profits." The learned judge, after referring to the English cases claimed to have qualified, if not overruled, the cases of *Grace* v. *Smith*, 2 W. Bl. 998, and *Waugh* v. *Carver*, 2 H. Bl. 235, which were the foundation of the doctrine that a participation in profits renders those receiving them partners, says that "without discussing those decisions, and determining just how far they reach, it is sufficient to say that they are not controlling here; that the rule remains in this State as it has long been; and that we should be governed by it until here, as in England, the Legislature shall see fit to abrogate it." The same remark may also be applied to the cases of *Harvey* v. *Childs*, 28 Ohio St. 319; *Hart* v. *Kelley*, 83 Penn. St. 286; *Beecher* v. *Bush*, 45 Mich. 188; *Eastman* v. *Clark*, 53 N. H. 276; *Emmons* v. *Bank*, 97 Mass. 230—decided in the courts of our sister States, in which the distinction between contracts of partnership *inter sese* and those making the parties partners as to third persons, although not so as between themselves, is sought to be practically abolished. The doctrine that persons may be partners as to third persons, although not so as between themselves, and although the contract of partnership contains express provisions repudiating such a relation, has been too firmly established in this State by repeated decisions to be now disregarded by its courts. See cases cited in *Leggett* v. *Hyde*. It is claimed that this doctrine has been practically overruled in this State by the decisions in this court of *Richardson* v. *Hughitt*, 76 N. Y. 55; *Burnett* v. *Snyder*, id. 344; *Eager* v. *Crawford*, id. 97; *Curry* v. *Fowler*, 87 id. 33; and *Cassidy* v. *Hall*, 97 id. 159. We do not think these cases had the effect claimed. They were all cases distinguished by peculiar circumstances, taking them out of the operation of the general rule. It cannot be disputed but that a loan may be made to a partnership firm on conditions by which the lenders may secure a limited or qualified interest in certain profits of the firm, without making them partners in its general business; but that is not this case.

In *Richardson* v. *Hughitt*, *supra*, Bench Bros. & Co. were a manufacturing firm, carrying on the business of making wagons, and Hughitt contracted to advance to them $50 on each wagon manufactured by them and delivered to him, to the extent of two hundred wagons, under an agreement that upon the sale of the wagons he was to receive back the moneys advanced, with interest, and one-fourth of the net profits on such wagons. It was held that this was a mere loan of money, providing for an interest in the profits as a compensation for the money loaned. The lender secured no interest in the general business of the firm, or interest in the profits made therein, and did not become liable for its debts. It is quite clear that if such a contract had been made after the wagons were finished, it would have created simply a pledge of property for the payment of a debt, competent for the parties to make, and which would not have made the pledgee a partner. The fact that the contract was executory would not alter the real nature of the transaction or affect the relations of the parties to third persons. The case of *Eager* v. *Crawford*, *supra*, was a pure loan of money, with an agreement that the borrower should pay to the lender, on the first day of each month, one-half of the gross receipts of the business carried on by him, until the whole sum, with interest, was repaid. The dispute in the case was upon the question whether the stipulation for one-half the gross receipts was intended to refer to profits. The question submitted to the jury, the evidence being conflicting, was whether it was "the real understanding between the parties that Crawford should participate in the profits, as such. If it was, it would constitute a partnership;" otherwise not. This court approved the charge. In *Burnett* v. *Snyder*, *supra*, two of the members of an existing firm, composed of five persons, agreed with Snyder, for a good consideration, that if he would become liable to them for one-third of the losses sustained by them in the business of their firm they would pay to him one-third of the profits received by them in such business. For obvious reasons, it was held that Snyder, under this agreement, took no interest in the general business of the firm, and did not become a member thereof. In *Curry* v. *Fowler*, *supra*, W. G. and J. E. McCormick were an existing firm, owning certain vacant