal 8vo. £4:16s. boards.


LI.

HAND-BOOK TO THE PUBLIC RECORDS.
1 vol. royal 8vo. 12s. cloth.

A Hand-Book to the Public Records. By F. S. Thomas, Secretary of the Public Record Office.

Also, 8vo. 6d. sewed, an

Illustrative Catalogue of Record Works, printed under the direction of the Commissioners on the Public Records of the Kingdom, on Sale by Messrs. Butterworth, Publishers to the Public Record Department.

LII.

BAKER'S LAW OF CORONER.
12mo., 14s. cloth,

A PRACTICAL COMPRENDIUM of the RECENT STATUTES, CASES and DECISIONS affecting the OFFICE of CORONER, with Precedents of Inquisitions, and Practical Forms. By William Baker, Esq., one of the Coroners for Middlesex.

"Mr. Baker has rendered good service to the public and the profession in thus laying the result of his extensive practical experience before them. We heartily recommend the work to every one engaged in this branch of Law and Practice."—The Legal Observer.
HOUSE OF LORDS REPORTS.

REPORTS of CASES decided in the HOUSE of LORDS on APPEALS and WRITS of ERROR—CLAIMS of PEERAGE and DI- VORCES. By Charles Clark, Esq., of the Middle Temple, Barrister at Law. (Reporter, by appointment, to the House of Lords.)

Vols. I., II. and III., and Vol. IV. Part I., containing Cases decided from 1847 to 1853.

(These Reports will be regularly continued.)

COOPER’S CHANCERY CASES AND DICTA AND CHANCERY MISCELLANIES.

CHANCERY CASES and DICTA, also Notes from MSS. Ancient and Modern, with occasional Remarks and Chancery Miscellanies. By Charles Purton Cooper, Esq., one of Her Majesty’s Counsel.

CHANCERY CASES AND DICTA, Nos. I. to VII. are published, price 6d. each, sewed.
CHANCERY MISCELLANIES, Nos. I. to XIV. are published, price 6d., each, sewed.

THE COMMON BENCH REPORTS.

CASES argued and determined in the COURT of COMMON PLEAS. Vol. X. Parts IV. & V. and Vol. XI. (By Manning, Granger and Scott.)

FONBLANQUE’S REPORTS IN BANKRUPTCY.

REPORTS of CASES adjudicated in the SEVERAL COURTS of the COMMISSIONERS in BANKRUPTCY, under the Bankrupt Law Consolidation Act, 1849. By J. W. M. Fonblanque, Esq., of the Middle Temple, Barrister at Law.

Vol. I. Parts I., II. & III., containing Cases decided from 1849 to 1852. 18s. 6d. sewed.

DR. ROBINSON’S NEW ADMIRALTY REPORTS.

REPORTS of CASES argued and determined in the HIGH COURT of ADMIRALTY, commencing with the Judgments of the Right Honourable Stephen Lushington, D.C.L. By William Robinson, D.C.L. Advocate.

Vols. I. and II., and Vol. III. Parts I. and II., containing Cases decided from Michaelmas Term 1838 to Trinity Vacation 1850. £4: 7s. sewed.

(These Reports are in immediate continuation of Dr. Haggard’s, and will be regularly continued.)

** The Statutes at Large, Law Reports, Law Journal, as well as all Legal Periodicals, supplied on the day of publication, and a liberal discount allowed for prompt payment.

Separate copies of scarce Private Acts furnished from a very complete Series.

A large Stock of Second-hand Law Reports and Text Books constantly on Sale at a great reduction from the published prices.
<table>
<thead>
<tr>
<th>Law Works PREPARING FOR PUBLICATION.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Kerr's Common Law Procedure Act, 1854.—The SECOND COMMON LAW PROCEDURE ACT, 1854: with Practical Notes; an Introduction, explanatory of the Equitable Jurisdiction conferred on the Superior Courts of Law; the New Process of Attachment of Debts; the New Writs of Mandamus and Prohibition; the New Jurisdiction in Mercantile Causes, and the Changes in Practice effected by the Statute. By R. Malcolm Kerr, Esq., Barrister at Law. In 12mo. <em>^</em> This Work, which will be published soon after the Second Common Law Procedure Act has passed into law, will form a convenient Supplement to the same Author's several Editions of the Act of 1852, as well as all other Editions of that Statute.</td>
</tr>
<tr>
<td>2. Shelford's Succession Duties.—The SUCCESSIONS DUTIES ACT, 1853, with the Acts relating to Probate and Legacy Duties now payable, and Notes of the Decisions thereon. By Leonard Shelford, Esq., Barrister at Law. In 12mo.</td>
</tr>
<tr>
<td>3. Stephen's Common Law.—THE PRACTICE of the SUPERIOR COURTS of LAW at WESTMINSTER in Actions and Proceedings over which they have a common Jurisdiction; with an Appendix of Forms, &amp;c. By James Stephen, Barrister at Law, of the Middle Temple, and Professor of English Law, &amp;c. at King's College, London. In 8vo.</td>
</tr>
<tr>
<td>4. Pleading.—Mr. SERJEANT STEPHEN'S TREATISE on the PRINCIPLES of PLEADING in CIVIL ACTIONS; comprising a Summary View of the whole Proceedings in a Suit at Law. The SIXTH EDITION, remodelled according to the new System of Practice and Pleading. In 8vo.</td>
</tr>
<tr>
<td>5. Costs in Chancery.—The SOLICITORS' BOOK of COSTS in the COURT of CHANCERY, according to the NEW PRACTICE; together with Charges in Conveyancing, and other Bills of Costs. By Thomas Kennedy, Solicitor of the Court. In 12mo.</td>
</tr>
<tr>
<td>7. Insolvent Debtors' Practice.—The THIRD EDITION of a TREATISE on the LAW and PRACTICE of the COURT for the RELIEF of INSOLVENT DEBTORS, with all the recent Statutes. By Edward Cooke, Esq., Barrister at Law. In 8vo.</td>
</tr>
<tr>
<td>8. Parliamentary Practice.—The THIRD EDITION of a PRACTICAL TREATISE on the LAW, PRIVILEGES, PROCEEDINGS and USAGE of PARLIAMENT. By Thomas Erskine May, Esq., of the Middle Temple, Barrister at Law, one of the Examiners of Petitions for Private Bills, and Taxing Officer of the House of Commons.</td>
</tr>
<tr>
<td>9. Real Property.—LEADING CASES on the LAW relating to REAL PROPERTY, CONVEYANCING and the CONSTRUCTION of WILLS; with Notes. By Owen Davies Tudor, Esq., of the Middle Temple, Barrister at Law. In royal 8vo.</td>
</tr>
<tr>
<td>10. House of Lord's Cases.—Vol. IV. Part II.</td>
</tr>
<tr>
<td>11. Fonblanque's Reports in Bankruptcy.—Vol. I. Part IV.</td>
</tr>
<tr>
<td>12. Robinson's Admiralty Reports.—Vol. III. Part III.</td>
</tr>
<tr>
<td>13. The Law Magazine for August.—No. 104.</td>
</tr>
</tbody>
</table>
The Law Magazine:

OR

QUARTERLY REVIEW OF JURISPRUDENCE,
Commenced in 1828,
AND REGULARLY PUBLISHED ON THE FIRST OF THE MONTHS OF FEBRUARY,
MAY, AUGUST, AND NOVEMBER, IN EACH YEAR,
AT SIX SHILLINGS A NUMBER.

This well-established Law Periodical is recommended to the Profession by
1. Articles on all subjects of prominent interest and practical usefulness to Practitioners. Among the Contributors are Judges, and many Lawyers of eminence.
2. Notes of all Leading Cases, explaining their practical effect.
3. A Quarterly Alphabetical Digest of all Cases in all Superior Courts of Law and Equity, &c. carefully classed and indexed.
4. Statutes useful to the Profession, carefully abstracted and noted.
5. Reviews, or Short Notes of New Law Books of value, and List of all New Law Publications.
6. Events of the Quarter, comprising Rules of Court, Calls, Promotions, Obituary, &c.
7. Parliamentary Papers of value, abstracted.

**••** The Law Magazine thus affords a mass of information essential to the Practitioner at a cost of 24s. per annum, which can be obtained from no other publication at less than double that price.

The Number for February, No. 102, contains—

I. Points of Colonial Law.
II. Registration of Judgments in Ireland.
IV. On the present State of the Matrimonial Law.
V. The Birmingham Conferences on Juvenile Offenders.
VII. American Notions of English Jurisprudence.
VIII. On the Statute Law Commission.
IX. The Census.
X. Mercantile Law Reform (continued)
—Points of Assimilation and Contrast in the Commercial Laws of England and Scotland.

Leading Cases—Events of the Quarter
—Notes of New Books, &c., and Digest of Cases.

The Number for May, No. 103, contains—

I. Colonial Policy.
II. Points of Colonial Law.
III. Statute Law Commission.
IV. The Laws of the Customs.
V. On Land Laws.
VI. Criminal Children.
VII. Principles of Advocacy at the Bar.
VIII. Mr. Justice Talfourd.
IX. Sketch of Lords Ellenborough and Tenterden.

Leading Cases—Short Notes of New Books—Events of the Quarter—List of New Publications—Digest of Cases.

LONDON:
Published by Messrs. Butterworth, 7, Fleet Street,
Law Publishers to the Queen's Most Excellent Majesty,
By whom Subscribers' Names will be received, and by all Booksellers.

**••** A Subscription of 24s., if paid in advance to the Publishers, will ensure the delivery of the Law Magazine on the day of publication, postage free, in any part of the United Kingdom, for the space of one year.

(Communications for the Editor may be addressed, under cover, to the Publishers.)
WHARTON’S ARTICLED CLERK’S MANUAL.—Seventh Edition.

Shortly will be published, in One Volume, 12mo.,

A

MANUAL

FOR

ARTICLED CLERKS,

CONTAINING

Courses of Study

AS WELL IN

COMMON LAW, CONVEYANCING, EQUITY, BANKRUPTCY AND CRIMINAL

LAW, AS IN CONSTITUTIONAL, ROMAN, CIVIL, ECCLESIASTICAL, COLONIAL

AND INTERNATIONAL LAWS AND MEDICAL JURISPRUDENCE;

A DIGEST OF ALL THE EXAMINATION QUESTIONS,

WITH

THE NEW GENERAL RULES,

FORMS OF DOCUMENTS, NOTICES AND AFFIDAVITS, AND A LIST OF THE

PROPER FEES:

BEING

A COMPREHENSIVE GUIDE

TO THEIR SUCCESSFUL EXAMINATION, ADMISSION AND PRACTICE AS

ATTORNEYS AND SOLICITORS OF THE SUPERIOR COURTS.

Qui bene dividit, bene discit.

SEVENTH EDITION.

By J. J. S. WHARTON, Esq., M.A.,

OXON., AND OF THE MIDDLE TEMPLE, BARRISTER AT LAW,

Author of "The Law Lexicon," &c.

LONDON:

BUTTERWORTHS, 7, FLEET STREET,

Law Publishers in Ordinary to the Queen’s most excellent Majesty.
QUESTIONS on Mr. Serjeant Stephen’s NEW COMMENTARIES.

Now published, One Volume, 8vo., 10s. 6d. cloth.

QUESTIONS
FOR
LAW STUDENTS
ON
THE THIRD EDITION
OF
MR. SERJEANT STEPHEN’S

BY
JAMES STEPHEN,
of the Middle Temple, Barrister at Law,
and Professor of English Law, &c. at King’s College, London.

“The Student, by properly using them, will find these Questions, which are
neatly put and very carefully framed, of great assistance to him in mastering the
Commentaries.”—Law Magazine.

STEPHEN’S COMMON LAW PRACTICE.

Preparing for Publication, in 8vo.

THE PRACTICE of the SUPERIOR COURTS of
LAW at Westminster in Actions and Proceedings
over which they have a common Jurisdiction, with an
Appendix of Forms, &c.

BY JAMES STEPHEN,
of the Middle Temple, Barrister at Law,
and Professor of English Law, &c. at King’s College, London.

LONDON:
BUTTERWORTHS, 7, FLEET STREET,
Law Publishers in Ordinary to the Queen’s most Excellent Majesty.