debt, was entitled to the benefit of the security upon the lots for his indemnity. *Uzzell* v. *Mack*, 4 Hum. 319.

Affirm the decree.

THOMAS PHILIPS *v.* HENRY & SCHACKLEFORD.

EVIDENCE. *Partner not a competent witness.* One of the copartners of a firm, in a contest between third persons and the firm, is not a competent witness to prove the existence of the partnership, or that the debt sued for was created for or on account of the firm.

FROM MONTGOMERY.

Verdict and judgment for the plaintiffs, at the September Term, 1858, PEPPER, J., presiding. The defendant appealed.

HOUSE and HORNBERGER, for the plaintiff in error, cited *Foster* v. *Hall*, 4 Hum., 346; *Vanzant* v. *Kay*, 2 Hum., 106; *Harvey* v. *Sweasy*, 4 Hum., 449; *Yancy* v. *Marriott*, 1 Sneed, 28; *Price* v. *Kearney*, 5 Hill, 82; *Marquand* v. *Webb*, 16 John. R. 89.

——— ———, for the defendants in error.

WRIGHT, J., delivered the opinion of the Court.

This was an action of assumpsit, commenced by the plaintiffs below, against Thomas Philips, as one of the

members of the firm of H. H. Hollister & Co., to recover the amount of an account for professional services alleged to have been rendered the firm.

A recovery was had and Philips has appealed in error to this Court.

This firm, as was alleged, was composed of H. H. Hollister, Horace Hollister, W. E. Ellis, and the plaintiff in error, Thomas Philips, and Richard Jordan.

On the trial in the Circuit Court the question appears to have been, whether the plaintiff in error was a member of this firm, so as to be chargeable with this debt, and whether, in fact, the debt was created on account of the firm?

In this state of the case the plaintiffs introduced and read the deposition of H. H. Hollister, a member of the firm, who proved that in May or June, in the year 1853, he employed the plaintiffs to attend to the suit for the firm of H. H. Hollister & Co., at a fee of $200, and that they rendered the services for the firm.

To the reading of this deposition the defendant objected; but the Circuit Judge overruled the objection, and permitted it to go to the jury.

In this we think he erred. We understand the settled rule of law to be, that a co-partner of the defendant is not a competent witness for the plaintiff, either to prove the partnership or that the debt was contracted for, or on account of the firm. Here H. H. Hollister was, undoubtedly, liable for the whole of this debt, and was directly interested in fixing it upon the plaintiff in error, as one of the firm of H. H. Hollister & Co., so as to

force him to share with him its payment. And such was the direct effect of his evidence.

It is true there is other evidence in this record tending to show that the plaintiff in error was a member of this firm, and that this debt, (which is admitted to be just as against H. H. Hollister,) was chargeable to the co-partnership. But still this does not obviate the difficulty, since it is impossible for us to say what influence the evidence of H. H. Hollister had with the jury in finding against the defendant. 2 Hum., 106; 4 Hum., 354–355; 4 Hum., 449; 1 Sneed, 28.

Reverse the judgment, and remand the cause.

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THE STATE *v.* GEORGE BONNER.

CRIMINAL LAW. *Slaves. Purchase of liquor from. Aider and abettor.* The sale of liquor by a slave is a criminal offence, and a white man who tempts him to commit the offence, by purchasing liquor from him, is an aider and abettor, and as much guilty, as a principal offender, of a misdemeanor, as if the seller had been of his own color.

FROM WARREN.

Upon motion, the presentment was quashed by Judge MARCHBANKS, at the October Term, 1858. The Attorney General appealed.

SNEED, Attorney General, for the State.

J. L. SPURLOCK, for the defendant.