

the partners is excluded from participation in the profits is null. An agreement by which one partner is exempt from liability for the losses of the partnership is null only as to third persons." In the present case there was no participation in the profits; no one of the partners of Cook and company received any portion of the profits of Knight's business, and Knight never treated Cook and company as partners, nor ever rendered them an account of the profits. He rendered merely an account of the loan and of the 6 per cent. interest.

But the Code of Lower Canada does not stop at section 1831. It proceeds to point out, in chapter 2, what are the obligations and rights of partners among themselves, and shows what, even if they had received the profits, would have been the rights and obligations of the Cooks, as between them and Knight. Chapter 3 speaks of the obligation of partners towards third persons; and section 1855 proceeds:—"A stipulation that the obligation is contracted for the partnership binds only the partner contracting, when he acts without the authority, express or implied, of his co-partners; unless the partnership is benefited by his act, in which case all the partners are bound." Now, what benefit did Cook and company derive by the act of James William Cook? They derived no benefit so far as profits were concerned, because, as already stated, they received no profits. Knight did not consider that he was a partner with them by reason of the contract which he had entered into with James William Cook, and which had not been authorised or ratified by either of his other partners. It is said that George Josiah Cook read the contract, about 1873 or 1874, and that he did not give notice to Knight or to anybody else that he did not consent to the arrangement which James William Cook had entered into. But to whom was he to give notice? Knight had never stated that he considered the contract binding on him. John Larkin Cook had never become bound. Why, then, should George Josiah Cook give notice to Knight in 1874, that he did not consider himself bound as a partner by the agreement which his brother James William Cook had entered into in 1869, when Knight had never rendered an

account of profits or ever shown that he treated him as a partner. There was no necessity for George Josiah Cook to give such notice, even if he read in 1874 the agreement that was entered into in 1869.

Further, it was said that by a letter which Cook and company wrote in 1876, they acknowledged their liability. Now, that letter was not an acknowledgment of their liability; on the contrary, they were proceeding to enter into a contract, binding themselves, not for their own debt, but for the debt of Knight. They say:—"With reference to the amount due to you by Mr. A. F. A. Knight, we will see it settled on the following conditions," &c. They do not say, "With reference to the debt which we owe to you as partners with Knight, we will settle it." Dunn and company never said, "You are liable yourselves; you are now proposing to guarantee Mr. Knight's debt, but it is your own debt, you are partners with Knight." There was nothing of that sort; they assented to the fact that it was Mr. Knight's debt, and not the debt of A. F. A. Knight including the Cooks.

Their Lordships, therefore, are of opinion, that the lower Courts came to a right conclusion in holding that there was no partnership, and that neither George Josiah Cook, nor John Larkin Cook, were liable in the action, and they will humbly advise Her Majesty that the decision of the Court of Queen's Bench be affirmed, and that the appeal be dismissed.

The appellants must pay the costs of this appeal.

Appeal dismissed.

G. Irvine, Q. C., Bompas, Q. C., and Graham for appellants.

Sir Horace Davey, Q. C., Bossé, Q. C., and Fullarton, for respondents.

COUR SUPÉRIEURE.

ST-HYACINTHE, 19 juin 1888.

Coram TELLIER, J.

BRABEGARD v. DAIGNEAULT.

Paroles injurieuses—Dommages.

JUGÉ:—*Qu'une personne qui accuse une autre publiquement d'avoir rendu sous serment un compte faux, et d'avoir divertis d'un inventaire et recelé des biens appartenant à des*