nership debt could be proved. The Register held that it could, and that the petitioner would be entitled to a discharge from all his debts, copartnership as well as individual. Now, if the judge had thought that the Register was wrong in this view of the case, he would certainly have said so. But he does not say so.. All he says is, "The debt in question is provable, whether there are any assets of the copartnership or not. *If there are any such assets*, they must be administered according to the provisions of section 36 of the act, and so must the assets of the separate estate of the bankrupt."

From all which I infer the opinion of the judge to be that when there are no assets of a copartnership to be administered, a member of a late copartnership may, upon his individual petition, be discharged from all his debts, copartnership as well as individual. In this opinion I concur, and this is as far as it is necessary for me to go in order to dispose of the present case.

## ABSTRACTS OF RECENT AMERICAN DECISIONS.

### SUPREME COURT OF VERMONT.[1]

#### AGENT.

*Competency as a Witness.*—The common-law principle, that an agent is a competent witness, either for or against the principal, to prove his acts done, or contracts made, as agent, and his authority therefor from his principal, is equally applicable to the case of a written contract purporting to be executed by an agent in the name and behalf of the principal, as to a case of a verbal contract: *Lytle* v. *Bond*, 40 Vt.

The main object of Gen. Stat. § 24, ch. 36, providing that no person shall be disqualified as a witness in civil suits, by reason of interest as a party or otherwise, was to *remove*, not to *create*, disqualifications; and the *proviso*, that when one party is dead or insane, the other shall not testify in his own favor, was intended mainly as a limitation or exception to the enabling clause; and this limitation or exception applies only to *parties*: *Id.*

An agent is not a party to a contract made by him in the name and behalf of his principal: *Id.*

Where a note was signed "Richard Bond, by Stillman Clark," it was *held*, that Clark was a competent witness in an action on said note against Bond's estate, after Bond's decease. Clark being an agent is not in legal sense a party to the note: *Id.*

[1] From W. G. Veazey, Esq., Reporter; to appear in 40 Vt. Rep.

The introduction of evidence by one party, that might have been excluded, had the other party objected to it, does not necessarily open the door to the other party to introduce incompetent evidence. But where the evidence introduced is a circumstance morally tending to render the disputed fact more probable, even if so remote as not to be admissible as legal evidence, the other party has a right to do away with the impression it may create in the minds of the jury, by evidence of the same character and force tending directly to meet and explain it: *Id.*

Under this rule, the evidence offered by the defendant and excluded, to the effect that for several years previous to the death of Bond, he had been in the habit of doing business with the Battenkill Bank, &c., was held admissible: *Id.*

Also testimony to show that Bond was a good business man, and accustomed to sign his own name to papers, and to do his own writing, was admissible as bearing on the probability of a statement of a witness in behalf of the plaintiff, that on one occasion Bond called on the witness, a daughter of Clark, to sign his name to a note in his presence, and directed her to sign his name whenever her father wanted her to: *Id*

*Refusal to deliver Goods to Principal.*—A refusal, by an agent, to deliver to the principal, goods purchased with funds furnished by the principal, entitles the principal to demand and recover of the agent the funds placed in his hands: *Safford* v. *Kingsley*, 40 Vt.

A refusal, except upon terms or conditions the other party is not bound to accept, is equivalent to an absolute refusal: *Id.*

The conduct of a party may amount to a refusal. It need not be in words: *Id.*

It is the duty of an agent, who buys goods on commission, to be delivered at a specified place, to separate them from goods of his own of the same kind, left at the same place, and if he neglects, on request, to perform this duty, at the same time claiming that the principal shall take the whole, his conduct amounts to such a refusal to deliver the goods he purchased on commission, as will enable the principal to recover the funds he left with the agent to purchase the goods: *Id.*

A. employed B. to buy, for him, certain lots of butter. B. bought these lots and others, and left the whole together at the railway station, the agreed place of delivery, and claimed that A. should take lots he, in fact, did not order to be purchased. A. wrote B. to meet him at the station, and designate the butter purchased according to order. To this letter B. paid no attention. A. made no attempt to pick out the lots by the marks upon the boxes. It did not appear but he might, by this means, have selected the lots he had directed B. to buy. *Held*, 1. That the request made of the agent was reasonable. 2. That the agent's neglect to comply with it, was equivalent to a refusal to let the principal have the butter unless he would take with it lots he had not authorized the agent to buy. 3. That the principal was not bound to rely on the marks upon the boxes, or to take upon himself the risk of attempting to separate the lots bought by order, from those bought without order. 4. That the principal, A., was entitled to demand and recover of the agent, B. the funds placed in his hands to purchase the butter: *Id.*

## Bills and Notes.

*Payable on Demand—Reasonable Time of Demand*.—The payee of a demand note payable in hemlock bark, given February 19th 1863, demanded payment in the summer of 1863, according to its terms, requesting the defendant to have the bark peeled during the summer, the season for peeling bark, and delivered the next winter, usually the best time to draw it, all which the defendant agreed should be done. *Held*, that this demand was most appropriate to such a note, and the defendant by failing to answer it, as he promised, became liable to pay the note in money. The payee could therefore recover upon the money counts: *Read* v. *Sturtevant*, 40 Vt.

## Contract. See *Limitations, Statute of.*

*Memorandum by one Party.*—A memorandum of a parol contract, made and signed by one of the parties thereto in his private memorandum book, for his own personal use, is conclusive upon no one. It is not a contract. It is, at most, but a piece of evidence not admissible in favor of the party, except when accompanied by proper parol proof, and not competent against him, except as an admission, the force of which to be determined by proof of the circumstances under which it was made: *Stannard* v. *Smith*, 40 Vt.

## Criminal Law.

*Indictment—Larceny—Duplicity—Evidence.*—The indictment in this case alleged that the respondent, on the 9th day of September 1866, one horse of the value of $300, one buggy wagon of the value of $150, and one harness of the value of $50, of the goods and chattels of W., feloniously did steal, take, and carry away, &c. *Held*, not bad for duplicity: *State of Vermont* v. *Cameron*, 40 Vt.

*Held*, that the horse, wagon, and harness being taken at one time, constitute but one theft, and cannot be the subject of different indictments: *Id.*

The state, before resting, proved that the respondent, on the 9th day of September 1866, hired a team of W., at Rutland, for a short ride, and, on the 14th, was seen driving a similar team on a cross road in Warrensburgh, N. Y.; that nothing was heard of the respondent or the team for several weeks; that on the 17th day of October 1866, the team was found at Mechanicsville, N. Y. *Held*, that the prosecution made out a *primâ facie* case: *Id.*

The respondent's witness, G., having testified that the team in question was bought by respondent's brother, J., of a stranger, at Lake George, N. Y., it was *held* competent for the state to show that J. was then on the jail limits for debt, had failed in business, and had no visible means of support, as tending to contradict G.'s testimony: *Id.*

One of the defences in this case was an *alibi*. The court charged the jury, that in order to convict the respondent the prosecution must establish their whole case beyond a reasonable doubt; but, that if the *alibi* was proven, they must acquit him, and refused, on request, to tell the jury, that in order to convict the respondent they must find, beyond a reasonable doubt, that he was *not* at the place of the *alibi* on the day in question. *Held*, that in this there was no error: *Id.*

The respondent requested the court to charge the jury, that the fact that the respondent had not taken the stand as a witness in his own behalf should not be thought of, or taken into consideration by them to the prejudice of the respondent. This the court refused, saying he could not prevent their thoughts, but charged them, that the respondent's omission to take the witness stand should not be taken against him. *Held*, that in this there was no error: *Id.*

The failure of the court, on request, as in this case, to prevent the prosecuting counsel from arguing to the jury, that the omission of the respondent to testify was evidence against him, constitutes such error and irregularity as to require the verdict to be set aside, and a new trial granted, and is a proper subject of exceptions: *Id.*

EVIDENCE. See *Agent, Contract.*

LIMITATIONS, STATUTE OF.

*Promissory Note — Demand — Contract — Consideration.* — A note, dated March 14th 1832, "payable in officer's fees as constable," although not in terms expressed to be payable on demand, or on request, is by legal construction so payable; and no demand having been made until 1859, it was *held*, that the note was barred by the Statute of Limitations: *Thrall* v. *Estate of Mead*, 40 Vt.

Where a debt is payable in specific property, a new contract made before the debt has become payable, changing the mode of payment, and extending the time, needs no new consideration for its support: *Id.*

The general rule in case of such debt is, that no action accrues until request or demand, and that the statute does not commence to run until demand is made, but the creditor may be guilty of such unreasonable neglect in omitting to make demand as will set the statute in operation without demand: *Id.*

Where a note of $400, dated February 19th 1827, was payable in instalments in grain, the last instalment April 1st 1832, and in June 1829, it was agreed between the plaintiff and maker that the plaintiff should not call for the grain until the last instalment became payable; and in the mean time the maker was to render such services as constable for the plaintiff as he should call for, from time to time, which were to apply on the note; and before April 1st 1832, the parties agreed that the balance due should be postponed to an indefinite period, and that the plaintiff should still continue to receive his pay in the services of the maker as constable, the latter agreeing to render such services as called for from time to time, and if any balance still remained due, after deducting such services, the same should be payable at any time after April 1st 1832, in grain, upon giving reasonable notice to pay in grain, it was *held*, that no new consideration was required to support this agreement, as to mode of payment, or extension of time: *Id.*

This case distinguishable from those where the debt was already due and payable in money when the new agreement was made: *Id.*

The maker having ceased to be constable in 1845, the balance then unpaid on the note became payable in grain upon reasonable notice or demand by the plaintiff, and it was *held*, that six years from 1845, was the limit of a reasonable time in which to make demand, and that after the expiration of that six years the statute began to run: *Id.*