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LORD RUSSELL. The meeting of the American Bar Association at Saratoga, August 19th to 22d, derives unusual interest this year from the visit of Lord Russell, of Killowen, Lord Chief Justice of England. His short service on the bench and the character of the causes before him have hardly afforded an opportunity for testing fairly his judicial abilities, but he is undoubtedly the possessor of a powerful legal mind. Before his elevation to the bench he was for years the acknowledged leader of the English bar. He is famous for his eloquence, his knowledge of common law jurisprudence, and his sympathetic interest in all matters of national concern. He will be given a most cordial welcome, not only for his many eminent qualities, but also because of his position as the head of the great system of justice which is the foundation of American jurisprudence.

SUB-PARTNER—SHARING PROFITS. *In re Assigned Estate of Haines & Company, Groves' Appeal*, Supreme Court of Pennsylvania, decided July 17, 1896; not yet reported. The facts in this case were briefly as follows: The firm of Wood, Brown & Company was a general partnership of seven members, two of whom—viz., Richard Wood and Samuel Brown—entered into another partnership agreement with three other persons under the firm name of Granville B. Haines & Company. In March, 1894, both firms made assign-

ments for the benefit of creditors. It was then discovered that Wood and Brown, without the knowledge and consent of their partners in either firm, had appropriated to the use of Haines & Company $175,000 belonging to Wood, Brown & Company. For this $175,000 the assignee of Wood, Brown & Company made the present claim against the estate of Haines & Company. It appeared, moreover, that at the time Richard Wood and Samuel Brown entered into the firm of Granville B. Haines & Company, they made an agreement with the remaining five partners of the firm of Wood, Brown & Company in which those five members agreed to indemnify Wood and Brown from any losses which might result to them from the business of the firm of Granville B. Haines & Company to the extent of a sum equal to 28.2 per cent. of the losses, and Wood and Brown agreed at the dissolution of the partnership of Granville B. Haines & Company to pay over to their five partners in the firm of Wood, Brown & Company a sum equal to 28.2 per cent. of the profits by them realized from the business of the co-partnership into which they were then entering.

The auditor to whom the account was referred found that all the partners of Wood, Brown & Company were liable as partners of Haines & Company, and that the estate of the one firm could not, therefore, maintain this claim against the other. This ruling was sustained by the court below, who took the view that by the agreement between Wood and Brown and the other five members of the firm of Wood, Brown & Company, all of the members of that firm became interested as partners in the profits and losses of the firm of Haines & Company.

There thus arose before the Supreme Court two interesting questions on the law of partnership.

First. Is an agreement to share a sum equivalent to a percentage of the profits and losses distinguishable from an agreement to share the profits and losses themselves directly?

Second. Admitting that there does exist such a distinction, were the five sub-partners to be regarded as third persons as respects the firm of Haines & Company, since through Wood and Brown they were interested in its operations?

The first question was disposed of by the court upon the authority of *Edwards* v. *Tracy*, 62 Pa. 374, in which it was said that the distinction between sharing the profits and sharing a sum equivalent to a percentage of the profits, while of a very refined and shadowy character, has been authoritatively established.

The second question gives rise to a consideration of the status of a so-called "sub-partner." At common law, possibly from an elaborate extension of the property idea, it seems to have been established that a sub-partner was liable to the firm creditors: See Parsons (James) on Partnership, § 68. Yet such a construction would create a staus one-sided indeed. It has been frequently held that a sub-partner has no voice in the management of the firm, no community in its profits, no lien before division to compel an accounting and distribution, but that his claim is merely a demand

against the partner with whom he contracted: See Collyer on Partnership, § 194; Lindley on Partnership, * p. 48. To hold one occupying such position liable to the firm creditors would seem singularly unjust. Yet, strangely enough, the courts have not been entirely unanimous in the few instances in which this question has been before them. In New York, Indiana and Wisconsin the sub-partner has been held exempt from the claims of the firms creditors: *Burnet* v. *Snyder*, 76 N. Y. 344; *Rockafellow* v. *Miller*, 107 N. Y. 507; *Reynolds* v. *Hicks*, 19 Ind. 113; *Riedeburger* v. *Schmitt*, 71 Wis. 644. Opposed to these authorities stands the case of *Harrington* v. *Fitch*, 13 Gray, 468, in which apparently a different view is maintained, and to this effect the case is usually cited, although it is to be noted that in that case the court stated the rule to be that "an agreement between one co-partner and a third person that he shall participate in the profits of a firm, *as profits*, renders him liable as a partner to the creditors of the firm, although as between himself and the members of the firm he is not their co-partner."

In the case in point, the Supreme Court of Pennsylvania, allying itself with, it is submitted, the soundest view, maintained that since the sub-partners did not share the profits, as profits, they were, as respects the firm of Haines & Company, third persons, and not only were they not liable to its creditors, but the assignee of Wood, Brown & Company might properly claim the $175,000 involved.

VALIDITY OF ORDINANCE AUTHORIZING THE ERECTION OF TROLLEY POLES ALONG HIGHWAYS. Once more the courts have said in an action brought by an abutting owner to have an ordinance authorizing the construction of a trolley system upon poles erected along the highway, declared unlawful and void for failure to provide compensation for the taking of private property, that such user of the highway is legitimate and proper, and imposes no new servitude upon the land: *Roebling* v. *Trenton Pass. R. R. Co.*, 34 Atl. Rep. 1093 (1896).

Whether the fee to the highway be in the abutting owner or in the State, the answer is the same; for the whole beneficial use is in the public for the purposes of a street: *Hoboken Imp. Co.* v. *Hoboken*, 36 N. J. L. 540.

It is settled that the legislature is custodian of the rights of the public in their highways, limited only by constitutional restriction. The regulation of a street is given to a municipal corporation only for corporate purposes, and subject to the paramount authority of the state in respect to its general and more extended uses: *Case of the P. & T. R. R.*, 6 Whart. 45 (1840). The power of a municipality over its streets is what the legislature has delegated to it: 2 Dill. Mun. Corp., § 680, 719.

Now it follows that when the legislature properly authorizes the construction of a railroad upon its streets, or diverts them to any other new use, it may legalize that which is a public nuisance; the only question is, have the private rights of the abutters been invaded? If they have, compensation must be made.

It was held in the *Elevated Railroad Cases in New York*, 90 N. Y. 122, that the abutting owner has only an easement of light, air, and access, and the same conclusion was reached in Pennsylvania: *P. R. R. Co.* v. *Duncan*, 111 Pa. 361 (1886); that the erection in the cartway of a public street, of a track, supported by pillars depriving the abutter of these property rights is a taking of private property for which compensation must be made.

Without here considering whether the difference between using horse cars and steam cars upon a highway is not merely a question of degree, it is settled that horse railroads are consistent with the purposes of a street: *Hinchman* v. *Paterson R. R. Co.*, 17 N. J. Eq. 75; and that steam railroads are not: see authorities in Lewis' Em. Dom., § 115. As science advanced the legislature permitted the substitution of electric cars for horse cars and with them came new problems for the courts. Where the overhead electric system is used, the company's right to erect poles is most frequently disputed. In *Roebling* v. *Trenton Pass. R. R. Co.* [*supra*], the abutting owner contended "that the setting of these poles [under the ordinance duly authorized by the legislature] on her lands [along the curb] constituted a permanent, exclusive and continuous use of her lands, not within the customary and legitimate use of the lands of the abutting owners on a public way, and was to that extent a taking of private property, such as is interdicted by the Constitution, except upon just compensation made;" and alleged that the ordinance was void because it contained no provision authorizing such compensation.

After reiterating the principle that public convenience is no justification for the seizure of private property without due compensation to the owner, the court, Depue, J., classed the case where it properly belongs. The Act of Assembly authorizing the substitution was constitutional and the ordinance of the city of Trenton was in accordance with the Act. The court held that the erection of these poles did not constitute an additional servitude, and that therefore the ordinance was not void. As to what constitutes an additional servitude the courts are not in harmony. In *Detroit City R. R. Co.* v. *Mills*, 84 Mich. 634 (1891), Grant, J., said, "To constitute an additional servitude they [the poles] must be an injury to the present use and enjoyment of his land;" while Campbell, C. J., said that whether or not it was an additional servitude depended upon the circumstances of each case; that if it constituted a nuisance or caused damage the abutter had his remedy. Without referring to this case the New Jersey court seems to agree with Mr. Chief Justice Campbell, for Depue, J., says, that "Injuries caused by a mode of user which is not justifiable, on the ground that the *locus in quo* is a public street, will lay the foundation for, and are redressible by action."

This seems the proper solution of the difficulty where the injury can be compensated in damages, and the application of this rule will amply protect the rights of the abutting owner.