

eral terms will not be restricted when the whole instrument shows that the parties did not intend any restriction by the enumeration of particulars. If Hood & Corwin had kept a country store, and the writing had read, "all the interest in the business known under the firm name of Hood & Corwin. Corn and flour, counters and scales also, good will of trade, &c.," it would hardly be claimed that all other articles comprising the stock in trade were excluded because these few articles were enumerated. Besides, the use of the character "&c." indicates that the things particularly enumerated did not include everything intended to be conveyed; and therefore the particular enumeration was not intended as a restriction of the general terms previously used.

The provision in the agreement relating to the payment of the debts of the firm, and the collection of the debts due the firm, by the defendant, and the arrangement that one half of the balance of the receipts remaining after the payment of the debts should be paid to the plaintiff, indicate that the parties intended to make a full settlement of all the partnership business. For the interest of Corwin's estate in the milk business, which was then determinable, the defendant agreed to pay the sum of twenty-five hundred dollars, and the balance of the surplus of the debts due the firm over the liabilities was to be divided equally when it was determined.

Our conclusion is, that the construction of the writing contended for by the defendant is correct; and, as the case now stands, the defendant's plea is *prima facie* a good bar to the plaintiff's action. *Hancock v. Carlton*, 6 Gray 54.

*Case discharged.*

BINGHAM, J., did not sit.

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STRAFFORD.

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FIRST NATIONAL BANK OF GONIC v. FERGUSON.

Where instructions given a jury are correct, a verdict will not be set aside because they are not so specific as they might properly have been, when no request was made for more definite instructions.

All exceptions to the charge of the judge will be considered as waived, unless taken and reduced to writing before the jury retire.

ASSUMPSIT, on a promissory note. Verdict for the defendant. The defendant requested the court to instruct the jury that if the note was not the property of the plaintiffs, but was left at the bank for collection, the plaintiffs could not recover,—claiming that the plaintiffs'

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58	403
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books contained entries tending to show that the note was so left. The presiding judge told the jury that he was not aware that there was any such evidence, but if there was, it was contained in the plaintiffs' books used on the trial, which they could examine, and satisfy themselves how this was; and if they should find that the note was left for collection merely, the plaintiffs could not recover to any greater extent than the original payee could. To these instructions the plaintiffs excepted. To what extent the original payee could recover had been previously explained to the jury. The plaintiffs moved to set aside the verdict, and for a new trial, because the instructions excepted to "must have misled the jury, and caused them to think the court understood the note was left for collection."

*Hobbs* (with whom was *Sanborn*), for the plaintiffs, argued that the court should have added to the instructions given, the following, in effect: That if, before the note was due, the plaintiffs gave up to the original payee and indorser of this note a certain note which they had previously discounted and advanced money upon, and received in exchange the note in suit, so that, in fact, the bank, before this note was due, became the holder and owner of the note in suit, without notice of any equity, the plaintiffs must recover.

*Copeland & Edgerly* and *Worcester & Gafney*, for the defendant.

FOSTER, J. The plaintiffs cannot complain that the presiding judge told the jury he was not aware that there was any evidence for the defendant on a certain question. The instructions, which they now suggest in argument should have been given, would perhaps have been given if a request therefor had been made. The exception comes too late. 54th Rule of Court; *Cooper v. Grand Trunk Railway*, 49 N. H. 209, 213; *State v. Gorham*, 55 N. H. 152.

Where instructions given a jury are correct, a verdict will not be set aside because they are not as specific as they might properly have been, when no request was made for more definite instructions. *Moore v. Ross*, 11 N. H. 557; *Kent v. Tyson*, 20 N. H. 121, 126, 127; *Wright v. Boynton*, 37 N. H. 9, 22, 23; *Hooksett v. Amoskeag Co.*, 44 N. H. 105; *Conway v. Jefferson*, 46 N. H. 521, 522.

And when the general principles of law applicable to a case are given to the jury, it is not always necessary or proper to give particular instructions applying the law to a part of the case; for thereby special emphasis and importance may sometimes seem to be attached to certain evidence of one side, to the prejudice of the other side.

*Judgment on the verdict.*