sufficiently proved the Court would have annuled the marriage. In Lyon v. Lyon, 230 Ill. 366, 82 N. E. 850, 13 L. R. A. (N. S.) 996, it was held that a false representation that defendant had not had an attack of epilepsy for eight years is not sufficient to warrant the annuling of the marriage. In a dictum in Reynolds v. Reynolds, 3 Allen 605, 606 Chief Justice Biglow said: "No misconception as to . . . health . . . however brought about, will support an allegation of fraud on which a dissolution of the marriage contract, when once executed, can be obtained in a Court of Justice."

Positive authority against the conclusion in the principal case can be found in Richardson v. Richardson, 140 N. E. (Mass.) 73, holding that if the wife prior to marriage concealed the fact that she was afflicted with epilepsy, an incurable disease, nevertheless it would not be a ground for annuling the marriage.

All that can be said after reviewing the cases is that the Courts are in conflict without enough cases being decided on one side or the other to establish a clear line of authority.

H. C. A., '27.

PARTNERSHIP—GUARANTY OR SURETYSHIP—AUTHORITY OF PARTNER TO BIND FIRM BY CONTRACT OF.—Nicolai-Nepach Co. v. Abrams et al., 240 Pac. 870 (Supreme Court of Oregon, November 3, 1925).

This was an action by the Nicolai-Nepach Co. against M. Abrams and his son, Ben Abrams, as partners in the hardware business, for $650. M. Abrams guaranteed on behalf of the partnership the payment of $700 due the plaintiff from the Columbia City Furniture Co., "and if they fail to make their payments, we or either of us promise to pay said accounts." The answer, by Ben, was that the business of the Oregon Hardware Co. was strictly in hardware, and that neither Ben nor the partnership at any time authorized any contract or agreement of guaranty or suretyship in the name of the partnership. The reply alleged that Ben obtained or had the means of obtaining knowledge of the agreement on or about the date of its execution; that Ben failed to give notice; that thereby the plaintiff was damaged through reliance on the contract; and that M. Abrams had authority to make the agreement because the partnership was a creditor of the Columbia City Furniture Co., and it was therefore to the interest of the partnership to keep the Columbia City Furniture Co. a going concern in order

that the Oregon Hardware Co. might obtain its indebtedness. The decision was for the plaintiff, on a trial by the court without a jury, and Ben appealed.

The Supreme Court held that as a general rule one partner has no authority to bind the partnership or his co-partner by such a contract; and that the burden of proof is on the party alleging the contract to show express or implied authority, or a ratification by the other partner. Such ratification would, of course, bind the firm, and might be either express or implied, from circumstances and conduct or express statements. But here, the court held, M. Abrams had implied authority, and Ben knowingly ratified; for the father transacted the main part of the business, and kept the firm bank account in his own name; and furthermore Ben paid a portion of the indebtedness in merchandise on a date subsequent to the agreement, and accordingly acknowledged its validity, as he acted with knowledge of all the facts, as a conversation relating to the matter had been carried on in his presence immediately prior to that time. Thereafter, he made no objection for a long time, and even though he did not actually intend to ratify, it is a presumption of law that a person intends the ordinary consequences of his voluntary act. The decision of the lower court was therefore affirmed.

The general rule, as stated by the Supreme Court of Oregon, is borne out by numerous cases. It was held in Rollins v. Stevens (1850), 31 Me. 454, in Olive v. Morgan (1894), 8 Tex. Civ. App. 654, 28 S. W. 572, and in First Nat. Bank v. Farson et al. (1919), 226 N. Y. 218, 123 N. E. 490, that a member of a commercial partnership has no implied authority to bind the firm as surety or guarantor for another. This seems to mean, however, not so much that there is no implied authority whatever, as that any implied authority must be implied from the circumstances of the particular case, as the rule of Seufert v. Gille (1910), 230 Mo. 453, 131 S. W. 102, 31 L. R. A. (N. S.) 471, is that a partner has no implied authority to bind the firm by contracts of suretyship, either for himself individually or for strangers to the firm, and the holder of such an obligation must show special authority to make the contract, or an implied authority from the common course of business of the firm, or previous course of dealing between the parties. It is nevertheless interesting to note that the Supreme Court of Oregon rested its decision in point of emphasis, not so much on an implied authority, or on the ingenious argument of the plaintiff that the contract was to the interest of the partnership, as on a ratification by Ben at a subsequent time. J. T. B., '26.