

ment of the town to the idle, illicit, propertyless and vagrant classes. And here lies the source of this evil, and probably it will never be permanently cured until the right to vote in municipal elections is confined to those who contribute to the support of the corporation and are directly interested in its well-doing.

With this statement of the case and the claims of the parties, I submit the matter to you to say what damages the plaintiff ought to have and the defendants to pay. The court is the judge of the law, and the jury of the facts. Therefore, what I have said to you concerning the law of the case you are bound to consider as such, and be governed by it; but what I have said to you about the facts is only advisory, or said by way of suggestion, and it is to have only such weight in your deliberation as you think it is entitled to under the circumstances. You are judges of the credibility of the witnesses and the weight or consideration to be given to their testimony. This is no common case. It touches the foundation of civil society, and in some respects is of more importance to the public than the parties. The duty you are called upon to discharge in this case is one of the highest that falls to the lot of a citizen in a free, law-governed country, and I believe you will so regard it, and act accordingly.

The jury found a verdict for the plaintiff in the sum of \$1,000.

CLEMENT *v.* CITY OF LATHROP.

(*Circuit Court, W. D. Missouri.* January, 1884.)

NAMES OF CORPORATIONS—EFFECT OF MISNOMER IN SIGNING CONTRACTS.

A corporation, like a natural person, may be known and designated by several names, although it can have but one corporate designation. It is well settled that it is not necessary in order that a corporation be bound by its contracts that they shall be made in its exact corporate name. If it appears from allegations and proof that the obligation sued upon was intended to be the obligation of the corporation sued, a recovery will not be defeated by reason of a misnomer.

Bryant, Holmes & Waddell, for plaintiff.

Waters & Wyne, for defendant.

MCCRARY, C. J. This case is before the court on demurrer to petition. It is a suit upon certain bonds issued in the name of the "Town of Lathrop." The true corporate name, as the petition avers, was "The inhabitants of the town of Lathrop." It is averred in the petition that the municipality was commonly known as the "Town of Lathrop," and that the bonds were issued by "The inhabitants of the town of Lathrop," in and by the name of the town of Lathrop. A corporation, like a natural person, may be known and designated by

several names, although it can have but one corporate designation. It has long been settled that it is not necessary in order that a corporation be bound by its contracts that they shall be made in its exact corporate name. If it appears from the allegations and proof that the obligation sued upon was intended to be the obligation of the corporation sued, a recovery will not be defeated by reason of a misnomer alone. Such a misnomer of the corporation will not prevent a recovery "either by or against the corporation in its true name, provided its identity with that intended by the parties to the instrument be averred in the pleadings and apparent in the proof." Ang. & A. Corp. § 234; Daniel, Neg. Inst. § 399; Dill. Mun. Corp. (3d Ed.) § 179; *Minot v. Boston Asylum*, 7 Metc. 416. It is enough if the identity of the corporation is unmistakable, either from the face of the instrument or from the averments and proof.

Judged by this rule, I am of the opinion that the petition is good and sufficient, and the demurrer thereto is accordingly overruled.

OPPENHEIMER and another v. CLEMMONS.

(Circuit Court, W. D. North Carolina. November Term, 1883.)

1. PARTNERSHIP—WHAT CONSTITUTES.

As a general rule, participation in the profits of a business constitutes a partnership as to third persons, despite any secret agreement between the partners. To effect this result, the profits participated in must be net, and not gross. Whether, in the case at bar, gross or net profits were intended is for the jury.

2. SAME—LOSSES PROPORTIONED TO PROFITS.

Community of profits is essential to a complete partnership. When there is no express stipulation to the contrary, it will be presumed that the losses are to be shared in proportion to the profits.

3. SAME—NOT TO BE PROVED BY DECLARATIONS.

When the existence of a partnership is disputed, the declarations of one of the alleged firm are not admissible to bind a third person as partner.

4. OSTENSIBLE AND DORMANT PARTNERS.

Contrasted and discussed with regard to the facts of this case.

This is a civil action to recover the price of spirituous liquors from the defendant upon the ground that he was a dormant partner of J. W. Bailey, who purchased the articles from the plaintiffs.

Johnston Jones and Shuford & Johnston, for plaintiffs.

J. H. Merrimon, for defendant.

DICK, J., (charging jury.) With the aid of the full and learned arguments of counsel, I hope that I may be able to instruct you correctly upon the questions of law involved in this action. I will, in the first place, call to your attention certain matters of fact which are admitted in the pleadings, and others about which there is no conflict in the evidence. In 1876 the defendant was the owner of a large