

Illinois; occasionally visited the board of trade in Chicago with the plaintiff; and the plaintiff testifies unqualifiedly that the defendant was familiar with the methods of business upon the board. This testimony is not contradicted by the defendant, and he nowhere in his testimony attempts to deny knowledge of such methods of business. He was in constant communication with the plaintiff, gave orders for purchases and sales by letter and telegraph, received statements from the plaintiff as often as transactions took place, and no other conclusion is consistent with all the facts, than that he must have known the manner in which various trades made in his behalf, were closed out. The case, therefore, in its facts upon this point, is unlike that of *Williar v. Irwin*.

Appreciating, as I do, as indicated in the outset, the hardship probably entailed upon the defendant by an adverse ruling in this case, the court feels constrained to hold, upon the testimony as it is presented, and upon what it conceives to be the weight of authority, especially in this circuit, that the defendant is liable to the plaintiff for the amount of the plaintiff's claim for advances and commissions in the transactions in dispute.

SANBORN v. STARK and others.

(Circuit Court, D. Colorado. May 4, 1887.)

1. PAYMENT—APPLICATION.

A creditor is at liberty to apply payments of a debtor upon any one of the debtor's obligations, unless the debtor names the debt on which he is making payment.

2. SAME—SECURED AND UNSECURED DEBTS.

Where there are two debts, one secured and the other unsecured, the court will as a rule apply a payment upon the unsecured debt.

3. PARTNERSHIP—POWERS—RENEWAL OF NOTE.

The renewal by one partner of a partnership note, after dissolution of the partnership, is binding upon the co-partner, if the latter recognized and consented to it.

On Motion for New Trial.

M. B. Carpenter, for plaintiff.

J. W. Horner, for defendants.

BREWER, J. In this matter of Sanborn against Stark, motion for new trial on two grounds, first that one payment of six hundred and odd dollars was not credited on the note of \$650, but on some other indebtedness of the other partner. There is nothing in that; the creditor is at liberty to apply payment upon any one of the obligations of his debtor, unless the debtor names the debt on which he is making the payment. Even if he had not made that application himself, where there are two debts, one secured and the other unsecured, the court ordinarily will apply a payment upon the unsecured debt; and the claim here is that this

note was the debt of defendant's partner, upon which defendant was security.

The other point is equally unsound. The claim is that the note for \$650, upon which judgment was rendered, was a renewal, and that as a renewal it was not binding on this particular defendant, Stark, because of the prior dissolution of the partnership, a fact which was known to the creditor at the time he took it. The truth of the matter is, the renewal was consented to by this defendant. It was given as a renewal of a part of a \$2,000 note upon which confessedly both defendants were liable. The renewal was some time about the twentieth of August. On the third of August this defendant writes to his partner: "*Friend Sanborn*: Yours of twenty-eighth July just at hand. I wrote you some days ago I could not provide for payment of note due 18th, Exchange Bank; and I cannot. It must be renewed." August 18th, Exchange Bank, \$2,000, that was the note upon which both defendants were liable, and this defendant writes to his partner saying, "It must be renewed." And on the twenty-seventh of August, after the renewal, he writes: "Yours twentieth August received. I am surprised you should renew those notes for so short a time, as you must be aware collections are coming in very slowly, and I cannot meet them." Obviously both before and after he recognized and consented to the renewals.

The motion will be overruled.

UNITED STATES v. MOLLOY.

(*Circuit Court, E. D. Missouri, E. D. April 20, 1887.*)

1. **VOTERS—FRAUDULENT REGISTRATION.**

Where the state statutes require voters to appear before the register and take a prescribed oath before registering, it is an offense indictable under section 5512, Rev. St. U. S., for a recorder of voters to knowingly, willfully, and fraudulently enter in the registration books, or cause to be entered therein, the name of a person as a qualified voter who has not appeared before him and applied for registration, nor taken the oath required by law.

2. **SAME.**

Where the act is proved to have been done knowingly and willfully, and not merely through inadvertence or ignorance of official duty, a fraudulent motive may be inferred.

3. **SAME—IGNORANCE AND INADVERTENCE.**

To register a voter who has not appeared or taken the oath is not a criminal offense, however, if done without any fraudulent or criminal motive, but merely through inadvertence or ignorance of official duties, or of the manner in which they should be performed.

4. **SAME—WRITING VOTER'S NAME.**

The mere writing of a person's name in the registration books is in itself no offense if the person whose name is written appears and applies for registration, or takes the oath, and expressly or by necessary implication requests the officer to write his name.

5. **SAME—DECEPTION OF REGISTER.**

Where persons appear before a register and give false names or places of residence, and apply for registration under such names or from such places of residence, and the register is imposed upon and places their names upon the registration books as duly qualified voters, he is guilty of no offense.