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 is one arising in the due course of the partnership business. Otherwise the partner is on the same footing with any stranger, and to validate his act it must appear to have been expressly authorized under seal. Thus, in *Ruffner* v. *McConnel*, 17 Ills., 212, it was held that one partner, even though expressly authorized by parol, cannot convey land or make a contract specifically enforcible against the others. See also *Bewly* v. *Innis*, 5 Harris, 485, and *Snyder* v. *May*, 7 Harris, 235. For the same reason bonds of submission to arbitration, and warrants to confess judgment, have been uniformly held invalid, unless authorized by sealed instrument; they are not in the regular course of business, and therefore not partnership transactions: *Karthaus* v. *Ferrer*, 1 Pet., 222; *Crane* v. *French*, 1 Wend., 311; *Armstrong* v. *Robinson*, 5 G. & J., 412; *Barlow* v. *Reno*, 1 Blackf., 252; *Sloo* v. *State Bank*, 1 Scam. 428; *Mills* v. *Dickson*, 1 Richards, 487. But if an award be made, and the money received by both, or by one in the firm name, the acceptance will be good either as a release or as accord and satisfaction: *Buchanan* v. *Curry*, 19 Johns. 137; *Lee* v. *Onsott*, 1 Pike, 206.

Having thus considered how one partner may bind his co-partners by sealed instrument *with their consent*, and how that consent may be proved, we come now to how he may bind them *without their consent*. And first, he may *release a debt* by sealed instrument. This is well settled both in England and the United States: *Bowen* v. *Marquand*, 17 Johns, 58; *Smith* v. *Stone*, 4 Gill & J. 310; *Morse* v. *Bellows*, 7 N. H., 549; and he may authorize an agent, under seal, to release: *Wells* v. *Evans*, 20 Wend., 251; S. C., 22 Wend., 324. So he may sign a composition-deed with a debtor of the firm: *Beach* v. *Ollendorf*, 1 Hilton, 41. The reason that a release is good is stated by Kent, C. J., in *Pierson* v. *Hooker*, 3 Johns, 68, to be that the deed is good as to the partner signing, and a release by one of joint creditors is good as to all, citing *Ruddock's case*, 6 Co., 25. Perhaps an equally satisafctory reason is, that the rule itself which makes the deed of one partner in the partnership name bad, extends only to those cases in which the effect of the deed would be to charge the partners with a new liability.

A second class of cases, where a partner may bind his co-partners under seal without their consent, express or implied, was marked out by Chief Justice Marshall at an early day. In *Anderson* v. *Tompkins*, 1 Brock, 456, he said: "The principle of *Harrison* v. *Jackson*, is settled. But I cannot admit its application in a case where the property may be transferred by delivery under a parol contract. But I cannot admit that a sale so consummated is annulled by the circumstance that it is attested by a deed." The principle thus enunciated has always been favorably regarded by the American courts, and it is now well settled in most of the states, that if the act done would have been valid without a seal, the addition of the seal does not vitiate it: *Tapley* v. *Butterfield*, 1 Met. (Mass.), 515; *Milton* v. *Mosher*. 7 Metc., 244, *Everitt* v. *Strong*, 5 Hill (N. Y.), 163; *Robinson* v. *Crowder*, 4 McCord, 537; *Dubois' Appeals*, 2 Wright (Penn.), 236, *Deckard* v. *Case*, 5 Watts, 22; *McCullough* v. *Sommerville*, 8 Leigh, 415; *Forkner* v. *Stuart*, 6 Grattan, 197; *Lucas* v. *Bank of Darien*, 2 Stew., 280; *Human* v. *Cuniffe*, 32 Mo., 316. In Kentucky, however, and perhaps in the other states where the strict ruling of the English cases is followed, this exception is not allowed. Thus in *Montgomery* v. *Boone*, 2 B. Monr., 244, Robertson, C. J., says: "The principle thus settled as to *deeds*, seems to have been recognized as applicable to all contracts under seal to pay money, even though a seal was not essential to the obligations of such contract. This may have been a perversion or extension of the principle as to *deeds* which was probably applicable at first only to such writings as would be ineffectual without a seal, and not to such as might be as binding and effectual without as with a seal. All judicial questions, however, has been concluded on this subject also by this Court."

In conclusion, we may regard the American decisions as now pretty well harmonized on the general principle, that a sealed instrument,