before the defendant shall be required to disprove the allegations of the plaintiff. And certainly because a man is supposed or charged to be a partner, there is no reason either in law or in justice to subject him to harder conditions than those which obtain in ordinary cases, so as to render him liable on a contract which as to him has no existence either actual or presumptive.

Having established the contract (supposing a consideration proven) the question next in importance is, who are answerable for its fulfilment, or rather for damages in default of its fulfilment, in other words, who are properly defendants to the action? And here it is manifest that no one ought to be made a defendant who was not a party to the contract either in person or by representation lawfully authorized. Where the contract is *express*, there is no difficulty in determining the question; but where it is implied, it is necessary to ascertain where the *legal liability* rests, for where this is found, then the presence of a contract is presumed. But no one can enforce this liability to whom it is not *directly* given, for "it is a general rule that no person can maintain this action (assumpsit) on an agreement to which he is not a party, for in such case there can be no contract express or implied," 1 Str. 592. Nor is there any magic virtue in the *lex mercatoria*, which can convert a stranger into a party simply because he happens to be called a partner by those whose interest it is to prove that he is such.

The real question then is, did the supposed partner contract with the partnership creditor? and in the absence of any express agreement, the law will infer a contract from certain facts and circumstances.

When A. at his request, either express or implied, obtains the goods of C. without agreeing as to the price or actually promising to pay it, the law imposes on him the obligation of a contract to pay so much as they are worth, and the ground of his liability is the benefit to himself and the corresponding detriment to C. The same is true if A. and B. obtain goods in a similar manner, each one at common law being liable for the whole debt, with the right of demanding contribution.

But the benefit must move *immediately* from C. to A. or to A. and B, and not through an intermediate interest or title, for otherwise the assumpsit cannot be implied, but must be expressly given. For instance, if A. assumes the responsibility of a debt contracted by B., for B.'s benefit, the law can raise no implied undertaking from A. to the creditor, whatever may be the consideration as between A. and B., but goes so far as to require that the promise shall be in writing. The liability of the guarantor is essentially different from that of the principal debtor, and depends upon a totally different principle. For here in fact are two contracts; the debtor's contract to pay for the goods, and the guarantor's undertaking to pay the debt in default of payment by the principal debtor. As to the contract *to pay for the goods*, there is no privity between the guarantor and the creditor, and the only effect of the statute 29 Car. II. c. 3 is that such collateral agreements are now required to be in writing, in order that the guarantee may be more readily proven, but it does not merge the two contracts into one.

So if A. purchases goods on credit and then gives or sells them to B., although the latter has the use and benefit of the property so obtained, yet the creditor cannot go around his immediate debtor and charge the debt upon a stranger, because here is an intermediate title or ownership, and there is *ex vi terminorum*, no privity and consequently no contract between the stranger and the creditor.

The ground of the implied contract is therefore the benefit drawn *directly* from the use of the goods or property purchased, which property has been received *immediately* from the creditor in such a manner as to create a privity of relationship between the debtor and himself; and what is true of one, holds equally good of any number of debtors.

This general reasoning is applicable to all cases of supposed partnership, where an attempt is made to extend the liability beyond its ostensible limits. The problem with the defence is to fix the point at which the liability ceases, for it must cease when no contract can be legally presumed as proven to exist, and if it can be shown to fall short of the person sought to be charged by being intercepted in some intermediate party, it follows necessarily that the former cannot be affected by it.

(*To be continued*)

A Chicago legal paper says that "a case was recently decided in Illinois upon the question of admitting atheists as witnesses in court. The testimony of a well-to-do merchant of that neighborhood was objected to on the ground that the witness was an atheist. This the witness admitted, but affirmed at the same time that he considered an oath binding on him. The judge decided that, under the constitution, no one could be denied any civil right or privilege on account of his religious opinions." A cotemporary remarks that they would have thought the objection was that the witness had *no* religious opinions.

Legal Aphorisms.—The defendant's counsel, in a breach-of-promise suit, having argued that the woman had a lucky escape from one who had proved so inconsistent, the judge remarked that "what the woman loses is the man as he ought to be." Afterward, when there was a debate as to the advisability of a marriage between a man of 49 and a girl of 20, his lordship remarked that "a man is as old as he feels; a woman as old as she looks.—*Bench and Bar.*