DEPARTMENT OF COMMERCIAL LAW.

ROBINSON *v.* FLOYD ET AL.[1] SUPREME COURT OF PENNSYLVANIA.

Partners of a banking firm who sell their interest and withdraw from the firm cannot by a mere publication of notice of such withdrawal in a newspaper, relieve themselves from liability for subsequent deposits by one who was a regular depositor for many years prior to such withdrawal; but a partner who gave actual personal notice to such depositor of his withdrawal, within three months thereafter, is not liable for such subsequent indebtedness.

NECESSITY FOR NOTICE UPON THE DISSOLUTION OF A PARTNERSHIP.

When a number of persons join themselves together for the purpose of carrying on any business or undertaking any kind of enterprise, each one thereby delegates to the other an authority, express or implied, to bind the members composing the partnership by an act or contract coming within the scope of the business for which the firm might be formed. Instances sometimes, if not frequently, occur where the authority of one member of a firm to bind the others will continue after the actual dissolution of the firm as between the parties themselves. But as to third persons and those dealing with the firm as creditors, the same continues to exist for all purposes until notice of the dissolution, actual or constructive, as the case may require, is given thereof. This wholesome rule of the law is founded on the soundest reason, and fortified by simple and natural justice. It is akin to the rule that holds the master liable for goods purchased by his servant

[1] Reported in 28 Atl. Rep. 258.

whom he sends to make purchases in the master's name, and where the servant, though his authority to make the purchases be withdrawn by the master, continues to buy of the dealer as before, the master not notifying the dealer that the servant's authority to buy goods on his credit is at an end. In short, the authority of the servant in the eye of the law is presumed to continue until notice to the contrary is given by the master. The rule is likewise grounded on the doctrine of equitable estoppel, as "where one party has by his representations or his conduct, induced the other party to a transaction to give him an advantage which it would be against equity and good conscience for him to assert, he would not in a court of justice be permitted to avail himself of that advantage." The servant is the agent of the master to buy goods on his credit. Good faith and fair dealing require the master to notify his dealer when that relation is ended. And so one partner is the agent of the others to bind them in all legitimate firm transactions; and when that authority is ended by the private agreement of the partners themselves, creditors of the firm and the public generally have a right to expect that the proper notice of the dissolution will be given and rely on this with assurance. Any other rule would open wide the flood-gates of fraud and facilitate all sorts of dishonesty and imposition.

There are two kinds of notice usually given when a firm retires from business and is succeeded by another, or is dissolved by the withdrawal of one or more of its members. To the public in general, it is usually sufficient to relieve the retiring member from liability for debts contracted in the name of the firm by the remaining partner or partners if notice of the dissolution be published in some newspaper in the town, vicinity or county where the business was carried on: Graves *v.* Gilbert, 7 Cow. 704; Lansing *v.* Gaine, 2 Johns. 304; Ketchum *v.* Clark, 6 Johns. 144; Wilkinson *v.* Bank of Pa., 4 Whart. (Pa.) 482; Reilly *v.* Smith, 16 La. An. 31; Wheelock *v.* McGovern, 28 Iowa, 533; Simonds *v.* Strong, 24 Vt. 642; Mitchum *v.* Bank of Ky., 9 Dana, 166; Kennedy *v.* Bohannon, 11 B. Mon. (Ky.) 118; Graves *v.* Merry, 6 Cow. 701; Austin *v.* Holland, 57 N. Y. 571; Amidown *v.* Osgood, 24 Vt. 278; Haynes *v.* Carter, 12 Heisk. (Tenn.) 7; Bristol *v.* Sprague, 8 Wend. 423; Johnson *v.* Tolten, 3 Cal. 343; Meyer *v.* Khron, 114 Ill. 574; Moline Wagon Co. *v.* Rummel, 12 Fed. Rep. 658. On the other hand, all who have had dealings with the firm prior to the dissolution are entitled to actual notice: McLemore *v.* Rankin Mfg. Co., 8 So. Rep. 845; Clement *v.* Clement, 69 Wis. 599; Morrill *v.* Bissell, 58 N. W. Rep. 324; Hall *v.* Heck, 92 Mich. 458; Moline Wagon Co. *v.* Rummel, 12 Fed. Rep. 658; Meyer *v.* Khron, 114 Ill. 574; Shamburg *v.* Abbott, 112 Pa. 6; Cogswell *v.* Davis, 65 Wis. 191; Gilchrist *v.* Brand, 58 Wis. 184; Elkington *v.* Booth, 143 Mass. 479; Potts *v.* Taylor, 140 Pa. 601; Speer *v.* Bishop, 24 Ohio, 598; Wilkinson *v.* Bank of Pa., 4 Whart. (Pa.) 482; Reilly *v.* Smith, 16 La. An. 31; Simonds *v.* Strong, 24 Vt. 642; Mitchum *v.* Bank of Ky., 9 Dana (Ky.), 166; Kennedy *v.* Bohannon, 11 B. Mon. (Ky.) 118; Marsh, Denman & Co. *v.* Dosson, 19 La. An. 9; Pope & West *v.* Risley, 23 Mo. 185; Lyon *v.* Johnson, 28 Conn. 1; Merrett *v.* Williams, 17 Kan. 287; Stewart *v.* Sonnebarn, 49 Ala. 178; Zollar *v.* Jarvin, 47 N. H. 324; Graves *v.* Merry, 6 Cowen (N. Y.), 701; Clapp *v.* Rogers, 12 N. Y. 283; Conro *v.* Port Henry Iron Co., 12 Barb. 27; Wardwell *v.* Haight, 2 Barb. 549; Vernon *v.* Manhattan Co., 22 Wend. 183; Prentiss *v.* Sinclair, 5 Vt. 149; Adam *v.* Holtgrove, 85 Ill. 470; Dickinson *v.* Dickinson, 25 Gratt. 321; Austin *v.* Holland, 57 N. Y. 571; Nott *v.* Douming, 6 La. 680; Haynes *v.* Carter, 12 Heisk. (Tenn.) 7; Johnson *v.* Tolten, 3 Cal. 343; Brown *v.* Foster, 19 S. E. Rep. 299; Robinson *v.* Floyd, 28 Atl. Rep. 258; Rosenbaum *v.* Horton, 57 N. W. Rep. 609; Bristol *v.* Sprague, 8 Wend. 423.

The retiring partner is charged with notice of the fact that the remaining partners can bind him by contracts made in the name of the old firm, and it is his duty under the law to diligently search out all the old customers of the firm at his peril, and to see that they have actual notice of the dissolution: Amidown *v.* Osgood, 24 Vt. 278. And this is necessary whether the name of the retiring partner appear in the style of the firm or not: McLemore *v.* Rankin Mfg. Co., 68 Miss. 196.

The Supreme Court of Louisiana lays down the recognized rule very correctly as follows: "The general rule of law is that, as to persons who have not dealt with the firm, notice in a public newspaper of the city or county where the partnership business is carried on will be sufficient; but as to persons who have been previously in the habit of dealing with the firm it is requisite that actual notice should be brought home to the creditor, or, at least, that the credit should be given under circumstances from which actual notice may be inferred:" Reilly *v.* Smith, 16 La. An. 31.

It may be necessary to inquire sometimes what is sufficient notice. The case of Haynes *v.* Carter, 12 Heisk. 7 was an action to charge one W. L. Carter, Sr., with a debt contracted in the name of a firm of which he had been a member, and which was made after his withdrawal. The creditors seeking to charge him had been previous dealers with the firm, the style of which was Carter & Upton. In the course of events, the senior Carter, who seems to have been the responsible member of the firm, withdrew and was succeeded by his son, W. L. Carter, Jr. The style of the firm was not changed. The dissolution was advertised in a local newspaper, a copy of which, containing the notice marked in red ink, was sent to the creditors by Carter, Jr. It was shown that this notice was not received, and it was held that Carter, Sr., was liable. It was held, further, that the sending of the paper was evidence tending to show notice, but was not, of itself, sufficient when it was shown that it was not received. It was also held that the sending a notice of dissolution properly directed would raise a presumption of notice, as letters sent by post are presumed to reach their destination; but that is a presumption of fact only, and not of law, and might be repelled by proof. Nor is it notice to a previous dealer that he take the paper in which the notice is contained unless he see it, or actual knowledge of it be brought home to him: Lyon *v.* Johnson, 28 Conn. 1. The law does not require that every notice or advertisement contained in a newspaper be read; and even if a creditor take a paper in which a notice of dissolution is contained, and actually receive the very number containing the same, this will not be notice. It is probable, and perhaps nothing is more common, than for persons to take newspapers without reading every advertisement they contain, and it would be going entirely beyond the pale of reason to visit a person with the knowledge of the contents of all notices contained in a paper from day to day: Wilkinson *v.* Bank of Pa., 4 Whart. (Pa.) 482; Austin *v.* Holland, 69 N. Y. 571; Reilly *v.* Smith, 16 La. An. 31; Meyer *v.* Khron, 114 Ill. 574. And a letter stating the dissolution, which was not returned from the dead letter office, though properly mailed and directed, is not sufficient notice without other evidence of its receipt. The rule that letters properly addressed and mailed are evidence of notice is restricted to commercial paper, and does not apply in case of the dissolution of a partnership: Kenney *v.* Altvater, 77 Pa. St. 34.

It is not necessary, however, that the creditor have actual notice of the dissolution of a copartnership. He may have a knowledge of such facts and circumstances as are inconsistent with anything less than notice. Or, if we have information of facts, which if diligently followed up with inquiry, would lead to a knowledge of the fact of dissolution, he shall be deemed in law to have actual knowledge of it. He cannot be wilfully blind when facts that imply the necessary information are brought to his knowledge. The law requires the retiring partner to give the necessary notice; none the less, however, does it require the creditor to use proper diligence and the means of information when he has that means: Prentiss *v.* Sinclair, 5 Vt. 149; Pope *v.* Risely, 23 Mo. 185; Stewart *v.* Sonnebarn, 49 Ala. 178; Rimel *v.* Hays, 83 Mo. 200; Johnson *v.* Tolten, 3 Cal. 343.

But it is not every kind of information that a creditor is bound to pursue in order to hold the retiring partner; for instance, every one is charged with knowledge of the contents of the public records of the courts, the records of deeds and mortgages, etc., but the recording of a mortgage executed by the remaining member of the firm to the retiring partner, is not notice to the world nor to the creditor that there has been a dissolution, and this though the property embraced in the mortgage be goods like those of the firm, and actual knowledge of the existence of such a mortgage be brought home to the creditor, does not charge him with notice, nor, as matter of law, put him upon inquiry. The fact that the creditor may have had the means of knowledge which, if followed up diligently, would have revealed the dissolution, yet this will not charge him unless the circumstances were such as to put him upon inquiry. If any question should arise involving the title to the property mortgaged, the mortgage being properly registered, would be constructive and conclusive notice to purchasers because it would be their duty to look to the registry for conveyances affecting the property. No such duty, however, rests upon a creditor of a firm to learn of the dissolution thereof. The law does not require that the retirement of a partner should be matter of record where deeds and mortgages should be registered, and of course there can be no requirement that a creditor look for a record to ascertain of a dissolution. It must be the duty of the creditor to follow up the knowledge that puts him upon inquiry before he can be charged with knowledge of what a due inquiry would lead up to: Zollar *v.* Jarvin, 47 N. H. 324.

If the creditor have notice of the dissolution, whether directly from the retiring partner or from third persons or from having seen the same advertised, or if he have the information from any source or in any mode whatsoever. It is sufficient if he have it. When this is the case all is accomplished that could be effected by serving actual notice upon him, or by the most diligent advertising, and this is true, though the retiring partner be negligent in not giving notice, yet the creditor cannot pursue him and hold him for the debts of the firm contracted subsequently to the change: Dickinson *v.* Dickinson, 25 Gratt, 321; Austin *v.* Holland, 69 N. Y. 371; Laird *v.* Ivens, 45 Tex. 622; Holtgrieve *v.* Wintker, 85 Ill. 472; Young *v.* Tibbets, 32 Wis. 79; Haynes *v.* Carter, 12 Heisk. 7; Davis *v.* Keys, 38 N. Y. 94; Johnson *v.* Tolten, 3 Cal. 343. The creditor must have this knowledge before he extends the credit in order to hold the outgoing member. If he credits the firm before learning this and have used due diligence on his part to ascertain the fact of dissolution, though he may afterwards come to a knowledge of the dissolution, however effective and convincing this knowledge be, he is still entitled to look to the retiring partner for his debt. His right to so hold him will not depend on the knowledge he may have of the retirement at the time his debt falls due or at the time he brings his action thereon, but will depend on his knowledge or ignorance of the dissolution at the time of entering into the contract and extending the credit: Wilkinson *v.* Bank of Pa., 4 Whart. (Pa.) 482. In a case where a firm was composed of three brothers named Wortendyke, and the style was Wortendyke & Co., one of the brothers retired selling his interest to one H. The firm name was changed to Wortendyke Bros. & Co. No notice of dissolution was given, and it was held that this change in the firm was not sufficient to put creditors upon inquiry, but that they had the right to presume that all the Wortendyke Brothers were members until notice was given to the contrary: American Linen Thread Co. *v.* Wortendyke, 24 N. Y. 550. But, doubtless, if upon the retirement of a partner the name of the firm so changes as to be sufficient to put dealers upon inquiry, the case would be different. For instance, if A and B dissolve partnership, A selling out to B, and the latter forming a partnership with C, under the style of C & Co., this would certainly put a former creditor of A and B upon inquiry, that is, of course, if the subsequent transactions be in the name of C & Co.

The rule requiring notice of dissolution to be given applies not only to partners *de facto* but *eo nomine* as well. And where one holds himself out to the public or to creditors as a partner, he is, of course, bound for the firm debts contracted in the usual course of business just as though he were a partner to all intents and purposes. And if such ostensible partner withdraws from the firm or ceases to hold himself out to the world as a partner, it is incumbent on him to give notice of the fact, just as a partner *de facto* must. This rule is grounded upon the principle of estoppel which will not allow one to hold himself out to the public as a partner in a firm, and upon being sued on debts contracted by the firm upon the faith of his solvency, say that he was not a partner. For the courts to hold otherwise would be to encourage dishonesty: Walrath *v.* Viley, 2 Bush. (Ky.) 478; Riser *v.* James, 26 Kan. 221; Carmichael *v.* Greer, 55 Ga. 116; Warren *v.* Ball, 37 Ill. 76; Brown *v.* Grant, 39 Minn. 404; Maxwell *v.* Gibbs, 32 Iowa 32; Campbell *v.* Hastings, 29 Ark. 512; Brugman *v.* McGuire, 32 Ark. 733; Speer *v.* Bishop, 24 Ohio, 598; Humes *v.* O'Bryan, 74 Ala. 64.

It is not necessary that the party hold himself out as a partner in any particular manner. It may be done by word, act, or deed as well as by conduct. In fact if he does, or omits to do, any thing or act which in any way causes the belief that he is a partner, he will not be heard to say he is not when it is sought to charge him as such: Cirkel *v.* Croswell, 36 Minn. 323. And if a person even suffer himself to be held out as a partner, he will be liable unless he give notice.

This doctrine of estoppel is well illustrated in the case of Riser *v.* James, *supra.* It seems that R. O. Riser & Co. were a firm of bankers, the firm being composed of Riser and one Moses Waters. The latter retired without giving notice thereof. He was sued on an indebtedness contracted by the remaining partner in the name of the firm, and sought to screen himself from liability under the plea that there was no proof of any partnership, and that no notice was necessary. There had been published in a local newspaper an advertisement of the banking firm in which the name of Moses appeared as one of the partners. He had put money into the enterprise, and it was notoriously and generally known in the community that he had been a partner in the business. The firm name was not changed. It was also shown that the letter-heads used by the bank contained the names of both Moses and Riser as members. These letter-heads were used after the dissolution, Riser even writing to Moses on them. These facts being shown, it was held sufficient to establish the fact that Moses either held himself out as a partner, or suffered himself to be so held out, and that he should have given notice. The usual mode of giving notice of the dissolution of a firm to new customers is by notice published in some newspaper in the town, city, or vicinity where the business is carried on: Kennedy *v.* Altwater, 77 Pa. 34. And the notice should be published in some paper where advertisements are usually published: Simonds *v.* Strong, 24 Vt. 642. The dissolution will not be effectual as to third persons until the notice required by law is given, though it be ever so effective as between the partners themselves: Johnson *v.* Tolten, 3 Cal. 343. The manner of giving notice is important where a question of notice or the sufficiency thereof is disputed. If there be a newspaper published in the place where the business is, it is necessary for the retiring partner—at least for some of the partners—to give notice of the dissolution by advertisement therein: Mitchum *v.* Bank of Ky. 9 Dana (Ky.) 166; Simonds *v.* Strong, 24 Vt. 642. And the mere notoriety of the dissolution at the place of business of the firm will not protect a retiring partner unless that fact be also known to the creditor extending credit to the firm: Martin *v.* Searles, 28 Conn. 43; Brown *v.* Foster, 19 S. E. Rep. 299; Pitcher *v.* Barrows, 17 Pick. (Mass.) 351. The notice must be reasonable; it need not be in a newspaper necessarily, but may be in some other public and notorious manner. But whether by publication in a newspaper or not, it must, so far as strangers and third parties are concerned, be so public and notorious as to put the public on its guard: Wardwell *v.* Haight, 2 Barb. 549.

The fact that the dissolution is notorious and matter of common knowledge throughout the community is always competent evidence tending to establish knowledge on the part of the creditor of the dissolution: Lovejoy *v.* Spafford, 93 U. S. 430. But mere notoriety or general reputation in the vicinity where the firm conducts its business will not charge a dealer with knowledge of the notorious facts unless the circumstances are such that he ought to take notice of the same. And a notice of dissolution which is tacked up in several public places in a town where the business is carried on, is not sufficient notice to a distant creditor who would not be apt to know what may or may not be notorious in some certain community, and he could hold the retiring partner for his debt; and this will be the case, though the creditor does not live at a great distance, but only a few miles off: Mitchum *v.* Bank of Ky., 9 Dana (Ky.), 166. And a notice purposely placed in a newspaper at a distance, and remote from the place of business, which did not have a circulation in the vicinity of the business, would, of course, be inadequate even as to new dealers. Such an attempt to avoid the liability incident to a withdrawal without notice would carry with it the very ear-marks of fraud. The law requires good faith in the matter of giving notice, and when this is lacking the protection those who are diligent in giving notice are entitled to will be withheld where there is a manifest lack of good faith in giving notice of retirement.

In order to affect a community with knowledge of a dissolution of a partnership, "the evidence of a dissolution should be clear, distinct and unambiguous, and the notice of it be by means sufficient to give it:" Brown *v.* Clark, 14 Pa. 469.

It should be borne in mind that this rule charging creditors of the dissolution when the fact is notorious in the community, applies only to new dealers; at least to dealers who live in the same town or city, and the circumstances are such that the law would presume them to be cognizant of the fact. But in the case of a firm dealing with a very distant creditor, the transactions between debtor and creditor being to a great extent, and perhaps exclusively through written orders, the law under such circumstances does not require such distant creditor to take notice of every fact of local notoriety in a distant community, such creditor being a previous dealer. Any other rule would be in the teeth of the decisions which accord to old dealers the right to actual notice: Scheifflin *v.* Stephens, 1 Winst. Law, 106.

Mere notoriety or general reputation in a community is not enough to prove the existence of a partnership, unless the circumstances are such as to estop the party to be charged from denying the relation. The very foundation of the rule requiring notice of withdrawal to be given is, that the party to be charged for a want of such notice would have been liable if he had not withdrawn: Humes *v.* O'Bryan, 74 Ala. 64. On the other hand, it will not be a defense to be availed of by the outgoing partner, that the creditor, who extended indulgence to the firm, was ignorant of the fact that such partner was, at the time of the entering into of the contract, a member of the firm. The law presumes that the dealer extends credit to every member of the firm, though he does not really know every person composing it. This principle is based on the rule that all who are generally known by the public as partners, and who, in fact, are such, are liable, and, upon retiring, must give the requisite notice: Kennedy *v.* Bohanno, 11 B. Mon. (Ky.) 188; Clapp *v.* Rogers, 12 N.Y. 283. And this is the case, though the party sought to be charged be really the responsible member of the firm, and the dealer when extending the credit did not know this: Elkington *v.* Booth, 143 Mass. 479. Neither is it any defense in behalf of the retiring partner that, for any reason, he did not have time to give the notice. He is held to undertake the partnership agreement with notice of the exactions the law makes, and these he must comply with at his peril, though it may be impossible to do so in some cases: Martin *v.* Searles, 28 Conn. 43; Bristol *v.* Sprague, 8 Wend. 423.

But a person who is not a partner in a firm, though he hold himself out to the world as such, is not liable on a contract made in the name of the firm, if the credit was extended without the knowledge that he held himself out as a partner, and in such a case it will not be necessary to give notice of dissolution so far as such partner is concerned: Thompson *v.* First Natl. Bank of Toledo, 111 U. S. 529. In such cases the doctrine of estoppel does not obtain, as the dealer has not been misled. The law does not presume that credit is extended to the nominal partner unless he be known as such.

It is not sufficient for the retiring partner to give notice of the dissolution to the agent of the dealer; at least unless it be shown that the scope of the agency be such as to embrace authority to receive notice. It should in any event be shown that the agent has general authority before the principal can be held to his knowledge in the matter of such notice. And the burden of showing the authority of the agent to receive the notice is on the party alleging he has that authority: Stewart *v.* Sonnebarn, 49 Ala. 178; Brown *v.* Foster, 19 S. E. Rep. 299. And this is the rule whether the creditor be an old or a new one: Id. And notice to a director of a corporation is not sufficient notice to the corporation itself. The notice should be given to some principal or managing officer, as the cashier or president: Bank *v.* Norton, 1 Hill (N.Y.), 572.

But in case of the necessity of giving notice to a firm it is not necessary to give notice to any particular member of it, nor is it necessary that all have notice. If the notice be given to any member it will suffice, and this is true though credit may be extended to the old firm by other members who are ignorant of the notice, and upon the faith in the solvency of the retiring member: Gaar *v.* Huggins, 12 Bush. (Ky.) 259. The distinction in case of a corporation and a firm. In the latter, any one partner has authority to bind all the other members in any firm transaction, and the firm is consequently charged with notice if it be brought home to any of the members. But as a corporation can only act through its board of directors and officers regularly constituted by such board, and to the extent only of the real or apparent authority of such board or officers, and a mere director having no authority to bind the corporation in any manner whatever, cannot, of course, bind it with his knowledge of the dissolution of a partnership. Who is, and who is not, a dealer within the sense and meaning of the rule, may in some cases be a question of more or less difficulty. It seems to be laid down that a single cash transaction, or, perhaps, any number of such transactions, will not constitute a person a previous dealer so as to entitle him to actual notice of the dissolution: Merrett *v.* Williams, 17 Kan. 287. A previous dealer is obviously one who has extended credit to the firm before the dissolution; who has had dealings such as to build up a credit upon the faith of the partnership. Cash transactions do not require that conservative and scrutinizing inquiry into the standing and names of the members of a partnership that is necessary and prudent in making sales on a credit. In a credit transaction, the dealer wants to know whom he is trusting; in cash transactions it is not material, as he runs no risk in selling to any one on a cash basis. Doubtless, the number of credit transactions necessary to bring a creditor within the rule as a previous dealer is not especially material. It is enough if the creditor have extended credit on the faith of the firm and the financial responsibility of its members, and it has been held that two transactions are sufficient for all purposes: Wardwell *v.* Haight, 2 Barb. 549. And when a credit is once raised on the faith of a copartnership, the dealer has the right to presume that the partnership continues the same until he has notice to the contrary: Id.

But one who comes into the possession of paper of a firm through a mere casual transaction, is not, in the eye of the law, a previous dealer and is not entitled to actual notice: Hutchinson *v.* Bank of Tenn., 8 Hump. 418.

But the rule is different if he be in the habit of discounting the bills of the old firm. In cases of this kind it is presumed that he deals in the paper on the strength of his faith in the solvency of all the partners, and he is, for all purposes of notice, a previous dealer. And a creditor who has been in the habit of taking notes of the firm in payment of sundry transactions is likewise entitled to actual notice: Graves *v.* Gilbert, 7 Cow. 701. Again, where a note made by the firm had been discounted by a bank for the accommodation of the payee, and repeatedly renewed, it is necessary that actual notice be given, as this would make the bank a previous dealer. But only those who are in the habit of taking the paper of the firm under circumstances where the knowledge of the fact on the part of the firm itself might be legally presumed will be entitled to actual notice: Vernon *v.* The Manhattan Co., 22 Wend. 183; Vernon *v.* The Manhattan Co., 17 Id. 527; Brown *v.* Clark, 14 Pa. 469; Mechanics' Bank *v.* Livingston, 33 Barb. 458; Janson *v.* Grimshaw, 26 Ill. App. 287; Nott *v.* Downing, 6 La. 680; Clement *v.* Clement, 69 Wis. 599.

When a partner retires, his authority to execute notes in the name of the old firm, even for the pre-existing indebtedness of the partnership, ceases. But all the partners will be liable on such paper executed by any one of them after the dissolution, to old or new dealers, as the case may be, until actual or constructive notice, as the circumstances may call for, be given: Davis *v.* Willis. The power of the remaining partners, after the withdrawal of a member, exist until notice thereof be given as required by law. And this authority extends, not only to making ordinary purchases in the name of the old firm, but likewise to the executing and negotiating of bills payable, and commercial paper generally, with the scope of the business for which the partnership was formed. And so far as the public and prior dealers are concerned, the partnership exists, for all purposes, until the necessary notice of dissolution is given: Amidown *v.* Osgood, 24 Vt. 278.

As to dormant partners, however, a very different rule obtains. And where a dormant partner is not known to be such by the dealer when his transactions with the firm are consummated, it is not incumbent on him to give any notice on his withdrawal from the firm, and his failure or neglect to give any kind of notice whatever will not make him liable: Nusshaumer *v.* Becker, 87 Ill. 281; 1 Ewel's Lim'd. Part. (2d Am. Ed.) star p. 213; Rand. Com. Paper, § 427; Wood's Byles on Bills, star p. 51 and notes; Id. p. 106; Daniel Leg. Inst. Sec. 353; Id. Sec. 369 a. The foundation of the rule is, the dormant partner is not known either to the creditor or to the public as such. He is not intrusted when the firm is credited, and in the event he fails to give notice, the creditor can show no injury thereby. The creditor would never have presented his bill to this partner. He was not credited, and he made no contract; because it is familiar elementary law that the minds must meet before a contract is effectually made. He does not act the role of a partner. There is nothing to make him such in fact, so far as the outside world is concerned. So, where a firm is composed of two persons, one of whom is dormant, and whose name does not appear in the style of the firm, and a creditor takes a note for the firm debt which is signed by both the dormant and known partner, but the relation of the dormant partner is not disclosed, he will only occupy the relation to the creditor of a surety, guarantor or indorser, as the case may be, for this particular transaction, but this will not make him liable for the subsequent debts of the firm, although other persons might know of the dormant partner having an interest in the business: Cregler *v.* Durham, 9 Ind. 375. But if the dormant partner is made known to the creditor by the other partner for the purpose of obtaining credit, and though this making known be without his knowledge or consent, he will be liable for debts contracted under such state of things, and it will be necessary for him to give notice upon retiring from the firm, at least, to such as may have extended the firm credit on the faith of the information; nor does it matter from what source the creditor obtains this knowledge, if he really knows it and relys on it in his transactions with the firm: Milmo Natl. Bank *v.* Carter, 20 S. W. Rep. 836; Kennedy *v.* Bohannon, 11 B. Mon. (Ky.) 118. And the dormant partner will be bound if the creditor only believe him to be a partner, unless he give notice upon withdrawing: Leib *v.* Craddock, 87 Ky. 525. But the authorities do not carry the doctrine any further than this in holding a dormant partner liable; and it would certainly be stepping over the recognized line to do so.

On principle, it is always necessary to show in an action to charge a retiring partner with the debts of the firm, contracted after the dissolution, that he would be liable, as a partner, had the dissolution not taken place. This done and a *prima facie* case being made out against him, the *onus* shifts upon him to show that he gave the requisite notice. If it be denied that he ever sustained such a relation to the firm as would charge him as a partner, this would resolve itself into a question of fact to be determined by a jury under proper instructions from the court. The burden would be on the creditor in the first place, to show that the party to be charged was once a partner, or that his relation to the firm, or holding himself out, was such as to imply that he was a member, and that the credit was extended, relying in whole or in part on this state of facts, this would make it incumbent on him to disprove these facts, or that he had, upon retirement, given the necessary notice of dissolution.

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