

# **THE LAW OF LIMITED PARTNERSHIP**

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The Law of Limited Partnership by Clement Bates

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**CLEMENT BATES**

**THE LAW OF  
LIMITED  
PARTNERSHIP**



THE LAW  
OF  
LIMITED PARTNERSHIP.

BY  
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OF THE CINCINNATI BAR,  
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UNDER THE CODE."

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## P R E F A C E.

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THE American system of LIMITED PARTNERSHIPS, adopted in Upper Canada and in all the organized subdivisions of the United States except the three Territories of Arizona, Idaho, and New Mexico, is unknown in the rest of the world.

The idea of a limited partnership arose several centuries ago (see §§ 3, 4) in Italy, and thence spread to the Netherlands, Spain, and France, where, viewed with eyes of lenient construction by courts and commentators, it grew to luxuriant proportions, only partially trimmed by the repeal of § 88 of the Code de Commerce in 1856. The French statute without the French construction was grafted upon our jurisprudence in 1824; but the process of integrating it with the common law choked the exotic outgrowth in the germ and produced a native system bearing no resemblance to the parent, yet which, though arising under the statutes of forty-five different States, forms a consistent and homogeneous system, as does the system of Code Pleading, with almost none of the chromatic aberrations that might have been expected from the media of so many atmospheres. For the European law I recommend any one to read Troubat on "Limited Partnership," published in 1853, rather than to go to

his foreign originals, most of which are out of print; and the latest French law (§ 8), adopted after over ten years of legislative discussion, is analogous to our law of corporations. Hence, except as a study in comparative jurisprudence, the foreign law is of no interest to us, and to restate it here would be merely to act the part of Old Mortality, — renewing forgotten graves.

Many of the principles of general partnership law apply to limited partnership. These I have avoided stating, except where necessary to construe doctrines of limited partnership or explain or limit decisions; and where thus compelled to resort to the general law, I have neither followed nor cited any existing text-book.

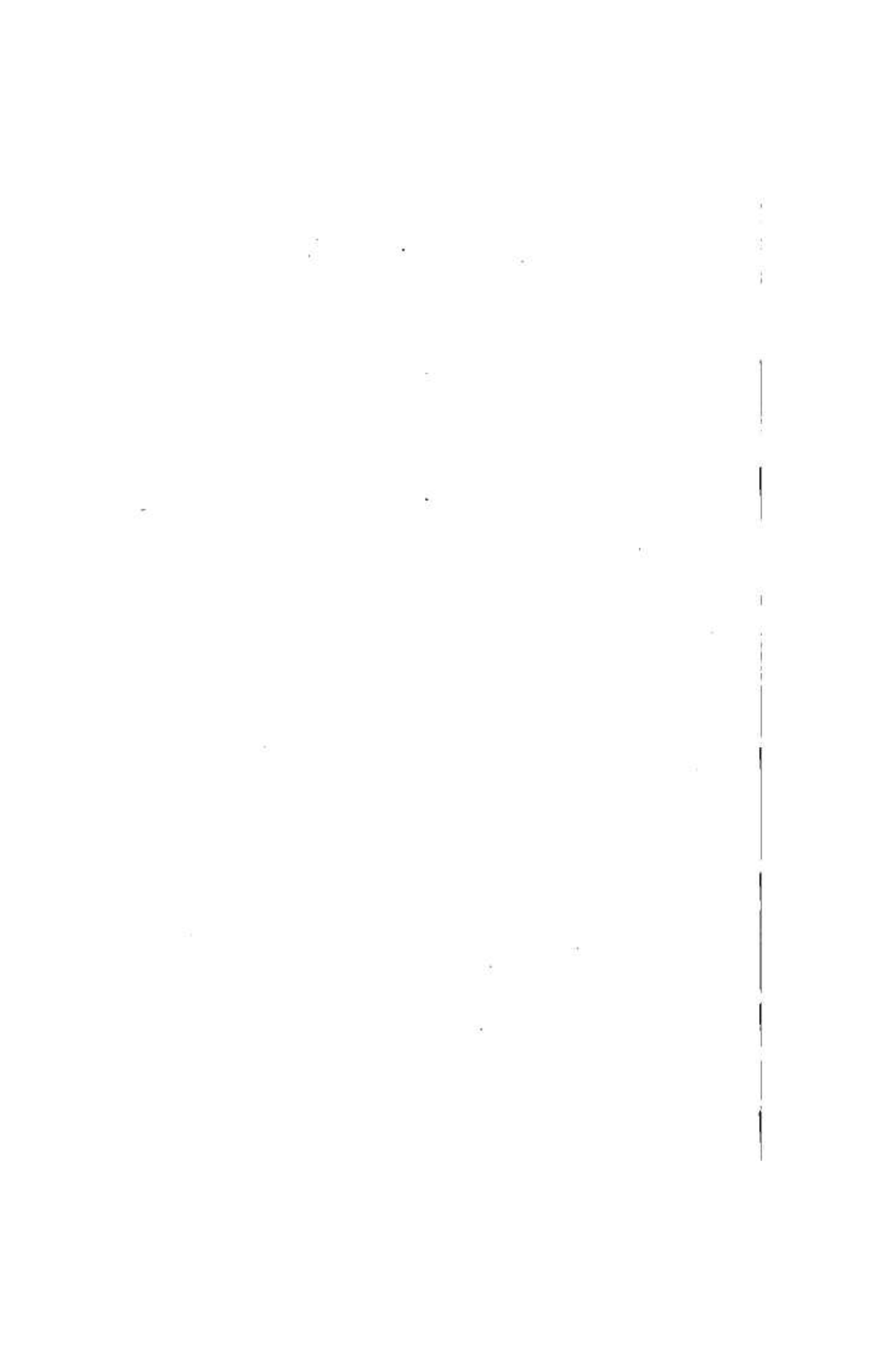
I have read and made notes of about five thousand American cases on partnership, which comprise nearly, but not quite, all there are. My object was twofold, — First, a belief that in this, as in many departments, the cases contained much law which had never been brought to light, and that new and useful examples of reasoning and precedent awaited whoever would go to the trouble of finding them. In this I have not been disappointed. Second, a hope — still distant — of producing an ideal treatise, constructed, by the use of different sizes of type, so as to combine at once a small and general work of ultimate and fundamental principles in large type; a medium-sized work, by placing in smaller type under the general principles their corollaries, deductions, qualifications, and exceptions; and lastly, an exhaustive statement of all decisions, with the minutest possible analysis. My belief is that a treatise thus framed would not only render the learning of law, as well as the search for it, more rapid and exact, but would also be acceptable and



profitable to the extent of encouraging similar efforts by specialists in other departments, and in time furnish the practicable material for a code that would preserve the wealth of the common law and assimilate all but the crude treasures of its storehouse, and successfully bear the test of answering inquiries and intercepting actual disputes.<sup>1</sup>

In this undertaking, the material of the present book was incidentally collected; and being statutory and undeveloped, and hence incapable of the designed treatment, is allowed to see daylight.

<sup>1</sup> These views were criticised, though in a very kindly spirit, in the Albany Law Journal of Feb. 21, 1885, vol. xxxi. p. 141.



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