

moval, no order to that effect can be made. The case does not show that such an order has been made; but as the exceptions raise the question whether any decree can be made for the plaintiff, the power to make such an order has been considered. Some facts appear in the case as to the erection of gravestones by the plaintiff upon the lot, but it does not appear that any orders are necessary or were asked for in reference to them. As upon the facts found the plaintiff is not entitled to any relief, the order will be,

*Exception sustained: bill dismissed.*

All concurred.

Rockingham, }  
Nov. 5, 1907. }

BOYLSTON NATIONAL BANK v. KILBURN & a.

SAME v. SAME.

BRISTOL COUNTY NATIONAL BANK v. SAME.

As against a *bona fide* holder for value without notice, a partnership is liable upon an unauthorized acceptance of a negotiable draft in the name of the firm by one member thereof.

ASSUMPSIT, against the acceptors of negotiable time drafts. Facts agreed. The plaintiffs are *bona fide* indorsers and holders of the drafts for value, having obtained them before maturity, in the regular course of business, without knowledge of any infirmity or of facts which would put them upon inquiry.

The defendants filed the following brief statement of defence: At the time the name W. H. Kilburn & Co. was signed to the drafts declared on, that concern was a copartnership composed of William H. Kilburn and Oscar E. Smith, who were engaged in the business of buying and selling merchandise, and the scope of the partnership was limited to that business. Neither partner had the right or authority to sign the name of W. H. Kilburn & Co., or to pledge the credit of the firm, for any other purpose than to carry on said mercantile business. The acceptance of the drafts, as signed by W. H. Kilburn & Co., was by Kilburn, was without the knowledge or consent of Smith, and was not within the scope of the partnership authority conferred upon Kilburn.

The defendant Smith has no defence, except as set forth in the brief statement. At the April term, 1907, of the superior court,

*Wallace, C. J.*, ruled that the brief statement did not contain a defence and found a verdict for the plaintiffs, subject to the defendants' exception. If the ruling is erroneous, the case is to stand for trial; otherwise, there is to be judgment on the verdict.

*Edward H. Adams* and *Arthur O. Fuller*, for the plaintiffs.

*Ernest L. Guptill* and *Page & Bartlett*, for the defendants.

PARSONS, C. J. The facts agreed establish a right of action to which the brief statement discloses no defence. *National State Capital Bank v. Noyes*, 62 N. H. 35; *Wagner v. Freschl*, 56 N. H. 495; *State Capital Bank v. Thompson*, 42 N. H. 369; *Stimson v. Whitney*, 130 Mass. 591; *Union National Bank v. Neill*, 149 Fed. Rep. 711; 1 Am. & Eng. Enc. Law 348.

*Judgment for the plaintiffs.*

All concurred.

Rockingham, }  
Nov. 5, 1907. }

STATE v. ENGLISH & a.

The validity of a liquor license issued to a person competent to receive it and the liability of the licensee and his sureties upon the accompanying bond are not affected by the fact that the license was procured for the benefit of one to whom it could not be legally issued.

DEBT, on a bond given by English as principal and the other defendants as his sureties. Trial by the court. Transferred from the April term, 1907, of the superior court by *Wallace, C. J.*

In 1905, English obtained a license for the sale of liquor to be exercised in Gilsun, and furnished the bond now in suit. Afterward during the term of the license, upon notice and a hearing, the state board of license commissioners found he had violated the terms of his license, which they thereupon revoked. The defendants filed a plea alleging that the license was illegally issued to English, that it was in fact procured for the benefit of one Race, who was not entitled to a license under the law, and that therefore no license was issued to English and the bond is invalid. They offered to prove the facts stated in the plea, but the court excluded the evidence, and the defendants excepted. A verdict having