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Partnerships--Title to Real Property

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A recent case held that a demonstration by a physician that he could drink the same amount and same kind of ground glass that the plaintiff allegedly drank was not proper, because the mental reactions of the plaintiff and the physician would not be the same after drinking the glass. This decision seems in accord with the limitation, since the conditions under which the plaintiff swallowed the glass and the conditions under which the physician swallowed the glass would not be the same.

Evidence by way of demonstrations should be received with caution, and be admitted only when it is obvious to the court, from the nature of the offer, that the jury will be enlightened rather than confused. In many instances a slight change in the conditions under which the experiment is made will so distort the result as wholly to destroy its value as evidence and make it harmful rather than helpful. The value and weight of demonstrations as evidence should always be left for the jury’s consideration and determination.

In conclusion, demonstrations of both types, personal and mechanical, should be allowed to determine a disputed fact and to enlighten and clarify issues for the jury, (1) when it can be done safely without danger to anyone, (2) where there is no opportunity to perpetrate a fraud on the court and (3) when it will not be prejudicial.

VILEY O. BLACKBURN

PARTNERSHIPS—TITLE TO REAL PROPERTY

For many purposes, in the absence of statutes, a partnership is not looked upon as a legal entity. It cannot sue or be sued in its own capacity. All suits involving the partnership must be brought by or against the individuals occupying the relation of partners. On the other hand, a partnership at common law was deemed to have some existence in itself which allowed it, as an entity, certain rights and imposed upon it certain obligations distinct from the rights and obligations of the individual partners. Contracts could, for example, be made or taken in the firm name.

This dual concept is well illustrated by the different situations that arise in regard to the property rights of a partnership. It is generally held that a partnership may not take, hold or convey legal title to real property, but a partnership may own personal

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5. Ibid. at sec. 123.
property and the rights of the partnership and of its creditors to such property are distinct from the rights of the partners as individuals and their creditors.\(^4\)

These conflicting conceptions are even extended so as to affect the rights in real property itself. As has been said, a partnership cannot take, hold or convey legal title to real estate. The reason generally assigned is that since the partnership has no legal existence, in itself, a deed to the partnership is void for the lack of a grantee.\(^6\) In most of the jurisdictions following this view, however, it is clear that the deed is not a nullity. It is true that legal title is not thereby conveyed, but it is held that the legal title is retained by the grantor in trust for the partnership.\(^7\) Thus the firm as an entity takes and holds an equitable right in the real property. This equitable interest is treated, not as property of the partners as individuals, but as property of the partnership.\(^8\) As such it is subject to the debts of the firm, under certain circumstances, in preference to the claims of individual creditors of the partners. The widow of a partner has no dower interest in such property except as to that remaining after the debts and equities of the partnership are adjusted.\(^9\) While the courts speak of the equitable interest in real property, which is held by a partnership, as personal property\(^10\) and treat it as such for partnership purposes it has been held that after the termination of the partnership any real property not disposed of in adjusting the equities of the partners and payment of debts of the partnership is returned to the individual partners as land.\(^11\) It is the deceased partner's interest in this remaining land which may be subject to the dower interest of his widow.\(^12\)

The view that a conveyance to a partnership is void or that it merely conveys an equitable interest to the partnership has not been acceptable to many courts, and there has been a tendency among them to give effect to such a conveyance, as far as possible, under one guise or another.

Where the name of the firm consists entirely of the names of living partners, such as "Smith & Smith", the named persons take legal title to the property which they hold in trust for the

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\(^4\) Mechem, Elements of the Law of Partnership (2d ed. 1920) sec. 150.
\(^5\) Ibid. at sec. 152.
\(^6\) Adams v. Church, 42 Ore. 270, 70 Pac. 1037 (1902).
\(^7\) Fred Gordon & Son v. Panhokin, 83 Neb. 204, 119 N. W. 449 (1909); Frost v. Wolf, 77 Tex. 455, 14 S. W. 440 (1890).
\(^8\) Mechem, Elements of the Law of Partnership (2d ed. 1920) sec. 154.
\(^9\) Ibid. at sec. 165.
\(^10\) Ibid. at sec. 163.
\(^11\) Ibid. at sec. 166.
\(^12\) Ibid.
partnership. The imperfect identification of the grantees is treated as a latent ambiguity which may be explained by parol evidence. Where the firm name appearing as grantee in the deed consists of one or more living partners coupled with words indicating additional associates, such as "Smith & Bros." or "J. W. Smith & Co.," there is a diversity of opinion as to whether the named partner takes the whole legal title to be held in trust for the partnership or whether the designation of the associates is sufficient to permit their identification by parol evidence. In some jurisdictions the named partner is treated as the grantee of the legal title in trust for the partnership. In other jurisdictions all partners who were members of the firm at the time of the conveyance are deemed, when identified, to hold legal title, although the deed does not purport to name them as individuals.

Where the name of the partnership is entirely non-personal, such as "The Enterprise Manufacturing Company," it is generally held that the conveyance is void as far as a transfer of the legal title is concerned, but that the partnership so named as grantee takes an equitable interest. There are some jurisdictions which make no distinction in the different types of partnership names but in each of the three situations discussed above hold that title vests in the several partners jointly as trustees for the partnership.

As a result of statutes in some jurisdictions, a deed naming a partnership as grantee is valid and effective as a conveyance of both legal and equitable title to the partnership as such.

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1 Cole v. Mettee, 65 Ark. 503, 47 S. W. 407 (1898); Taylor v. Danley, 83 Kan. 646, 112 Pac. 595 (1911). Cf. Walker v. Miller, 139 N. C. 448, 52 S. E. 125 (1906). Conveyance named as grantee a firm, all partners of which were dead. The business was being operated under the firm name by personal representatives of the deceased partners. Held that both legal and equitable titles were conveyed to heirs of the deceased partners. But see Frost v. Wolf, 77 Texas 455, 14 S. W. 440 (1890) where it is said that a conveyance to a firm, the name consisting of surnames of all partners, conveys only equitable title because the full name of none of the partners is given.

2 Cole v. Mettee, 65 Ark. 503, 47 S. W. 407 (1898); Taylor v. Danley, 83 Kan. 646, 112 Pac. 595 (1911); Walker v. Miller, 139 N. C. 448, 52 S. E. 125 (1906).


6 Uniform Partnership Act, sec. 8(3).
The Uniform Partnership Act, which has been adopted in about half of the states, provides that “any estate in real property may be acquired in the partnership name.” This view overrules our historical concept of the legal incapacity of a partnership and it probably could not logically be arrived at by the courts without the aid of a statute. It gives a partnership certain attributes of a corporation. Yet is that objectionable? Today a partnership does business in the same way as a corporation and most people do business with it as such. By enabling a partnership to take, hold or convey real property the many conflicting rules, fine distinctions and questionable fictions which have complicated the problem under the common law may be dispensed with. Certainly the advantages of such a result seem to counterbalance any undesirable features which might grow out of a lessening of the distinction between a corporate and an unincorporated business.

Reconveyance of property by a partnership has also created certain problems at common law. A conveyance by the person or persons holding legal title in trust for the partnership, in breach of trust, will, under the law of trusts, defeat the equitable interest of the partnership when made to a bona fide purchaser. That, however, is not a conveyance by the partnership but by the trustee as an individual and does not directly concern the present problem.

Under the usual rules of partnership law, each partner is an agent of the firm with power to bind the partnership within the scope of the partnership business. This rule has never been followed, however, to the extent of permitting a partner, in the absence of further authority, to sell the business of the partnership or deprive it of its interest in real property. A conveyance by such an unauthorized partner, in the name of the partnership as grantor, conveys only such interest as he as a partner held in

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20 Uniform Laws, Annotated (1922), vol. 7, 1944 Supp. p. 6. States in which the uniform act has been adopted and the dates of adoption: Alaska (1917), Arkansas (1941), California (1929), Colorado (1931), Idaho (1920), Illinois (1917), Maryland (1916), Massachusetts (1923), Michigan (1917), Minnesota (1921), Nebraska (1943), Nevada (1931), New Jersey (1919), New York (1919), North Carolina (1941), Oregon (1939), Pennsylvania (1915), South Dakota (1923), Tennessee (1917), Utah (1921), Vermont (1941), Virginia (1918), Wisconsin (1915), Wyoming (1917).

21 Uniform Partnership Act, sec. 8(3).

22 Winter v. Stock, 29 Cal. 407 (1886); Robinson Bank v. Miller, 153 Ill. 244, 38 N. E. 1078 (1894); Mechem, Elements of the Law of Partnership (2d ed. 1920) sec. 167; Restatement, Trusts (1935) sec. 296.

23 Mechem, Elements of the Law of Partnership (2d ed. 1920) sec. 244.

24 Ibid. at sec. 274.

25 Ruffner v. McConnel, 17 Ill. 212 (1855).
the property, that is, the grantee becomes entitled to share, as a tenant in common, in any excess in the property purported to be conveyed after the partnership purposes are completed.\textsuperscript{26}

When a properly authorized partner, however, executes a conveyance in the name of the partnership, the partnership and the co-partners as individuals are bound by the conveyance.\textsuperscript{27} If those holding legal title refuse to join in the deed as grantors, the conveyance operates as a contract to convey\textsuperscript{28} and will be enforced against the recalcitrant partners by a decree for specific performance by a court of equity.\textsuperscript{29}

In some jurisdictions it is not necessary that the partner acting on behalf of the partnership be expressly authorized to convey realty. It is sufficient if the authority may be implied from the acts of the other partners\textsuperscript{30} or from the nature of the partnership\textsuperscript{31} as where the dealing in land is a usual practice of the partnership. The Statute of Frauds, as adopted in many states, requires that the authority of an agent to convey, or to contract to convey real property be in writing.\textsuperscript{32} In these states express written authority should be required and in its absence the contract or conveyance by one partner should not affect the interest of the firm or the other partners.\textsuperscript{33}

Here again, there is no apparent reason why a partnership named as grantee in a deed should not reconvey the property in the same name. If this right were recognized it would do much to clear the records of technical defects and obviate the necessity of searching for facts and obtaining affidavits as to matters outside the records. The Uniform Partnership Act also follows this view by providing that where legal title has been conveyed to a partnership it "may be conveyed only in the name of the partnership."\textsuperscript{34} States having adopted the uniform act have a convenience in conveying partnership property and a certainty of titles not found in the common law states.

Fred B. Redwine

\textsuperscript{26} Dillon v. Brown, 11 Gray 179 (Mass. 1858); Chester v. Dickerson, 54 N. Y. 1 (1873).
\textsuperscript{27} Tinnin v. Brown, 98 Miss. 378, 53 So. 780 (1910); Sullivan v. Smith, 15 Neb. 476, 19 N. W. 620 (1884); Robinson v. Daughtry, 171 N. C. 200, 88 S. E. 252 (1916).
\textsuperscript{28} Robinson v. Daughtry, 171 N. C. 200, 88 S. E. 252 (1916).
\textsuperscript{29} Tinnin v. Brown, 98 Miss. 378, 53 So. 780 (1910).
\textsuperscript{31} Rovelsky v. Brown, 92 Ala. 522, 9 So. 182 (1891); Robinson v. Daughtry, 171 N. C. 200, 88 S. E. 252 (1916).
\textsuperscript{32} Mechem, Outlines of the Law of Agency (3d ed. 1923) sec. 96.
\textsuperscript{33} Hart v. Withers, 1 Penr. & W. 285 (Pa. 1830) requires that the authority be in writing. But see McGahan v. Bank of Rondout, 156 U. S. 218 (1895) where it is held that the authority need not be in writing.
\textsuperscript{34} Uniform Partnership Act, sec. 8(3).