But plaintiff was not aware of this clause, and knowing that the new firm had taken over the assets of the old one, had good reason to believe that it would also assume its liabilities.

All this makes the decision look much less alarming than would appear from a perusal of the head note alone.

And yet many of the French authors criticizing these decisions insist upon putting their own interpretations upon them, and which are quite different to what the Court of Cassation clearly intended to be the rule. The intention of this court is to protect the innocent vendor of goods or lender of money, and except in cases of clear fraud, the presence of the firm signature is a presumption *juris et de jure* of the firm's indebtedness, and this is quite in keeping with Art. 22, *Code de Commerce.*

How does this rule compare with that of the common law which says that the firm signature is only binding where the contract is within the *scope* of the partnership business? The most cursory examination of the nature and quantity of the English jurisprudence on this point will shew the unsatisfactoriness of the English rule. Where is the difference, as to its effect upon the firm, of a dishonest partner acting under the English or the French law? In the former case he can borrow money within the scope of the partnership and afterward misapply it to his own use, still the firm is liable. [Okell v. Eaton, 31 L. T. N. S. 330 (Q. B.); Brown v. Watson, 4 Leg. News (Quebec) 404 and many others.] In France, in the case above cited, the partner could equally have bound the firm by the simple expedient of representing to the lender that the loan was for the ordinary partnership business and then misappropriated the money. If the borrower in this case had been in England, this is the course he would have adopted, but knowing in France that the firm signature would be binding in any event, he just told the straightforward truth as to the destination of the loan, although acting just as fraudulently in applying the loan contrary to the terms of the partnership deed and concealing from the lender that clause in the deed prohibiting such an application of the loan.

The main argument relied on by the French authors in their condemnation of these decisions is, that they violate one of the plainest rules of the law of agency, which is, that in order to bind the principal, the act done must be within the scope of the authority committed to the agent. For where the agent is acting without the scope of his authority, the third party who purports to be dealing with the firm through him is *presumed* to be guilty of either negligence, (ordinary or gross), or actual fraud and connivance according to the circumstances. The Court of Cassation presume otherwise. That is the difference.

The result of the presumption under the English law is seen in the following cases:

O'KELL v. EATON
31 L. T. N. S. (Q. B.)

In order to bind the partnership it is not necessary that it should have received the benefit of the loan, for where one partner borrows money on the credit of the partnership, and applies it to his own purposes, it is no defense to an action by the lender against the partnership that he negligently omitted to communicate with the other partners, and to make inquiries as to the borrower's authority to pledge the partnership credit, provided he acted *bonâ fide* in advancing the money.

LOYD v. FRESHFIELD
2 Car. and P. 325.

If money be lent to one of two partners, who says he borrows it for the firm, and he misapply it, and there be proof that the plaintiff lent it under circumstances of negligence, and out of the ordinary course of business, he cannot recover against the other partner.