Cause being at issue the jury is empannelled and sworn, and cause submitted for trial.

Trial begun and the plaintiff concludes her case in chief. Defendant moves to non-suit the plaintiff. Motion overruled, and exception. Trial concluded.

Plaintiff now tenders instructions numbered one and two with a request in writing that each of them be given to the jury. Defendant also tenders instructions numbered from one to four inclusive accompanied by a request in writing that each and all of them be given to the jury. The court now indicates which instruction will be given and which refused, which in structions are ordered filed and made a part of this record, without bill of exceptions.

Arguments for the plaintiff and the defendant are now heard and the court instructs the jury, and files the instructions with the clerk and orders that they be made a part of this record without a bill of exceptions.

The jury now retire in charge of a sworn jury bailiff to deliberate upon the case and arrive at a verdict. Come again the jury into open court with their general verdict, to-wit: "We, the jury, find for he defendant against the plaintiff.

"John Paul Cullen, Foreman."

Edwin J. McCarthy,

Clerk of Court.

JUNIOR MOOT COURT

The following cases were presented to the court by oral argument as well as briefs upon the hypothetical state of acts. Only the principal propositions and the cases or authorities supporting them are here reported. These cases will later be developed and submitted for trial in the Notre Dame Circuit Court by the lawyers who argued them in this court. The statements of fact with propositions and authorities follow:

CAUSE NO. 1

James Milburn

vs.

Willis Harmon

STATEMENT OF FACTS

Plaintiff and the defendant, together with Samuel Jones and Robert Benton, were partners, owning and operating in equal shares the mercantile establishment known as the Economy Store in South Bend, Indiana, a prosperous concern valued at 75,000.

On July 1st, 1920, plaintiff suggested the sale to him by the defendant of defendant's share in said concern; and the defendant then actually offered to sell to plaintiff for the sum of $20,000 his undivided share in the concern. On July 5th, following, the plaintiff came to defendant and asked him to hold the offer open till the 1st day of August, ensuing. Defendant, not willing to hold the offer open for that length of time because, as he said, he had another chance to sell, plaintiff offered and defendant accepted fifty dollars to hold the offer open till August 1st.

On July 15th, in a readjustment of the partnership, Robert Smith sold out to the defendant his undivided interest and Jones also transferred his interest to another.

On July 30th, the plaintiff went to the defendant to accept the offer which was to expire on August 1st, and then and there tendered to defendant $20,000 and demanded the transfer to him by the defendant of

the latter's undivided interest in the Economy Store, which the defendant refused to do, not offering to deliver to plaintiff any part of his interest therein.

Plaintiff brings his tender into court and in his action seeks judgment for damages for the breach of the alleged contract.

Who is entitled to recover?

Edward J. Lennon and
Edmund C. Tschudi,
Attorneys for Plaintiff.

A partner's share is definite at all times—what he would take upon dissolution of the partnership. Mechem's Elements of Partnership; Sindelar vs. Walker, 137 Ill. 4-27 N. E. 59-31 Am. St. Rep. 353; Nenaugh vs. Whitehall, 52 N. Y. 146-11 Am. Rep. 693. Plaintiff paid a consideration for an option to buy and the right to buy defendant's partnership interest at any time within the stipulated period. 6 R. C. L. Contracts; Thompson vs. Bescher, (N. C.) 97 S. E. 654; Murphy-Thompson vs. Reid, 101 S. W. 964. Unexpected hardship or inconvenience in performance no defense or excuse. I. R. C. L. 6; Marx vs. Kilby Locomotive & Mach. Wks., 50 So. 136; Ptacek vs Pisa, 83 N. E. 221; Cotrell & Son vs. Smokeless Fuel Co., 184 Fed. 594.

John C. Cochrane and
Linus C. Glotzbach,
Attorneys for Defendant.

Plaintiff knew fifteen days before accepting that defendant had acquired another partner's interest since making his offer to sell his own, for notice thereof is required by the law of partnership. Eagle vs. Butcher, 67 Am. Dec. 343. There was no mutuality of contract or meeting of the minds in plaintiff's acceptance and defendant's offer. Eggleston vs. Wagner, (Mich.) 10 N. W. 37-13 N. W. 522.

CAUSE NO. 2.

Charles Slaggert
vs.
John H. Barrett

STATEMENT OF FACTS

Defendant, John H. Barrett, was a stock buyer of 20 years experience, engaged in buying stock on the hoof throughout the country, particularly in St .Joseph County, Indiana. On January 15th, 1921, in company with Jake Adams, an employee, of experience in judging cattle, the defendant came to the country home of plaintiff and negotiated with him for the purchase of 20 head of Hereford steers. Defendant and Adams inspected the steers and offered plaintiff $2,000 for them, which offer plaintiff agreed to accept. It was also agreed that plaintiff was to deliver the steers to defendant in South Bend, Indiana, on the morning of January 16th, 1921.

On January 16th, about 10 o'clock a. m., plaintiff brought the steers to South Bend, to the stock yards, which was the accustomed place for delivery of stock, and here met the defendant who refused to accept the delivery or to pay the purchase price, giving as reason that he feared the steers might be infected with the hoof and mouth disease then prevalent in the community. Plaintiff insisted on delivery and acceptance of the steers, stating to the defendant that he well knew all about the disease prevalent in the country at the time he agreed to purchase the cattle; that he and his man had inspected the steers fully at the time of the agreed purchase; that the steers and none of them were affected by the disease, and that he, defendant must keep his contract. Plaintiff then formally of-

fered to deliver the steers and demanded of defendant the agreed purchase price of $2,000. Defendant refused.

Plaintiff was compelled to return the steers to his home, and to sell them in the open market for $300 less than had been agreed upon, and for this $300 and the damages plaintiff brings action.

Frank J. Kelly and
Albert J. Ficks,
Attorneys for Plaintiff.

The doctrine of caveat emptor applies to defendant's purchase. Sweet vs. Colgate, 11 Am. Dec. 266; 25 Am. Dec. 276; 35 L. R. A. (NS) 271. Delivering the cattle at the place agreed upon by the defendant constitutes delivery. 6 R. C. L. 322. Plaintiff fully peformed his contract. 52 L. R. A. 260; 31 S. E. 525; 2 N. E. 387; 72 N. W. 752; 53 L. R. A. 108; 18 Atl 90; 19 So. 340.

Thomas J. Keating and
Matthew McEnery,
Attorneys for Defendant.

This is an oral contract for the purchase of goods of the value of more than fifty dollars, and is unenforcible under the statute of frauds. 2 Starkie on Evidence. 490; 22 N. E. 349; 64 N. W. 952; 96 Pac. 870; 62 Ind 485.

CAUSE NO. 3

Richard B. Swift

vs.

Henry W. Kearnes

STATEMENT OF FACTS

Defendant, Kearnes, met plaintiff, Swift, and, in conversation stated to Swift that he had heard considerable about Swift's horse, named Swift Richard, and of racing stock. A few weeks later, August 1, 1921, Swift directed and mailed to Kearnes the following letter:

"Grand Rapids, Mich.,
"Aug. 1, '21

Mr. Henry W. Kearnes,
South Bend, Indiana.

"Dear Sir:—

"Referring to our recent conversation about my horse, am writing to say that you can buy the horse, Swift Richard, for One Thousand Dollars, you paying me that amount in cash or executing your promisory note for that sum payable to me in thirty days.

"Yours truly,
(Signed) "R. B. Swift."

On August 15, 1921, in reply to Swift's letted, Kearnes sent the following letter:

"South Bend, Ind.,
"Aug. 15th, 1921.

"Mr. Richard B. Swift,
"Grand Rapids, Mich.

"Dear Sir:—

"I have your letter of the 1st instant. I like your horse pretty well, as I stated when I last saw you. And your proposition does not seem high, if the horse meets my expectation. I don't want to buy him, however, until I can look him over carefully. We might come to a deal then. I'll think the matter over.

"Yours very truly,
(Signed) "H. W. Kearnes."

On the 30th day of August, 1921, Mr. Swift sent the horse in charge of his keeper and driver, Mr. Charles Owens, to the defendant Kearnes, with instructions to take the horse to Kearnes. Upon arriving in South Bend, Indiana, Owens drove the horse to the home of Kearnes and told him that Swift had directed him to do so. Whereupon Kearnes, after "sizing up" the horse, said "Well, he really looks good. I believe you can leave him Owens."

On September 1st, 1921, Swift, wrote Kearnes for the $1,000, and Kearnes replied: "I did not buy the horse; you may have him any time." Next, Kearnes, on Sept. 3rd, offered to return the horse, but Swift refused to accept the return of the horse and brought action.

Lyle E. Miller and
Chas. E. Robitaille,
Attorneys for Plaintiff.

There was contract offer and acceptance in terms of offer, Lockwood vs. Robbins, 125 Ind. 398; in re Greis, 308; Stagg vs. Compton, 81 Ind. 171; Train vs. Gold (Mass.) 28 Am. Dec. 374; Sturgis vs. Robbins, 28 Am. Dec. 374. Delivery of the horse takes the case out of the operation of the statute of frauds. Coffin vs. Bradbury. 3 Idaho 770-95 Am. St. Rep. 37; Hinkle vs. Fischer, 104 Ind. 84-3 N. E. 624.

Edward W. Gould and
Eugene M. Hines,
Attorneys for Defendant.

There was not sufficient acceptance and delivery to take the contract out of the statute of frauds. Defendant took possession of the horse for purpose of "carefully examining" him and did not intend acceptance by merely "sizing him up." Clark on Contracts, pages 121, 127; 1915 L. R. A. 824: 4 L. R. A. (NS) 177; 29 L. R. A. 431.

CAUSE NO. 4

Thomas Watkins and Jacob Hines as Watkins & Hines, Partners,

vs.

Jonathan Reidenhor

STATEMENT OF FACTS

The plaintiff are doing a mercantile business as a partnership, operating under the firm name of Watkins & Hines. Their place of business is corner of Colfax and Michigan Streets in the City of South Bend, Indiana.

On August 1, 1921, the defendant purchased of the plaintiff 500 sacks of stock food and gave his note for $200, payable at The St. Joseph Loan & Trust Company, Sept. 15, 1921, with 6 per cent interest and attorney fees.

Defendant owns and operates a large stock farm in St. Joseph County, Indiana, where he resides, about ten miles from South Bend. Defendant opened and used part of one sack of the stock food and decided that it was no good. Accordingly he had the stock food examined by a man who presumed to know the ingredients of such foods and experienced in handling and mixing them for ten years. Several sacks were thus examined and the defendant, upon the advice of this inspector, a Mr. James Cunningham, concluded that the stock food was "no good," and called the plaintiff at their place of business by telephone and told them that "the stock food you sold me is no good," and that he could not use it.

The note having matured and not having been paid, plaintiff brings action on the note.

The stock food is, in fact, no good as a stock food, and defendant's purchase is hardly worth team hire to carry it back.

Francis J. Galvin and
Daniel D. Lynch,
Attorneys for Plaintiff.

The doctrine that articles sold for food are impliedly warranted to be sound and wholesome extends only to food sold for human consumption and not to food for animals. National Cotton Oil Co. vs. Young, 85 S. W. 42; Lukes vs. Freund, 41 Am. Rep.

429. The law presumes that a buyer who fails to exact an express warranty relies on his own judgment. Davis vs. Murphy, 14 Ind. 158; Court vs. Snyder, 2 Ind. App. 440.

J. Stanley Bradbury and
Joseph W. Nyikos,
Attorneys for Defendant.

There was an implied warranty that the stock food was reasonably fit for the purpose for which it was ordered, buyer relying on seller's judgment. Sales Act, Sec. 15; Hunter vs. State, 73 Am. Dec. 168; Coyle vs. Baum, 41 Pac. 389; Houston vs. Cotton Oil Co. vs. Tramwell, 72 S. W. 244; Hauk vs. Berg, 105 S. W. 1176; Best vs. Flint, 5 Atl. 192.

CAUSE NO. 5.

Andrew W. Grayham
vs.
The Indiana Traction Company,
an Indiana Corporation.

STATEMENT OF FACTS.

Plaintiff was driving his Packard car, going east in Colfax street, South Bend, Indiana. Plaintiff's son was driving the car while plaintiff himself rode in the rear seat. As the car approached Michigan street, defendant's car driven by its servants was also approaching Colfax street. Plaintiff and his son, expecting the defendant's car to be brought to a full stop before crossing Colfax street, continued to drive their Packard east. Defendant's servants did not stop the street car, but continued to travel across Colfax street.

Plaintiff, seeing the defendant's car coming on without the accustomed stop at the crossing, and fearing that a collision was inevitable, to avoid injury to himself, leaped from his Packard car and was thereby thrown violently against the stone pavement and street, sustaining a fractured shoulder, broken arm, bruised face and cut scalp, and a concussion of the brain. Plaintiff's son, upon seeing the street car coming on without a stop, and intending to avoid a collision, put on the accelerator and succeeded in getting the Packard across the street car track an instant or two before the street car passed, thus averting injury and damage to himself and his car.

Plaintiff paid $500.00 for medical and surgical aid, $500.00 hospital charges, was confined to the hospital and his home for a period of three months, losing $750 salary, and he suffered pain and anguish, for all of which he brings action against the defendant street car company for $2000.00.

Plaintiff's action is founded on the theory that it was defendant's duty to bring its street car to a full stop before attempting to cross Colfax St. Of course, had the plaintiff remained in his car, he would have averted the injuries just as his son did. And, again, the son, by putting on the accelerator and suddenly starting or jerking the Packard forward, really caused the plaintiff to be thrown to the ground.

Jerome D. Blievernicht and
James P. Wilcox,
Attorneys for Plaintiff.

Plaintiff had equal right with defendant to use of crossing and, having reached the crossing first, had right to pass before the street car. 12 Ohio St. 22. Defendant violated the city ordinance. South Bend Ordinances, page 208, Secs. 6 and 7. Defendant's servants were negligent in operating street car. 107 Pac. 964; 10 L. R. A. (N.S.) 391.