

### Commercial Decisions.

[Comments will be made on these in next number.]

*Editor of the Journal of Commerce:*

I have been selling goods for the past two or three years to F. McC. & Co. of —, New York. In April last, McC., who is the responsible party in the concern, went out. He published notice of dissolution in the — papers but did not notify me. The other members of the firm, F. & Co., continued the business, but ordered their goods from me in the name of the old firm — F. McC. & Co. They (F. & Co.) have now failed and are owing me a debt. Can I hold McC. for it?

I have been a reader of your paper many years, but do not remember to have seen the above question asked.

Respectfully yours, G. P.

*Reply.*—There is no question in regard to the liability of the retired partner in such a case; he can be held for all debts contracted by his successors of former customers, who have dealt in good faith and in ignorance of the dissolution. A retiring partner must give notice to all who have had dealings with his firm, or take the consequences of their ignorance. Bank of the Commonwealth v. Mudgett, 45 Barb., 603; Ennis v. Williams, 30 Ga., 601. The courts have held that "if the retiring partner did all that is usual and proper to give the public and customers notice of his retirement" by advertising and sending circulars to all his correspondents, he is not bound to a creditor who may have missed the notice; "but if the retiring partner give no such notice, then a customer of the firm accustomed to trade with the firm on the responsibility of all the partners, including him who has retired, and not knowing of his retirement, may hold him for a debt contracted with the firm after his retirement." See Parsons on Contracts, vol. 1 sec. 179, note E, for voluminous authority to sustain this position.

The following presents a question often brought up to the minds of business men, but which cannot be solved satisfactorily by either law or commercial usage:

*Editor of the Journal of Commerce:*

B, who does business in New York, has an agreement with A, a manufacturer in a neighboring city to act as his exclusive agent in New York at an agreed rate of commission. A stipulates that he will not sell any goods here direct but only through B, and will refer back to him all inquiries coming from New York. Goods are sold delivered here and charged direct to B.

After this agreement has been in force, and worked successfully as to amount of sales for some time B, suddenly finds that he can no longer get the prices at which has been instructed to sell, and discovers that his customers (to whom he first introduced the goods) are being sold at a less price by C—a concern doing business in the city where A manufactures. B remonstrating with A for violating the agreement in allowing his goods to be sold here by other parties, is told by him that he has sold the goods in his own city, and claims not to have known

they were coming to New York, although he afterwards admits delivering them free on board the transportation company for this city. Is not B entitled to his usual commission on all such sales, and is not it a valid claim in law?

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*Reply.*—Even if A has sold the goods to C with a secret conviction that the buyer would send them to New York and interfere with B, the latter has no legal redress. It is a point which it is impossible to guard by any diligence. And it may be that the manufacturer did not suspect that the sale would lead to any such competition. At any rate B cannot recover a commission on such deliveries, though he might have a good cause of action against A for violation of contract.

*Editor of the Journal of Commerce:*

Referring to the case of F. McC.'s & Co. in your issue of the 7th inst., I would like to ask if in case of F. McC.'s death, could his estate be held liable for purchases subsequently made in the name of the firm by the surviving partner, no dissolution of copartnership having been published?

Your reply will greatly oblige

A SUBSCRIBER.

*Reply.*—The death of a partner is itself a dissolution of the firm, but notice of such dissolution ought to be given precisely as if the firm is dissolved for any other reason. If the death is concealed, or no sufficient notice of it given to the persons dealing with the firm, and a debt is contracted by a surviving partner in the firm's name, the innocent creditor might establish, we think, a claim against the executors or administrators, even if he could not hold the estate.

The following is from a bank officer, whose communication on the same theme we answered a day or two ago:

*Editor of the Journal of Commerce:*

In your reply contained in your paper of December 2 to my questions under date of November 27, it seems to me you omit to answer the first and second questions contained in my communication.

That is, does a check dated say December 2, and in the body of the same made payable December 20, become due on the 20th, or is it entitled to grace, and if entitled to grace, does it not take the form of a draft, and become subject to presentation for acceptance, when received before due, by a third party for collection? By answering more fully the above, you will much oblige a subscriber.

Yours respectfully, CASHIER.

*Reply.*—We will make our answer more explicit, and furnish the authority. Story says—"But a case may be supposed of a check drawn on a bank, payable on a specified day, as for example it may be dated on the 1st of January 1845, and be made payable on the tenth of the same January; and the question might then arise whether it was payable on the very day, without any allowance of the days of grace. The general understanding among banks is believed to be that in such a case the check is payable on the tenth day of

January without grace, and it is treated as a check payable on demand on that very day. In any other view the check might be presented for, and require acceptance; and yet it is understood that such acceptance is never called for or given." This has been questioned, and once overruled, but is now settled, as far as we know. The courts have made nice distinctions between checks and bills of exchange, but by numerous decisions, such a check as above described is legally distinguished from an ordinary bill. It is not entitled to grace, and it need not be accepted.

*Editor of the Journal of Commerce:*

Please answer the following at your earliest convenience: A sends B a check for \$200, and in the body of the check fills in—"In full for or of account of services rendered." A not wishing to indorse the check with such an understanding erases the words "In full for services rendered, &c.," indorses the check, which is paid by B's bank, A not discovering the erasure until some weeks after. Does B make himself liable or give cause for action, and if so, what is the penalty? Would such indorsement be a legal receipt provided B did not make the erasure?

Yours truly, B.

*Reply.*—The use of such words in a check would not bind the payee to an acknowledgment that the payment was in full of services rendered if such were not the fact, if he indorsed and collected it; and if B chose to strike out the words before presenting the order for payment, he would incur no penalty. In either case the words are of no importance as a settlement of account between the parties.

*Editor of the Journal of Commerce:*

Will you oblige a subscriber by answering the following:

A lands a lot of lumber on my wharf for B in June last, where it lies up to to this date subject to heavy charges, being on end of wharf. I notify both parties to come forward, pay charges, and remove it; they both deny in writing any ownership or interest in said lumber.

Can I legally sell it at public sale to pay charges and expenses? And if so, what disposition must be made of any surplus over and above charges, if any? Or what is my proper course to pursue?

Yours truly, J. A.

*Reply.*—A's denial of ownership does not release him from his liability as bailor, and the course least open to question, provided B's ownership cannot be proved, probably is to bring an action against A for storage, and damage if any.

*Editor of the Journal of Commerce:*

A, a merchant, of Huston, Texas, does business with B, in New York, and gives him in settlement a promissory note payable at that place. B has the note discounted by C, who lodges it indorsed for collection with his bank in New York. The New York bank directs said note to their correspondent in Huston to be collected when due. The note is not honored by its maker at maturity, and is returned to New York without having been pro-