Powers of Partners - I

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An important decision was also rendered by the court in the case of Francis Barton v. John Barbour, receiver, a case involving the liability of a receiver to suits in the courts of another State than the one whose court appointed him. It is held that where a court of one State has a railroad or other property in its possession for administration as trust assets, and has appointed a receiver to aid it in the performance of its duty by carrying on business to which the property is adapted, a court of another State has no jurisdiction to entertain such suit against such receiver for cause of action arising in the State in which he was appointed and in which the property in its possession is situated, based on his negligence or that of his servants in the performance of their duty in respect to such property, or for any services performed or materials furnished such receiver in carrying on such business.

POWERS OF PARTNERS.

I.

So large a proportion of the business of the world is conducted by means of partnerships, that the law, regulating and governing associations for such purposes, is one of unusual importance, and must continue always to attract careful attention at the hands of lawyers engaged in active practice. Attention has been directed recently in this Journal, in two learned articles, to the law regulating the powers and liabilities of surviving partners and of dormant partners; and it is our purpose now to supplement the articles referred to by reviewing the law regulating the powers of partners in general.

The very nature of a partnership makes evident the necessity which exists, that one partner should be held to represent all, possessed of a power to bind his copartners in all transactions which concern the partnership. To deny the existence of this power, and to require the express assent of each copartner to be given as a condition precedent to the transaction of any partnership business, is so to cripple the relation of partners as to deprive it of much of its usefulness. Hence we find it laid down as an elementary principle underlying the whole law of partnership, that one partner is to be considered as the agent of all his copartners, with a power as such to bind them in matters which legitimately pertain to the partnership business. An implied power is held to exist in each to bind all the others in all matters within the scope of the partnership business. Of course, one partner's power to bind another is limited to partnership transactions, and does not extend to other and distinct affairs. But so assured is the power of one partner to bind his copartners, within the scope of the partnership business, and so necessary is it to the proper carrying on of the business, that this power should exist, that the principle even clothes the partner with the right to bind his copartners, within the scope of such business, so long as the relation continues, notwithstanding their dissent and refusal to agree to the transaction involved. And so far as third persons are concerned, the private arrangements between the partners, contained in the articles of partnership, limiting and restricting the usual powers possessed by partners engaged in that kind of business, can not be allowed any force or effect against them, provided they had no notice of such limitations. Third persons dealing with a


4 Croungton v. Forrest, 17 Mo. 331; Eastman v. Cooper, 18 Peg. 276, 290; Jones v. O'Farrell, 1 Nev- ada, 341; Cuyan v. Hardy, 37 Mo. 592; Goodman v. White, 3 Cushman, 163; Godde v. Linneman, 1 How. (Miss.) 281; Livingstone v. Roosevelt, 4 Johns. 254; Mereciel v. Mack, 10 Wend. 561; Nichols v. Hughes, 2 Bailey, 185.

5 Wilkins v. Pearce, 5 Denio, 541.

partnership, have a right to presume that each partner is clothed with the usual powers pertaining to a partnership formed for the transaction of that particular kind of business; but if they have actual notice that those powers are limited and conditioned by the articles of copartnership, they will be bound accordingly. 7

It is settled that a general partner in a mercantile business may borrow money for the benefit of the firm, and pledge its credit therefor, unless restrained by the articles of copartnership, of which the lender has notice. 8 He possesses the power to make negotiable paper, and to give it effect by delivery. 9 He can compromise a debt due to the firm, 10 and execute a chattel mortgage to secure a debt due from the firm. 11 A managing partner has authority to permit mutual credits with other business establishments. 12 And one partner has the power to dispose of the entire firm property for any purpose within the scope of the partnership, 13 it being deemed necessary that each partner should possess the *jus disponendi* of the whole property, to the more effective carrying on of the partnership business. He can transfer the firm property to one who promises to pay the firm's debts, although such transfer is made against the protest of his copartner. 14 The transfer of the entire firm property may be made without any consultation with copartners. 15 And it has been held that one partner can bind his copartners by a submission to arbitration, where it is not necessary that the submission should be under seal. 16

The principle has been announced in Pennsylvania, that one of two partners can give authority to a clerk to act in the name of the firm. 17 One partner may assign a debt due the firm, 18 and he has authority to release, under seal, a debt due to the partnership. 19 The authority of one partner to endorse a note in the firm name is presumed. 20 One partner has authority to accept a bill addressed to the firm; and if the acceptance is in the name of one of the partners only, yet all the members will be bound. 21 And a note, expressed to be for the firm, and executed in the name of one of its members, is held good against the firm. 22 But in order to make a note, signed in the individual name of one partner, binding upon the firm, it must appear affirmatively that it was given and received as a firm note, binding on all the partners. 23 But the law, of course, implies authority to execute notes, only where from the nature of the partnership, the authority is necessary for the success of its business, or where the exercise of such power is according to usage and custom. 24 Where two lawyers, being general partners in the practice of law, collected money for a client, and one of them spent it, and afterward, to repay money borrowed by himself to meet his client's

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15 Mabbutt v. White, 12 N. Y. 444.
19 Pierson v. Hooker, 3 Johns. 68; Bulkley v. Dayton, 14 Johns. 387; Weils v. Evans, 20 Wend. 251; McBride v. Hagan, 1 Wend. 320; Salmon v. Davis, 4 Binns. 375.
22 Caldwell v. Sithers, 5 Blackf. 99.
23 Gray v. Ward, 18 Ill. 32; Dow v. Phillips, 24 Ill. 249.
draft, drew a bill on his own firm, and accepted it in the firm name, it was held that the other partner was not liable. And so, a member of a firm formed for agricultural purposes, was held unable to bind his co-partners by issuing commercial paper. In a comparatively recent case in Wisconsin, where it was held that a law partnership was not liable upon a note made by one of the partners in the firm name, and for a firm debt, the court said that, in order to clothe one partner with power to bind his co-partners by a promissory note, the exercise of such a power must be necessary for the carrying on of the business of the partnership; or it must be usual for one partner to possess such a power in similar partnerships, or the authority must have been granted by the express assent of the co-partners.

It has been held, where a firm, by the violation of their contract of agency, became liable to their principal for the amount of certain notes taken by them as agents, that either partner had authority, in settlement of the notes taken by them as agents, that either partner had authority, in settlement of the contract of agency, became liable to their principal for the amount of certain notes taken by them as agents, that either partner had authority, in settlement of the notes taken by them as agents, the exercise of such a power must be necessary for the carrying on of the business of the firm. And where a contract is made by one partner in the name of the firm, the same being beyond the scope of the partnership, a subsequent assent there-to may be inferred from declarations or conduct of the other partners, so as to bind them. Where one partner purchases property for the use of the partnership, but upon his single credit, the seller, not being aware that it was purchased for the partnership, and not even being aware of the existence of the partnership, may nevertheless hold the other partners liable when he discovers the facts, if he desires so to do. Where an active partner accepted, for the firm, service of a writ against all the partners, and employed an attorney to attend to the cause, who entered a general appearance for the defendants, and submitted to a judgment against them, it was held that all the partners were concluded by his action. But one partner has no implied power to enter an appearance in a suit, except for the partnership; and he can not, by an appearance, bind his co-partners individually, who are not within the jurisdiction, and who have not been served with process. In order to sue out an attachment in the name of the firm, one partner can execute a bond in the name of the partnership.

The power of one partner to bind his co-partner rests alone upon the usage of merchants, and does not amount to a rule of law in any other than commercial partnerships. In a recent case in Kentucky, the court said: "The business of a copartnership being ascertained, and the nature of the contract made by a single member, and the circumstances attending it being known, the court may generally determine as matter of law, whether the contract was within the scope of the implied powers of a partner. Not so, however, in reference to a contract made by a member of a non-commercial partnership. A partner in such a partnership does not generally possess power to bind the firm, and, consequently, the extent of his powers is not fixed by the rules of law, but each case is left to be decided upon its particular facts; and, in all such cases, in order to make out the liability of the firm, it ought to be made out affirmatively by the plaintiff, that the partner had power to make the contract in question."

It is held that the extent of the powers of a copartnership, or of one of its members, to bind the firm, and the liability of its members, must be determined by the law of the place where the partnership was formed, and had its place of business, although the transaction was had in another State. One partner, of course, can receive and receipt payment of firm debts. And a member of a partnership formed for a special purpose, has the same power to bind his associates as if the partnership were a general one. The fact that a partnership happens to be in debt, does not give one partner the right to prevent a copartner from taking pos-

25 Breckinridge v. Shrieve, 4 Dana, 578.
26 Hunt v. Chaplin, 6 Laas, 139.
28 Brayley v. Hedges, 5 Iowa, 623.
29 Waller v. Keyes, 6 Vt. 557.
31 Bennett v. Stickney, 17 Vt. 551.
33 Lessee of Wilson v. Smith, 8 Ga. 551.
36 Yandis v. Lefavour, 3 Blackf. 571.
session of the partnership property. And where one partner contracts a debt, representing that it is for the benefit of the firm, if the contract was within the scope of the business, the firm will be liable, whether the representation was true or false. And, in short, the admissions made by one partner while engaged in the partnership business, are admissible in evidence against the firm. Of course, the admissions of one partner do not bind the copartners as to matters which are foreign to the purposes of the partnership.

Passing to the powers which partners do not possess, it may be remarked that the general rule is, that one partner has no right to sue his copartner in an action at law, and during the continuance of the partnership, concerning any matters which pertain to the partnership. But an action between partners may be maintained where the cause of action is distinct from the partnership accounts. And in Crater v. Bininger, the New York Court of Appeals declared that there was no rule of law forbidding one partner to sue another at law, in respect of a debt arising out of a partnership transaction, if the obligation, or contract, though relating to partnership business, was separate and distinct from all other matters in question between the partners, and could be determined without going into the partnership accounts. If partners, by an express agreement, separate a distinct matter from the partnership dealing, and one expressly agrees to pay the other a specific sum for that matter, assumption will lie on that contract, although the matter arises from their partnership dealings. Where one copartner furnishes another with funds, which the latter ought to have furnished as a part of the capital stock, the former may recover the same in assumption, before the final settlement of the partnership business. And if one copartner makes a note payable to the other, for the use of the firm, the latter may recover thereon at law. An action at law may also be maintained by one partner against the other for damages occasioned by a breach of the articles of copartnership. In a case in New Hampshire it was held that money lent by one partner to another, for the purpose of launching the partnership, could be recovered in an action at law, provided the matter was not so blended with the partnership accounts as necessarily to require an accounting, as upon the dissolution of a copartnership, to ascertain whether the sum be due or not. And a partner may maintain an action against a copartner, to recover his individual funds, received by the copartner, as his agent, and commingled, without his consent, with the partnership funds. In fine, one may sue his copartner upon any agreement which is not so far a partnership matter as to involve the partnership accounts. It is settled that one partner has no power to confess judgment against his copartner, and if he undertakes to do so, the confession of judgment is valid only against the partner who makes the confession. But no one can object to such a confession of judgment except the other partner...
matter which concerns the partnership. 63
And while one partner can not make a general assignment, yet the assignment, if made, is not void, but voidable, and may be ratified by the copartner. 64 And the same principle holds in reference to a submission to arbitration. 65

HENRY WADE ROGERS.

FELLOW-SERVANT IN SAME COMMON EMPLOYMENT.

The line of adjudications settling the doctrine that a master is not liable to a servant for an injury resulting from the negligence of a fellow-servant engaged in a common employment is almost unbroken. 1 But many cases arise in which it becomes extremely difficult to determine just what relations to each other, and to their master, will constitute two persons fellow-servants within the meaning of the rule. The purpose of this article is the consideration of some of these cases. Redfield has defined fellow-servants within the meaning of the rule as follows: "All the servants of the same master engaged in carrying forward the common enterprise, although in different departments widely separated, or strictly subordinate to others, are to be regarded as fellow-servants, bound by the terms