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Power of Partners - II

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questionably entitled to a fair and impartial trial before a court of justice rather than in the newspapers. It is unworthy the dignity of a civilized community that there should be an effort made by the press to bring extraneous influences to bear upon the natural course of justice. If the law, allowing the plea of insanity as a defense to the charge of homicide, stands in need of amendment (and we are firmly of the opinion that it does), let these blatant newspapers direct their efforts towards a reform. For in the halls of legislation their influence is legitimate and proper, but the administration of justice should be sacred from their encroachments.

POWERS OF PARTNERS.

II.

In considering the powers which a partner possessed, it was stated in our former article, that he could make a chattel mortgage to secure a debt due from his firm. It becomes necessary to state, now that we are considering the powers which he does not possess, that he can not mortgage the partnership realty.¹ And it makes no difference that the mortgage was made to secure a pre-existing debt of the firm, contracted within the scope of the partnership business.² In the case last cited it was held that, while a mortgage on lands could not be foreclosed as to the interest of any person who had not executed it, or assented to, or ratified it, yet it could be foreclosed as to the interest of the person who executed it, though in executing it he may have used the partnership name, reciting that he was a member of the firm. He could not deny that he had an interest in the firm at the date of the execution of the mortgage. It is also settled that he can not make a chattel mortgage for the purpose of securing his own private or individual debts.³ And if he makes such a mortgage, the other party will not take, though ignorant at the time of the facts constituting the illegality.⁴ It has also been held that one partner can not mortgage his undi-

vided interest in a specific part of the property belonging to the firm.⁵

Attention was also called, while considering the powers which partners possessed, to the right of one partner to make and indorse promissory notes, and also to accept bills drawn on the firm. It remains to notice, as among the powers which partners do not possess, that one partner can not, in the name of the firm, make an accommodation indorsement.⁶ But one may be authorized by his copartners to make an accommodation indorsement, and this authority may be shown by parol.⁷ It is also settled that a partner can not bind his copartner by signing as a surety in the name of the partnership.⁸ But authority to bind a firm as sureties upon a note may be established by evidence tending to show that such authority had been habitually exercised in previous transactions with the knowledge of the copartner; and where such authority did not previously exist, the action of the partner in so signing may be afterwards ratified.⁹ One partner has no power to bind his copartners by the guaranty of the debt of another,¹⁰ unless it is within the scope of the partnership business.¹¹ Neither can he accept a bill, merely for the accommodation of a third person.¹² Nor can he bind the firm by a promissory note made in the firm name and for his individual debt, the copartners not having assented thereto, and the payee not being aware of the consideration on which it is founded.¹³

⁵ Lovejoy v. Bowers, 11 N. H. 404.

⁶ Chenoweth v. Chamberlain, 6 B. Mon. 61; Heffron v. Hannaford, 40 Mich. 305; Bowman v. Cecil Bank, 3 Greene, 33; Lang's Heirs v. Waring, 17 Ala. 145; Fielden v. Lanens, 2 Abb. Dec. 111.

⁷ Butler v. Stocking, 8 N. Y. 408.

⁸ Rollins v. Stevens, 31 Me. 454; Foot v. Sabin, 19 Johns. 154; Laverty v. Burr, 1 Wend. 529; Wilson v. Williams, 14 Wend. 146; Bank of Vergenes v. Cammeron, 7 Barb. 143; Whitmur v. Adams, 17 Iowa, 567; Butterfield v. Hemsley, 12 Gray, 226; Andrews v. Planters' Bank, 7 S. & M. 192; Langen v. Hewitt, 13 S. & M. 122; Wagnon v. Clay, 1 Mar. (Ky.) 257; Bank v. Bowen, 7 Wend. 158.

⁹ First National Bank v. Breese, 39 Iowa, 640.

¹⁰ First National Bank v. Carpenter, 34 Iowa, 433; Selden v. Bank of Commerce, 3 Minn. 166; Sutton v. Irwine, 12 S. & R. 13; Hamil v. Purvis, 2 P. & W. 177; Sweetser v. French, 2 Cush. 310, 314.

¹¹ First National Bank of Dubuque v. Carpenter, 41 Iowa, 518.

¹² Beach v. State Bank, 2 Ind. 488; Hibler v. DeForest, 6 Ala. 92.

¹³ Davenport v. Runlett, 3 N. H. 386; Williams v. Gilchrist, 11 N. H. 535; Mauldin v. Branch Bank at Mobile, 2 Ala. 502; Pierce v. Pass, 1 Porter, 232;

¹ Tapley v. Butterfield, 1 Metc. 515; Arnold v. Stevenson, 2 Nev. 234.

² Sutlive v. Jones, 61 Ga. 676.

³ Smith v. Andrews, 49 Ill. 28.

⁴ Binns v. Waddill, 32 Gratt. 538; Rogers v. Batchellor, 12 Pet. 221.

But a *bona fide* holder for value of negotiable paper made by one partner for his individual debt, can recover against the firm.¹⁴ One partner can not promise to pay the debt of a third person.¹⁵ No principle of the law of partnership can be considered better settled, or as more generally known, than that one partner can not bind his copartners by the execution of a deed.¹⁶ And it is equally well settled that a deed executed by one partner may bind the partnership, provided the partner executing it was authorized by his copartners, by parol, so to do; or provided they have subsequently assented to the same.¹⁷ So, when a deed is executed in the presence of one partner and with his consent, it is his deed.¹⁸ So, where a lease of partnership realty is made by one partner in the partnership name, without the authority of the copartner, and without his subsequent ratification, it will not pass the interest of such copartner, although a seal may be unnecessary.¹⁹ The reason for this is the fact that as partners they own the realty as tenants in common, and as tenants in common they must devise it as such, although it may be regarded in equity, for some purposes, as partnership property.²⁰

In our former article we considered the

Knapp v. Norman, 7 Ala. 19; L. F. & M. Ins. Co. v. Treat, 58 Me. 415; Chazournes v. Edwards, 3 Pick. 5; Viles v. Bangs, 36 Wis. 131; Colzhausen v. Judd, 43 Wis. 213; Lansing v. Gaine, 2 Johns. 300; Dob v. Halsey, 16 Johns. 34; Saylor v. Macklin, 9 Iowa, 209; Todd v. Lorah, 75 Pa. St. 155.

¹⁴ Waldo Bank v. Lambert, 16 Me. 416; Emerson v. Harmon, 14 Me. 271; Dudley v. Littlefield, 21 Me. 418; Monroe v. Cooper, 5 Pick. 412; First National Bank v. Morgan, 73 N. Y. 593; Blodgett v. Weed, 119 Mass. 215.

¹⁵ Mo Quewans v. Hamil, 35 Pa. St. 517.

¹⁶ Morgan v. Scott, Minor, 81; Doe v. Tupper, 4 S. & M. 261; Shirley v. Fearn, 33 Miss. 653; Lucas v. Bank of Darien, 2 Stew. 280; Hart v. Withers, 1 P. & W. 285; Massey v. Pike, 20 Ark. 92; Posey v. Bullitt, 1 Blackf. 99; Bent v. Lierlein, 4 Mo. 417; Henry County v. Gates, 26 Mo. 315; Trimble v. Coons, 2 Mar. 376; Drumright v. Philpot, 16 Ga. 424; Morse v. Billew, 7 N. H. 556; Clement v. Brush, 3 Johns. Cas. 180; Van Duesen v. Blum, 18 Pick. 229; Morris v. Jones, 4 Harr. 428; Cummins v. Cassily, 5 B. Mon. 74; Munnelly v. Doherty, 1 Yerger, 26.

¹⁷ McCart v. Lewis, 2 B. Mon. 266; Bond v. Aitkin, 6 W. & S. 165; Cady v. Shepard, 11 Pick. 400; Pike v. Bacon, 21 Me. 280; McDonald v. Eggleston, 26 Vt. 154; Smith v. Kerr, 3 N. Y. 144, 150; Skinner v. Dayton, 19 Johns. 513; Herbert v. Harriek, 16 Ala. 581; Grady v. Robinson, 28 Ala. 289; Gunter v. Williams, 40 Ala. 561; Drumright v. Philpot, 16 Ga. 424.

¹⁸ Lee v. Onstott, 1 Ark. 206.

¹⁹ Dillon v. Brown, 11 Gray, 179.

²⁰ In note 40 the cases were collected.

fact that the admissions made by one partner, while acting within the scope of the partnership business, were competent evidence against the firm; and now in coming to the consideration of the effect which a dissolution of the partnership has upon the power of partners, the question which arises is, whether one partner can, after the dissolution of the partnership, by a promise or an admission, take a case out of the statute of limitations as against his copartners. While there has been a diversity of opinion in relation to this question, it has finally become settled, if a large preponderance of the latest authorities can settle it, that one partner has no such power as against the other. This is the view which the Supreme Court of the United States has taken of the subject, and it prevails in a large number of the States.²¹ In a very able opinion recently announced in New Jersey, Chief Justice Beasley giving the decision, the contrary doctrine is enunciated.²² After showing by a thorough examination of the authorities that the conclusion reached by him was the rule established by a long series of cases, covering a long period of time, and sanctioned by a long line of English and American jurists of the very highest eminence, he declares that the overthrow of it by judicial action is arbitrary and unjustifiable, and does much to shake the confidence of the people in the stability of legal rules. "If partners have ceased to be such by the act of dissolution, and can no longer bind each other in that capacity, they are still joint debtors, and from that connection they are the agents of each other in making payments, and renewing the promise to pay, so as to avoid the effect of the statute of limitations." This doctrine is sustained in the cases cited below.²³ It has been changed by statute in

²¹ Bell v. Morrison, 1 Peters, 351, 370; Newman v. McComas, 43 Md. 70; Tate v. Clements, 16 Fla. 339; Yandes v. LeFavour, 2 Blackf. 371; Kirk v. Hiatt, 2 Ind. 322; Exeter Bank v. Sullivan, 6 N. H. 124; Speake v. White, 14 Tex. 369; Peet v. O'Brien, 5 Neb. 360; Whitney v. Reese, 11 Minn. 138; Steele v. Jennings, 1 McMullen, 297; Belote's Exr's. v. Wynne, 7 Yerg. 534; Muse v. Donaldson, 2 Humph. 166; Helm v. Cantrell, 59 Ill. 524; Van Keuren v. Parmelee, 2 N. Y. 523; Shoemaker v. Benedict, 11 N. Y. 176; Wilson v. Torbet, 3 Stew. 296; Myatt v. Bell, 41 Ala. 222; Levy v. Cadet, 17 S. & R. 126; Searight v. Craighead, 1 P. & W. 135.

²² Merritt v. Day, 38 N. J. Law, 32.

²³ Whitcomb v. Whiting, Doug. 652; Wood v. Braddick, 1 Taunton, 104; Cady v. Shepherd, 11 Pick. 400; Vinal v. Burrill, 16 Pick. 401; Sigourney v. Dru-

Maine,²⁴ Massachusetts,²⁵ and in Vermont.²⁶ The case last cited is an interesting one. It was there held that if a partner, who is the agent of a firm in making disbursements, makes a payment as such agent, upon a promissory note previously given by the firm, it prevents the running of the statute as against all the partners, notwithstanding a provision in the statute that a payment by one joint contractor is not allowed to prevent the running of the statute as against the other. "This," said the court, "is not to be treated as a case where a payment is made by an individual member of a firm, but it was a payment by the entire firm, on their joint account, and out of their joint fund."

It is important to notice the effect which a dissolution of the partnership has upon the power of the partners to make and negotiate commercial paper. After dissolution of the partnership, one partner can not give a note in the name of the firm, even for a pre-existing debt.²⁷ And if a note has been executed by one partner, in the name of the partnership, and for a partnership debt, but has not been delivered by him until after the dissolution of the firm, it can not bind the partnership, as it can take effect only from delivery, and no authority exists to make the delivery after dissolution.²⁸ So, after dissolution, no power to indorse a note, in the name of the firm, exists in either partner.²⁹ But if the indorsee had no notice of the dissolution of the partnership, and took the note in ignorance of that fact, it has been held that he acquires a valid title to the instrument, and that the firm is answerable thereon.³⁰ And the same principle holds where the note has

been executed after dissolution, but the payee received the note without knowledge of this fact.³¹ Not only is a partner unable to make a note which may evidence a pre-existing indebtedness, but he can not make a new note for the purpose of renewing an old one.³² But in a case decided in Missouri, it was held, where the holder of the firm note had agreed with the partnership that the note should be renewed upon part payment at maturity, and a new note given for the balance, that such a note might be given after dissolution by one of the partners in the name of the partnership.³³ And one partner may, after dissolution, negotiate a note in the name of the firm, provided he has been authorized by his copartners so to do; and such authority may be given by parol.³⁴ But upon the dissolution of a partnership, it frequently happens that the copartners designate one of their number a special agent for winding up the affairs of the firm. When this is done, the question arises whether the liquidating partner is thereby clothed with authority to execute notes, to renew them, or to bind the firm by an indorsement. The rule upon this subject seems to be that he is not so authorized, unless the power is expressly conferred upon him. It has been held that he can not execute a note in the firm name for a pre-existing indebtedness;³⁵ that he can not renew a note;³⁶ that he can not bind the firm by an indorsement.³⁷ And in a case in Nebraska, it is said that after dissolution, no valid draft, acceptance or indorsement can be made by the firm; and it is no authority to do so, if, in the notice of dissolution, any partner is empowered to receive and pay debts of the firm; that it must be done by all of the partners, or one must be especially empowered to do the act.³⁸

In Pennsylvania it has been held that after

ry, 14 Pick. 387; *Bound v. Lathrop*, 4 Conn. 363; *Shepley v. Waterhouse*, 22 Me. 497; *Wheelock v. Doolittle*, 18 Vermont, 440; *McIntire v. Oliver*, 2 Hawks, 209; *Brewster v. Hardman*, Dudley, 138; *Smith v. Ludlow*, 6 Johns. 267; *Johnson v. Beardsley*, 15 Johns. 3; *Patterson v. Choate*, 7 Wend. 441.

²⁴ See *True v. Andrews*, 35 Me. 183; *Weltman v. Southard*, 30 Me. 425.

²⁵ See *Peirce v. Tobey*, 5 Met. 168.

²⁶ See *Carlton v. Mill*, 28 Vt. 504.

²⁷ *Woodworth v. Downer*, 13 Vt. 522; *Parker v. Cousins*, 2 Gratt. 372; *Burr v. Williams*, 20 Ark. 172; *Lansing v. Gaine*, 2 Johns. 300; *Montague v. Reakert*, 6 Bush, 393; *Whitman v. Leonard*, 3 Pick. 177.

²⁸ *Woodford v. Dorwin*, 3 Vt. 82; *Parker v. Macomber*, 18 Pick. 505; *Gale v. Miller*, 54 N. Y. 536; *Grasswitt's Assignee v. Connally*, 27 Gratt. 19.

²⁹ *Bryant v. Lord*, 19 Minn. 396; *McDaniel v. Wood*, 7 Mo. 543.

³⁰ *Cony v. Wheelock*, 33 Me. 366.

³¹ *Dickinson v. Dickinson*, 25 Gratt. 321; *Taylor v. Hill*, 36 Md. 494.

³² *Wilson v. Forder*, 20 Ohio St. 95; *Merritt v. Pollys*, 16 B. Mon. 356; *Cunningham v. Bragg*, 37 Ala. 436.

³³ *Richardson v. Moies*, 31 Mo. 430.

³⁴ *Yale v. Eames*, 1 Metcalf, 486.

³⁵ *Van Valkenburg v. Bradley*, 14 Iowa, 108; *Kemp v. Coffin*, 3 Greene, 190 (being overruled); *Hamilton v. Seaman*, 1 Ind. 185; *Conklin v. Orghorn*, 7 Ind. 553; *Perrin v. Keene*, 19 Me. 355; *White v. Tudor*, 24 Texas, 639.

³⁶ *Palmer v. Dodge*, 4 Ohio St. 21; *National Bank v. Norton*, 1 Hill, 572; *White v. Tudor*, 24 Texas, 639; *Lumberman's Bank v. Pratt*, 51 Me. 563.

³⁷ *Sanford v. Mickles*, 4 Johns. 224.

³⁸ *Mayberry v. Willoughby*, 5 Neb. 368.

dissolution the liquidating partner can borrow money, on the credit of the late firm, for the purpose of paying its debts.³⁹ It is held in the same State that the liquidating partner can renew an accommodation indorsement,⁴⁰ and that he can bind his copartners by notes in liquidation.⁴¹ It has been held that the power to indorse notes and bills of the firm exists for the purpose of settling up the business of the firm.⁴² An indorsement made without authority is ratified where the copartner retains his share of the proceeds of the note with a full knowledge of the facts of the case.⁴³ In a case in Maine it is said that after dissolution each member has the same power as before to collect, liquidate and settle accounts, and apply the funds and effects to the payment of debts, this power continuing until the concerns of the partnership are closed up.⁴⁴

The rule is that, after the dissolution of a partnership, one partner can not incur any new responsibility in the name of the firm by entering into any new contract whatsoever.⁴⁵ Upon dissolution, in the absence of any agreement to the contrary, each may collect debts and receipt for them.⁴⁶ And one partner can release a debt, after dissolution, that is due to the firm.⁴⁷ So he may lawfully assign to a creditor of the firm a demand due to the partnership.⁴⁸ One partner, after dissolution, can transfer or assign a judgment obtained by the partnership, and the title will vest as against his copartner; but he can not bind him by a covenant contained in the assignment that the whole judgment remained unpaid.⁴⁹ If one partner, on dissolution of the

firm, assigns all his interest in the book debts and demands to his copartner, with power to collect them for his own benefit, he can not afterwards exercise any control over them.⁵⁰ But the fact that one partner is insolvent will not prevent him from collecting the firm debts, after dissolution.⁵¹ It seems to be agreed that while each partner has authority to settle partnership debts, yet if it is agreed, upon dissolution, that one partner surrenders this right to his copartner, and one who has notice of this agreement afterwards settles with the partner who surrendered his right to settle, the settlement is not binding on the copartner.⁵² Third parties settling with other than the liquidating partner, and having notice, are subject to the equitable rights of the other partner.⁵³ But if made in good faith, it was held in Vermont that payment to one partner, even against the prohibition of the other, operated as payment of the debt.⁵⁴ After a dissolution of the partnership, one partner can not bind the other by a promise to pay a note indorsed by the firm, but from which they have been discharged by want of notice of non-payment.⁵⁵ And in a recent case in North Carolina it has been held that, after dissolution, one partner has no authority to waive protest of paper indorsed by the firm.⁵⁶ And admissions made by one partner after dissolution are held not conclusive upon the partnership.⁵⁷ But declarations made by one partner after dissolution, concerning facts which transpired during the existence of the partnership, and in the regular course of its business, are admissible as against the firm, provided they do not create a new liability.⁵⁸ One member of a dissolved partnership has no authority, unless it has been expressly given, to retain an attorney to defend the other members of the late firm, in a suit

³⁹ Davis' Estate, 5 Whart. 530; Whitehead v. Bank of Pittsburgh, 2 W. & S. 172; McCowin v. Cubbison, 72 Pa. St. 358; Brown v. Clark, 14 Pa. St. 469; Robinson v. Taylor, 4 Pa. St. 242.

⁴⁰ McCowin v. Cubbison, 72 Pa. St. 358.

⁴¹ Ward v. Tyler, 52 Pa. St. 393.

⁴² Chappell v. Allen, 38 Mo. 213.

⁴³ First National Bank of Maukato v. Parsons, 19 Minn. 289.

⁴⁴ Milliken v. Loring, 37 Me. 408; Knowlton v. Reed, 38 Me. 246.

⁴⁵ Bacon v. Hutchings, 5 Bush, 597; Easter v. Farmers' National Bank, 57 Ill. 215; Helm v. Cantrell, 59 Ill. 524; Dunlop v. Limes, 49 Iowa, 178; Simmons v. Curtis, 41 Me. 373; Perrin v. Keene, 19 Me. 355; Hicks v. Russell, 72 Ill. 230; Mauney v. Coit, 80 N. C. 300; Sanders v. Ward, 23 Ark. 242.

⁴⁶ Heartt v. Walsh, 75 Ill. 200; Hilton v. Vanderbilt, 82 N. Y. 591; Robbins v. Fuller, 24 N. Y. 570; Gillilan v. Sun Mutual Ins. Co., 41 N. Y. 376.

⁴⁷ Morse v. Bellows, 7 N. H. 549; Torrey v. Baxter, 37 Vt. 573.

⁴⁸ Milliken v. Loring, 37 Me. 408.

⁴⁹ Bennett v. Buchan, 61 N. Y. 225.

⁵⁰ Davis v. Briggs, 39 Me. 304.

⁵¹ Heartt v. Walsh, 75 Ill. 200.

⁵² Combs v. Boswell, 1 Dana, 475; Clark v. Reed, 31 Leg. Int. 413.

⁵³ Hilton v. Vanderbilt, 82 N. Y. 591.

⁵⁴ Thrall v. Seward, 37 Vt. 573.

⁵⁵ Schoneman v. Fegley, 7 Pa. St. 433.

⁵⁶ Mauney v. Coit, 80 N. C. 300.

⁵⁷ Flowers v. Helm, 29 Mo. 324; Brady v. Hill, 1 Mo. 315; Taylor v. Hillyer, 3 Blackf. 433; Beatty v. Ams, 11 Minn. 331.

⁵⁸ Rich v. Flanders, 39 N. H. 305, 338; Mann v. Locke, 11 N. H. 246; Curry v. Kurtz, 33 Miss. 24; Loomis v. Loomis, 26 Vt. 198; Hinkley v. Gilligan, 34 Me. 101; Parker v. Merrill, 6 Me. 41.

brought against the partnership.⁵⁹ In a case in Iowa it has been held that one partner, after dissolution, is authorized to defend, in the name of the partnership, a suit against the firm, to appeal from the judgment, and to procure sureties on an appeal bond necessary to that end.⁶⁰ In the same State it was held, where, upon dissolution of a copartnership, it was stipulated that all unsettled business should be entrusted to one of the partners, and by him arranged for their joint benefit in the same manner as if the firm continued to exist, with power to execute all contracts, and perform all duties necessary to the settlement of its affairs, that such partner could not maintain an action in his own name to recover a debt due to the firm.⁶¹ In a case in Pennsylvania it was held that one partner, on the eve of dissolution, had no power to dispose of the entire property of the firm, and especially when its continued ownership was essential to the prosecution of the business; and that he would be restrained by injunction from so doing.⁶² It is settled that, whenever one partner gives actual notice that he will not be holden as partner, he can not thereafter be bound for debts contracted by his copartner.⁶³ A partnership is not bound by acts of another partnership having a common member.⁶⁴ HENRY WADE ROGERS.

Pennington, N. J.

⁵⁹ Hall v. Lanning, 1 Otto, 160; Bowler v. Houston, 30 Gratt. 266.

⁶⁰ Gard v. Clark, 29 Iowa, 189.

⁶¹ Sypher v. Savery, 39 Iowa, 258.

⁶² Sloan v. Moore, 37 Pa. St. 217.

⁶³ Monroe v. Conner, 15 Me. 178; Feigley v. Sponeberger, 5 W. & S. 564; Leavitt v. Peck, 3 Conn. 125, 128.

⁶⁴ Cobb v. I. C. R. Co., 38 Iowa, 610.

THE RIGHT TO MANACLE PRISONERS.

The question of the right to manacle prisoners, which arose before the Commission of Oyer and Terminer on Wednesday last, is one that has not frequently been the occasion of controversy in modern times. It may, however, occur at various stages of the prisoner's custody—at the time of his arrest, of his committal to gaol, and of his appearing at the bar; and a few words upon the law applicable to each of those contingencies may here be useful.

In the first place, as regards the arrest, we consider that ordinarily, and not merely when the apprehension takes place on mere suspicion (as laid down by Mr. Levinge, "Justice of the Peace"), an unconvicted prisoner ought not to be manacled, unless there is reasonable ground to fear an attempt at escape or rescue; and if without reasonable grounds the prisoner is manacled, the constable would seem to be liable to an action for assault.¹ Neither, in the dubious interval between the commitment and trial, should the prisoner be loaded with needless fetters;² and if the gaoler shall imprison a man so straightly by putting him in stocks, or putting more irons upon him than is needful, an action will lie against the gaoler.³

Lastly, as to the trial at bar, we apprehend that the prisoner ought not to be hand-cuffed. This question arose in 1867, when the prisoners charged with the Fenian outrage at Manchester were brought in fetters before the police court, when their counsel, Mr. Ernest Jones, having failed in his peremptory demand for the removal of the manacles, went so far as to throw up his brief.⁴ But, in our opinion, such a demand could not be insisted upon as of right. That the prisoner ought to be unshackled we doubt not; the custom is so; but it is a matter lying within the discretion of the court. In *State v. Kring*,⁵ indeed, where the prisoner, having on a former trial assaulted a bystander, was brought into court the second time ironed upon his wrists, and the court refused to order the removal of the irons, *Bakewell, J.*, said: "It was no sufficient reason for compelling the prisoner to stand his trial for his life with gyves upon his wrists and his hands bound together. Officers of the court could have been placed around him if he was considered dangerous to bystanders, or he might have been placed in an enclosed space within the bar of the court, as was the English custom. Any proper precau-

¹ *Wright v. Court*, 4 B. & C. 596; *Griffin v. Coleman*, 4 H. & N. 265; *Smith v. Brears and Beach*, 1 Ir. L. T. 611; 2 Hale P. C. 219.

² *Fleta*, Lib. c. 26; *Mirror*, c. 5, s. 1, n. 54; 4 Bl. Com. 300; 1 Rol. 807, 1; 2 Inst. 381; 1 Hale, P. C. 601; 2 Hawk. c. 22, s. 32.

³ *Fitz. H. Nat. Brev.* 93; *Dalton*, c. 170, s. 13; 1 Ed. III., St. 1, c. 7; 14 Ed. III., St. 1, c. 10; 17 St. Tr. 453.

⁴ See 1 Ir. L. T. 603.

⁵ 1 Mo. App. 439, affirmed 64 Mo. 591.