formed, which provides that neither of the parties shall sell or assign his interest without consulting the other parties and giving them the preference to buy such interest, is not sufficiently indicative of an intention to authorize the introduction of a stranger into the firm, to overrule the well established law on that subject. Indeed the complainant nowhere alleges that he became a partner under the clause referred to. It may have been introduced as a provision for an earlier dissolution than the term mentioned in the agreement, but whatever effect the provision may have had between the parties themselves, it does not clearly appear to confer on the complainant those rights which would, in the present case, justify the Court in granting the present application.

The motion for an injunction and for the appointment of a receiver, is therefore refused.

C. Fallon for complainant; *Mallory, Bull* and *Sheppard* for respondents.

RECENT ENGLISH CASES.

Sussex Summer Assizes, 1852.

REG. *v.* FRANCES MOORE.[1]

A party cannot be convicted of an attempt to commit Suicide, if, at the time of the act done, he was so drunk as not to know what he was about.

The prisoner was indicted for a misdemeanor, in attempting to commit suicide by throwing herself into a well. The only witness examined stated, that he lived in the same house with the prisoner and her husband; and, one evening, as they were quarrelling and beating each other, he, in order to separate them, put the prisoner out of the house into the garden, where was a well, thirty-eight feet deep, with about four feet of water. The prisoner then exclaimed, that as she was thrust out of the house she would throw herself into the well. She accordingly did so, but help having been obtained, was taken out without much injury. The witness

[1] 16 Jur. 750.

further said, in answer to a question from the judge, that the prisoner was at the time so drunk as not to know what she was about.

JERVIS, C. J., (to the jury).—If the prisoner was so drunk as not to know what she was about, how can you find that she *intended* to destroy herself?—*Verdict, not guilty.*

—— The authorities are rather at variance as to whether, and under what circumstances, the fact of an accused person having been drunk at the time of the commission of the alleged offence, may be taken into consideration by the jury. Perhaps they may be reconciled, by adverting to the distinction taken by foreign jurists between "*delicta facti permanentis*," and "*delicta facti transeuntis.*" That drunkenness is no excuse for crime committed under its influence, when the crime is one by which mischief is caused to person or property, is a principle alike of natural and municipal law. In such cases, it is no answer whatever to the charge that the accused did the mischievous act without criminal intent, seeing that it was his own voluntary act which deprived him of the means of knowing the injury he was doing. The reason of this is thus clearly stated by Puffendorff,[1]—"Equidem id manifestum, est, delicto ob ebrietatem, per quam patrato sunt, ideo a pœna haudquaquam immunia esse. Scilicet quanquam forte in ebrietate ipsa quis ignoret, quid agat; tamen ubi quis ultro voluit usurpare illa, ex buibus obnubilationem mentis orituram norat, censetur etiam in ea consensisse, quæ inde erant consecutura. Quia absolute est interdictum, delicta admittere, ideo vitandæ quoque sunt homini occasiones, qæ probabiliter in delicta possunt pertrahere. Quid autem ebrietas designot, vix est, ut ignorare quis possit. Et cum ipsa ebrietas eo præcique nomine sit peccatum, quatenus ad alia peccata hominem disponit; not potest ex peccatorum numero eximi, quod in se est peccatum ideo, quia peccato suam debet originem." And in our own law, Sir E. Coke, in a well-known passage, says,[2]—"As for a drunkard who is *voluntarius dæmon*, he hath (as hath been said) no privilege thereby, but what hurt

[1] De Jur. Nat. & Gent., lib. 3, c. 6, § 4. [2] Co. Litt. 247. a.

or ill soever he doth, his drunkenness doth aggravate it: *Omne crimen ebrietas et incendit, et detegit.*" But where a party is charged with a crime, the essence of which is intention, and which leaves no permanent effects behind it, the fact of his drunkenness at the time becomes a material element in determining whether that intention did really exist in his mind or not.—*Jurist Reporter.*

It is well settled in the United States, that intoxication is no excuse for the commission of a crime, such as murder.[1] But drunkenness may be material upon the question of malice; and when proved, may lower the grade of the offence, as from murder in the first, to murder in the second degree.[2] So where there was provocation given, it may be taken into consideration to determine whether the blow was given upon the provocation or on an old grudge; and also on the ground of the greater excitability of a drunken man.[3] There may be distinctions taken, too, among the different stages of intoxication, as that by Swinbourne, in his chapter entitled "Of him that is drunk,"[4] between a man "excessive drunk," and one "not clean spent, albeit his understanding be troubled."

But to justify the application of the general rule the crime must take place, and be the immediate result of the fit of intoxication, and while it lasts. Permanent insanity, though remotely caused by habitual intemperance, will be, as in other cases, a good defence.[5] In a case in Ohio, indeed, it was said that where insanity is produced by intoxication, and the prisoner *knew* that

[1] Bennett *v.* The State, Mart. & Yerg. 133; Swan *v.* State, 4 Hump. 135; Cornwell *v.* The State, Mart. & Yerg. 147; U. S. *v.* Shelmire, 1 Baldw. 371; State *v.* Turner, Wright's Ohio, 20; State *v.* Tookey, 2 Rice, S. C. Dig. 105.

[2] Kelley *v.* The State, 3 Sm. & M. 518; Com. *v.* Haggerty, Lewis Crim. Law, 405; Penn'a *v.* McFall, Add. 257; Pirtle *v.* The State, 9 Hump. 663; See R. *v.* Gradley, 1 Russ. on Crimes, 8, afterwards, however, denied to be law in Rex *v.* Carroll, 7 C. & P. 145.

[3] Pirtle *v.* The State, 9 Hump. 668; R. *v.* Thomas, 7 C. & P. 817; R. *v.* Pearson, 2 Lewin, 144; State *v.* McCaul, 1 Spear, 184.

[4] Wills, p. 2. ch. vi.

[5] U. S. *v.* Drew, 5 Mason. 28; Cornwall *v.* The State, Martin & Yerg. 155.

such would be the result, he could not set it up as a defence.[1] But this is said to be contrary both to medical and legal authority.[2]—*Ed. Am. Law Register.*

Court of Queen's Bench, Eastern Term, May 4, 1852.

LLOYD *v.* HENRY OLIVER.[3]

In an Action by Payee against the Maker of the following Instrument—"Two Months after Date I promise to pay to T. R. L., or Order, 99*l.* 15*s.* for Value received"—in the Corner was the Name of the Plaintiff, and his Acceptance was written across the instrument:—*Held*, that it might be treated as a Bill of Exchange.

Action by Payee against the drawer of a bill of exchange. Plea, *non accepit.* On the trial, before Erle, J., at the London Sittings in this term, the plaintiff gave in evidence the following instrument:—

"99*l.* 15*s.* "London, July 17, 1851.

"Two months after date I promise to pay to Mr. T. R. Lloyd, or order, the sum of ninety-nine pounds fifteen shillings, for value received. "HENRY OLIVER."

"John Edward Oliver, Birmingham."

Across the instrument was written:—

"Accepted, payable Spooner, Attwood & Co., bankers, London.
"EDWARD OLIVER."

The plaintiff, who was called as a witness, stated that he gave the bill to Henry Oliver to get it accepted, and that he brought it back with the names of the drawer and acceptor, but with the words "I promise to pay" interlined. It was contended for the

[1] 3 Am. Jur. 10.

[2] Bost. Med. & Surg. Jour. 568; Wharton's Crim. Law, 47.

[3] 16 Jur. 833.

defendant that this was a promissory note, and not a bill of exchange. The learned judge was of opinion that it might be declared upon as a bill of exchange; and a verdict was entered for the plaintiff.

Gray now moved for a rule *nisi* to enter a nonsuit, or for a new trial on the ground of misdirection.—In *Edis* v. *Bury*, (6 B. & Cr. 433,) where the instrument began as this does, Littledale, J., said, (p. 436), "In order to make this a bill of exchange the words 'I promise' must be rejected; and those words constitute the essential difference between a bill of exchange and a promissory note." [Lord *Campbell*, C. J.—the decision in that case was only that the instrument might be treated as a promissory note as against the maker.] In contemplation of law it must be a bill of exchange before any acceptance is put upon it. [He also cited *Block* v. *Bell*, (1 Moo. & R. 149).]

Lord Campbell, C. J.—I am clearly of opinion, that, as against Henry Oliver, the drawer, this instrument may be treated as a bill of exchange, and that it might have been so treated even before it was accepted, because it was directed to John Edward Oliver, and that must mean that he was requested to pay the money therein mentioned two months after date. I do not reject the words "I promise to pay;" they may be considered as expressing what is implied by law, viz. that the drawer of the bill promises to pay, if the person to whom it is directed does not pay. This instrument might also, as against Henry Oliver, be treated as a promissory note. Such an equivocal instrument as this may, as Lord Ellenborough held, be treated either as a bill of exchange or as a promissory note, as against the person who framed it; and, in the latter case, the maker of it would not be entitled to notice of dishonor, which is all that was decided in *Edis* v. *Bury*, (6 B. & Cr. 433).

Erle, J.—I have no doubt, that, as against the present defendant, this instrument may be treated as a bill of exchange. The language of it must be taken with reference to the surrounding circumstances. There is the name of a drawee at the bottom, and