of the partners. The instrument sued on in that case was a charter party, but an elaborate opinion was given by Jones, C. J., covering the whole class of sealed instruments. In the other case, *Cady* v. *Shepherd*, the Supreme Court of Massachusetts held, that the instrument would be valid and bind the firm, if previously authorized or subsequently ratified by them, and that such authority or ratification may be by parol. It may now be taken as settled law in most of the states, that either previous authority to a partner or subsequent ratification, will make his deed valid to bind the firm, and that such authority or ratification may be by parol: *Fichthorn* v. *Boyer*, 5 Watts. 159; *Bond* v. *Aitkin*, 6 W. & S., 165 (overruling *Hart* v. *Withers*, 1 Penn. 285, and adopting the reasoning of Huston, J., already quoted); *Mackay* v. *Bloodgood*, 9 Johns. 285; *Smith* v. *Kerr*, 3 Comst, 144; *Swan* v. *Stedman*, 4 Met. 548; *Pike* v. *Bacon*, 8 Shepl., 280; *Fleming* v. *Dunbar*, 2 Hill, S. C., 532; *Fant* v. *West*, 10 Rich. Law, 149; *Drumright* v. *Philpot*, 16 Ga. 424; *Grady* v. *Robinson*, 28 Ala 289; *Gwin* v. *Rooker*, 24 Mo. 290; *Price* v. *Alexander*, 2 Greene, Iowa, 427; *Haynes* v. *Seachrest*, 13 Iowa, 455; *Henderson* v. *Barbee*, 6 Blackf., 26; *Day* v. *Lafferty*, 4 Pike, 450; *McDonald* v. *Eggleston*, 26 Vt., 154; *Remington* v. *Cummings*, 5 Wis., 138; *Wilson* v. *Hunter*, 14 Wis., 683; *Shirley* v. *Fearne*, 33 Mi., 653; *Fox* v. *Norton*, 9 Mich. 207; *Charman* v. *McLane*, 1 Or., 339; *Lowry* v. *Drew*, 18 Tex. 786.

In a few of the states, however, it would seem that the strict technical reasoning of the English cases has prevailed, and it is held that to make the deed good there must be express authority (or ratification) *under seal: Little* v. *Hazzard*, 5 Harrington, 291; *Turbeville* v. *Ryan*, 1 Humphreys, 113; *Napier* v. *Catron*, 2 Hump. 534. In Kentucky the question hardly seems settled. The early cases of *Trimble* v. *Coons*, 2 A. K. Mars, 275, and *Cummings* v. *Carsily*, 5 B. Mon., 74, held that the authority must be under seal, but the latter case of *Ely* v. *Hair*, 16 B. Mon. 230, goes upon the ground that parol authority or ratification will be sufficient, but does not notice or expressly overrule the previous decisions.

Trimble v. *Coons*, *Peirson* v. *Carter*, 3 Murphy, 321, and a few other of the earlier American cases, appear to sanction the English rule (founded on the ancient decisions, that the same piece of wax might serve for the seals of several obligors), that if the deed was sealed by one in the *actual presence* of the other, it would bind both, thus making a most singular confusion of the authority itself, and the evidence by which it is proved, the foundation of an unsubstantial distinction effectually disposed of by a few words in the opinion of Huston, J., in *Hart* v. *Withers*, already quoted This distinction is now, however, abandoned in most of the American cases. In *Modisett* v. *Lindley*, 2 Blackf. 1 19, it is expressly held that presence is merely evidence of consent, for there the partner, though present, not having knowledge of the act, was held not bound. But in *Gardner* v. *Gardner*, 5 Cush. 483, it is held that signing by one person (whether partner or not) for another *in his presence*, and by his express direction, is a good signing by the latter; the opinion of Shaw, C. J., though very brief, and apparently not much considered, appearing to sustain the soundness of the distinction between an act done in or out of the presence of the party sought to be charged. In *Lambden* v. *Sharp*, 9 Humphreys, 224, it was held that where there are more signatures than seals, the court will presume that several of the parties adopted the same seal, but this presumption may be rebutted by evidence, and it will then be a question for the jury, whether the instrument is sealed by all. And if the signature be in the firm name only, it will be presumed to be the several signature and seal of all the partners, but open to rebuttal by plea and evidence as in other cases. To the same effect are *Davis* v. *Burton*, 3 Scam., 41, and *Hatch* v. *Crawford*, 2 Porter (Ala.), 54.

In all the foregoing cases it is to be borne in mind that the instrument must be made in the firm name, and purport to be the act of the firm. For if the partner though authorized to execute a deed in the partnership name, does in fact make it in his own name merely, it will bind himself only, and will moreover merge the firm debt, if the latter be on a simple contract, so as to discharge the other partners: *United States* v. *Ashley*. 3 Wash. C. C., 508. And the same effect will follow according to the authority of some cases, if the partner signing the firm name is not authorized to do so. In such case the suit should be against the party signing as on his individual obligation: *Clement* v. *Brush*, 3 Johns. Cas. 180; *Button* v. *Hampson*, Wright (Ohio), 93; *Nannely* v. *Doherty*, 1 Yerger, 26; *Waugh* v. *Carriger*, Id., 31; *Morris* v. *Jones*, 4 Harring. 428. And if the bond be declared on against both as a joint obligation, no recovery can be had even against the one who signed: *Lucas* v. *Sanders*, 1 McMullan, 311. In an action by a firm, however, on a sealed instrument, the defendant cannot plead that it was executed by one partner only, for the suit is a ratification by all who are joined in it: *Dodge* v. *McKay*, 4 Ala. 346.

The doctrine that a bond in the firm name by a partner not authorized to make it, merges a simple contract debt of the firm and substitutes the sealed obligation of the partner signing, has not, however, commanded universal assent. In *Doniphan* v. *Gill*, 1 B. Mon. 199, it was expressly rejected, the court holding that there was no merger where it appeared on the face of the instrument that there was no such intention in the minds of the parties at the time of execution. To the same effect, apparently, are *Fronebarger* v. *Henry*, 6 Jones, Law, 548, and *Despatch Line* v. *Bellamy Man. Co.*, 12 N. H. 235.

All of the foregoing cases, moreover, assume that the transaction in which the bond is made