gested in regard to the nature of judgments against two or more are applicable to another point made by the defendant's counsel, and which is that a judgment against three persons not served, two of whom did not appear, and for whom the third had no authority to appear, being void as against the two, is also void against the third, who did voluntarily appear.

It is next insisted that the judgment against Mr. Allen individually is void because service of the notice of appeal was made upon Mr. Clopton, who, it is said, ceased to be Allen's attorney upon the dissolution of the firm of Stone & Clopton.

Service of a citation upon the law partner of a deceased attorney of record, the partner not affirmatively appearing to have been attorney or counsel in the cause in which the appeal is taken, is not good, (*Bacon* v. *Hart*, 1 Black, 38;) but in this case Mr. Clopton affirmatively appears to have been both attorney and counsel, and to have been, equally with Mr. Stone, charged with the management of the cause. The mere fact of the dissolution of a law firm does not necessarily dissolve the agency of each member, but the dissolution of the agency of a particular member must, I think, depend upon questions of fact; and in this case Mr. Clopton continued to be what he was before, the actual attorney of Mr. Allen. I do not propose to consider what may be the effect of the dissolution of a commercial partnership upon the relation of the members of such partnership as selling agents or factors for others.

Upon the bill to set aside the judgments for fraud, the conduct of the defendant's attorneys in making the stipulation, and in not attending to the cause after the appeal, is attacked. If the stipulation had not been entered into, the effect would not have been to cause an abandonment of the existing suit and the institution of a new one, but simply a delay, and the amendment of the bill or the filing of a supplemental bill. The agreement of Stone & Clopton was not in excess of their authority, which extended to all proceedings in good faith naturally incident to the management of the existing cause while it was pending in court. They were not authorized to make agreements by way of compromise or settlement of the cause, or agreements to keep alive a cause, which, but for such agreement, must be abandoned; but the stipulation which they made was not of such a character. The wisdom or the imprudence of their agreement I am not called upon to examine, but there was no fraudulent combination with the plaintiffs' lawyer to sacrifice Mr. Allen or to benefit Mr. Lakin. So, also, while I think that Mr. Clopton was neglectful in the management of the cause after the appeal, his conduct was not fraudulent, and it cannot be that the laches or the negligence of an attorney, when there is no fraudulent combination or collusion with the opposing counsel, will have the effect of rendering void a judgment in favor of the successful party. *Wynn* v. *Wilson*, 7 Hempst. 699.

Other objections are made to the judgment, on the ground that the

decree is not in conformity to the bill, and that the plaintiff could not properly bring the bill in her own name, but "it is of no avail to show that there are errors in the record, unless they be such as prove that the court had no jurisdiction of the case, or that the judgment rendered was beyond its power." *Cooper* v. *Reynolds*, 10 Wall. 308.

In an action upon a judgment, interest thereon is, as a rule, allowed by the courts of this country, in the absence of a compulsory statute, upon the amount of the original judgment, as damages for the detention of the money, and as equitably incident to the debt. *Williams* v. *American Bank*, 4 Metc. 317; *Klock* v. *Robinson*, 22 Wend. 157; *Nelson* v. *Felder*, 7 Rich. (S. C.) Eq. 395. This is the general rule, but exceptional cases arise where it is inequitable that interest, by way of damages, should be allowed. *Redfield* v. *Ystalyfera Co.* 110 U. S. 174; S. C. 3 Sup. Ct. Rep. 570.

The judgment of $1,424.21 is made up of $719.23 principal and $713.98 interest, at 8 per cent., the legal rate. In the original amount of $1,852.18, found to be due from Allen, Hopkins & Co., $521.07 interest are included. Five years and seven months' interest upon that interest is included in the judgment of $2,804.97. The amount of the two judgments is $4,226.18, of which $2,187.84 is interest at 8 per cent. If interest should now be allowed upon these two judgments, a large and inequitable compounding of interest would be the result. In the case against John Allen let judgment be entered against the defendant for $1,424.21, and costs; and in the case against John Allen and James McLean, (McLean not served,) let judgment be entered against said Allen for $2,804.97, and costs. The bill in equity is dismissed, without costs.

NISKERN v. CHICAGO, M. & ST. P. RY. CO.[1]

(Circuit Court, D. Minnesota. December Term, 1884.)

1. RAILROAD COMPANIES—FIRES CAUSED BY SPARKS—BURDEN OF PROOF—PRESUMPTION OF NEGLIGENCE—GEN. ST. MINN. 1878, CH. 34, § 60.
   In an action under the Minnesota statute against a railroad company to recover damages for destruction of property, caused by fire set out by sparks or coals from an engine, the burden of proof is on the plaintiff to show that the fire was caused as alleged, but when this is proven, a *prima facie* case of negligence is made out, and the burden is shifted to the company to rebut the presumption of negligence thus raised, by proof that it performed its whole duty in the premises, and did not use a defective engine, or manage it in an unskillful manner.
2. SAME—CONTRIBUTORY NEGLIGENCE.
   When the railroad company fails to overcome the presumption of negligence thus raised, the plaintiff will be entitled to recover, unless the company prove that he was himself guilty of negligence which contributed to the destruction of his property.

[1] Reported by Robertson Howard, Esq., of the St. Paul bar.