

## PARTNERSHIP ESTATES.\*

---

BY PROFESSOR JOHN WURTS,

OF THE YALE LAW SCHOOL.

The term "partnership estates" is used to designate a certain class of resulting trusts. These particular resulting trusts are classed with joint estates because, as a usual thing, the legal title is held by all the members of a partnership as tenants in common, and in equity, the partners are considered as joint tenants for the purpose of administering the trust. But the legal title is not necessarily held by all the members as tenants in common; for it may be vested in one of the partners as tenant in severalty; in which case there is not only the resulting partnership trust, but an additional subordinate resulting trust to the partners as equitable tenants in common. The legal title may be in one or in several. As will be shown, the partners bear a two-fold relation to the beneficial interest in the property; for each has a separate and distinct lien on the property for any balance which may be found to be due him on an accounting; and as to this lien, his interest is purely potential: the balance on an accounting having been paid, the partners now own the residue of the beneficial interest as tenants in common.

Land bought with partnership assets for partnership purposes is held by the grantee or grantees of the legal estate, be he or they one of the partners, or all of them, or a third person, upon a two-fold trust; and this trust gives rise to the term "partnership estates." All partnership assets are held in trust to pay first, the partnership debts; and then, the partnership balances. The trust character of partnership funds follows them into the land, whereby the same trust is said to result out of the land, from its purchase with trust funds, in favor of

---

\* This is an excerpt from the original work of Mr. Wurts, contained in his revision of Washburn on Real Property, to be published shortly by Messrs. Little, Brown, & Co. All rights reserved.

the beneficiaries of the fund. But the property is not necessarily exhausted by these two beneficial interests, which are in the nature of liens; and as soon as these liens are satisfied by the payment of the partnership debts and the discharge of the partnership balances, equity removes the trust mantle from the property, leaving the legal estate of the owners therein subject to all the incidents of tenancy in common. Where the property is taken in the name of one of the partners or of a third person, another trust results, *prima facie*, in favor of all the partners, because they furnished the purchase money. But this resulting trust is entirely distinct from the trust which is the partnership estate. The latter arises by a conclusive presumption of law from the application of partnership funds to the purchase of the property. The former arises *prima facie*, from the application of a common fund to the purchase; but it depends upon the intention of the owners of the fund at the time of the purchase. The presumption of this trust is rebuttable by proof that the real intention at the time of the purchase, was that both the legal and the beneficial interests should be coincident.

The liens securing the payment of partnership debts and balances are paramount to the rights, legal or equitable, of the partners, simply as co-owners of the property, and are equally paramount to all rights incidental to those of the partners as co-owners. Thus, partnership debts and balances must be paid before a partner's widow is entitled to have dower assigned in her husband's share of the partnership land, whether his estate therein be legal or equitable; or, perhaps, it would be better to say that any assignment must be subject to the enforcement of these claims; so that the widow of a partner is, in reality, dowable only out of what remains of her husband's share after the payment of partnership debts and balances. In this connection, partnership estates are said to be treated in equity as personal property.

The lien of creditors upon the partnership land, however, being mere security for the payment of their claims, must not be enforced to the destruction of other rights in the land, if it can be avoided. Therefore, when the personal assets of the partnership are sufficient to pay the partnership debts, a creditor cannot seek satisfaction out of the land. Moreover, the lien of creditors is not specific—it is only a *quasi* lien, enforceable only in equity as against a trust, after the personal assets have been exhausted.

The objects of a partnership would be defeated if the partners had not the power to deal with its property. Where, therefore, in good faith, the character of the property is changed from joint to separate; or is, in good faith, conveyed to a stranger, the transfer will be upheld as against partnership creditors. The *quasi* lien of creditors acquires no specific character until the actual institution of suit in equity to enforce their claims. And creditors who buy in good faith for a valuable consideration, knowing the land to be partnership assets, will not be held to see to the application of the purchase money. *A fortiori*, one who buys land in ignorance of the fact that it is partnership property takes it free from all liabilities of the partnership as such. But if the conveyance be voluntary, or be made for the purpose of defeating partnership liabilities, to one having actual notice of such intent, or to one to whom notice of such intent must be imputed, the land will be held subject to the enforcement of the partnership claims.

From the principles laid down, it naturally follows that the trust for partnership purposes must be fully discharged by payment of the partnership debts and settlement of balances as between the partners before the creditors of an individual partner can be permitted to subject his share to the payment of their claims. It is only the surplus of a partner's share, after all partnership obligations are discharged, which stands good for his individual debts; notwithstanding that such debts have been secured by a specific lien on his interest; always excepting the case of a lienor who stands in the position of a *bona fide* purchaser for a valuable consideration without notice. And, in this respect, it matters not whether the legal estate be in one partner or be held by a stranger in trust for the partnership. Saving the rights of *bona fide* purchasers, the legal estate must respond to the partnership liabilities.

Inasmuch as the partnership estate is a trust resulting out of the purchase of the land, it matters not what the form of the conveyance may be or whether it is sufficient to pass the legal title. The facts being proved, equity will declare the trust and compel the execution of the proper conveyances. A deed to a name which is a mere trade-mark passes nothing in law; but it will be sufficient to pass an equitable estate; and if it be to a firm name which contains the full name of one partner, it will pass the legal title to the partner named, who will hold in trust for the partnership. Thus, where the conveyance was to "S. L. & Co.," S. L. took the legal estate clothed with a trust for the company. The partnership estate results irrespective of the form of the deed; but a deed to the partners as tenants in common, or to one of the partners as tenant in severalty, without mentioning the partnership estate, will make it possible to evade the partnership obligations in favor of a *bona fide* purchaser; as where land was bought by a partnership but the conveyance was made to one of the partners and he conveyed it to one without notice in consideration of an obligatory promise to marry him.