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PARTNERSHIP REAL ESTATE

EFFECT OF THE UNIFORM PARTNERSHIP ACT ON CONVEYANCES TO THE FIRM IN THE FIRM NAME

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THE PURPOSE of this article is to state the validity and effect of a conveyance of real estate to a partnership in the firm name, as, for example, where the firm name contains the surname of one or more partners in connection with such customary additions as Blank Lumber Co., Blank & Co., or Blank & Son, and where the firm name is purely fictitious and is merely a trade identification, such as The Ajax Co., Boulevard Flower Shop, or American Laundry.

Whatever statements are true with respect to such conveyances to the firm might be expected to be true conversely with respect to conveyances by the firm in the firm name, but it does not necessarily follow. The tenure resulting from a conveyance to the firm may make a reconveyance impossible without all partners joining.

The writer had purposed to show the abrupt change made by the courts from a line of decisions previously based upon the common law brought about through the adoption of the Uniform Partnership Act in those jurisdictions where the act has been adopted. It was his in-

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tention to discuss with particularity the provision under section 8, paragraph 3 which provides, in effect, that title to real estate may be taken in the firm name, and that title so taken may be reconveyed only in the firm name.¹ With respect to the purpose of the writer, it may well be said that "the mountain labored and brought forth a mouse," for but few pertinent cases can yet be discovered in the reported decisions.

The barrenness of the reports as to decisions searched for may well be explained. Since the act has been adopted in only nineteen states, including Alaska,² little or no change can be expected in the other thirty jurisdictions. Further, since the act was adopted nowhere earlier than twenty years ago, and in two states less than five years ago, we may expect but few cases involving this point to have reached the courts of last resort. Still further, the habits of partners, conveyancers, and attorneys, conditioned by many years of the common-law practice may cause such persons to hesitate to accept the validity of acts and contracts made valid and secure only by force of fairly recent statutes that are radical departures from previously accepted theories. On the other hand, the full purport and effect of the statute may have been recognized, so that there has been little resort to litigation.

Before entering upon a discussion of cases, however few in number, where the provisions of the Uniform Partnership Act have been invoked, it might be well to review

¹ *Partnership Property*.—(1) All property originally brought into the partnership stock or subsequently acquired by purchase or otherwise, on account of the partnership, is partnership property.

"(2) Unless the contrary intention appears, property acquired with partnership funds is partnership property.

"(3) *Any estate in real property may be acquired in the partnership name. Title so acquired can be conveyed only in the partnership name.*

"(4) A conveyance to a partnership in the partnership name, though without words of inheritance, passes the entire estate of the grantor unless a contrary intent appears." U. L. A., Vol. 7, p. 16.

² State and year of adoption: California, 1929; Colorado, 1931; Idaho, 1919; Illinois, 1917; Maryland, 1916; Massachusetts, 1922; Michigan, 1917; Minnesota, 1921; Nevada, 1931; New Jersey, 1919; New York, 1919; Pennsylvania, 1915; South Dakota, 1923; Tennessee, 1917; Utah, 1921; Virginia, 1918; Wisconsin, 1915; Wyoming, 1917; Alaska, 1917.

briefly the effect of conveyances to the firm in the firm name in jurisdictions unaffected by the act, or in all jurisdictions prior to the act.³

It was elemental at common law that title to real estate could vest only in some person or persons, either natural or artificial, identified by a particular name.⁴ As applied to artificial persons the rule contemplated only corporations. Since a partnership was not a person, but a group or aggregation of individuals operating or doing business under some name not necessarily composed of any or all the names of such persons, it therefore followed that at common law it was impossible to convey legal title in real estate to a partnership unless the deed described each and every member by his proper name. Where, however, a deed failed to describe all the partners by their names it was still a valid conveyance of legal title to those partners whose names did appear as grantees. As to such named grantees, title became vested in them as tenants in common,⁵ subject to partnership equities. It is not to be implied that a partnership even at common law might not have beneficial interest in lands or have an equitable interest in land held by a trustee for the benefit of the members of the firm, but a partnership could not take legal title to land by reason of a conveyance to it in the firm name.

Transfers of personal property were never required to measure up to the strictly observed formalities of

³ See 1 A. L. R. 556. The case of *Kentucky Block Cannel Coal Company et al. v. A. W. Sewell et al.*, 249 F. 840 (1918), is made the subject of exhaustive footnotes and further annotation. Same ground is covered in 47 C. J. 756. Also well discussed under Deeds, 8 R. C. L. 935. See Mechem, *Floyd R.*, *Elements of Partnership* (2d ed., Chicago: Callaghan and Co., 1920), p. 133 et seq.

⁴ A common law exception is recognized in "dedications" to public, pious, or religious uses. *Village of Mankato v. Willard*, 13 Minn. 1, 97 Am. Dec. 208 (1868). The validity of the dedication is approached and decided from the viewpoint that a dedication to a public use operates as an estoppel which precludes the original owner or those claiming under him from revoking the dedication.

⁵ *Kentucky Block Cannel Coal Company et al. v. A. W. Sewell et al.*, 249 F. 840, 1 A. L. R. 556 (1918); *Percifull v. Platt*, 36 Ark. 456 (1880).

transfers of real estate and such transfers in some jurisdictions included mortgages of real estate or other interests in land so long as such interests were not, strictly speaking, real property.⁶

The foregoing remarks as to the common law sufficiently cover the situations described under the first class of conveyances exemplified heretofore, and it may be said upon abundant authority, in the absence of code or statute, that where a conveyance of real estate is made to the firm name which contains a surname of one or more or all of the partners, legal title passes to the person or persons named as tenants in common subject to partnership equities;⁷ and that a conveyance to a partnership in the firm name, where such name is purely fictitious, passes no legal title—the person or persons, natural or artificial, in whom title must vest, so necessary and vital at common law, are wanting, and the deed is void. In the latter case, legal title remains in the grantor, although

⁶ In *Hendren v. Wing*, 60 Ark. 561, 31 S. W. 149, 46 Am. St. Rep. 218 (1895), the court said in determining that a chattel mortgage to the "Arkansas Machine & Supply Company" was valid and would sustain an action in replevin, "A partnership, as such, cannot at law be the grantee in a deed or hold real estate." This rule does not apply to personal property. On the contrary, a partnership, as such, can at law be the vendee in a bill of sale or other conveyance of personal property. The custom of the country teaches us that this is so."

To the same effect is *Menage v. Burke*, 43 Minn. 212, 45 N. W. 155 (1890); *Woodward v. McAdam*, 101 Cal. 438, 35 P. 1016 (1894); *New Vienna Bank v. Johnson*, 47 Ohio 306, 24 N. E. 503 (1890).

⁷ (a) *Cole v. Mette*, 65 Ark. 503, 47 S. W. 407, 67 Am. St. Rep. 945 (1898), (citing *Percifull v. Platt*, 36 Ark. 456): Mette and Kanne were surnames of two partners and a conveyance to "Mette & Kanne" vested legal title in both partners sufficient for them to maintain an action in ejectment:

(b) In *Riddle v. Whitehill*, 135 U. S. 621, 10 S. Ct. 924, 34 L. Ed. 282 (1889), in a deed to "J. M. Whitehill & Co. . . ." the legal title vested in J. M. Whitehill impressed with a trust for the benefit of the partnership.

(c) *Robinson v. Daughtry*, 171 N. C. 200, 88 S. E. 252, Ann. Cas. 1918E 1186 (1916); a deed executed to R. P. Robinson & Co., was held legally valid and vested equitable title in the members of the partnership as tenants in common.

(d) In *Arthur v. Weston*, 22 Mo. 378 (1856), a deed to "W. W. Phelps & Co.," a partnership of Phelps and others, passed legal title to Phelps only. Parol evidence was inadmissible to explain further.

(e) See an early and leading case quoted by many later decisions in other courts: *Morse v. Carpenter*, 19 Vt. 613 (1847).

an equitable title passes, and the grantor is trustee for the use of the firm.⁸

Exceptions to this view may naturally be expected in the English cases,⁹ but it is rather curious and interesting to note that at an early date Massachusetts decided that a deed to an unincorporated association known and described as "South Chelmsford Hall Association" passed good legal title to the members as tenants in common.¹⁰ The court, however, did not decide that title passed because the Association was an entity capable of taking title. Had the court so held, it would have adopted the entity theory of partnership organization to a degree that has never been acceptable to the courts of this coun-

⁸ (a) The question presented: Do deeds to *Grante Pass Real Estate Association* vest in the partners composing that association any title, legal or equitable, to the lands described in said deeds? "In other words, is a deed to a partnership by its firm name void? . . . I have been unable to find an adjudged case where it has been held that a partnership might take the title to land in its firm name, when such firm name did not contain the surname of one or more of the partners. . . . But . . . if the deeds . . . were ineffectual as conveyances of the legal title to the firm, [still] they . . . created an equitable estate in the land described." *Kelly v. Bourne*, 15 Ore. 476, 16 P. 40 (1887).

(b) Where a deed purported to convey title to "Spaulding Mfg. Co.," which was a partnership, the court held the deed to be void at law but not in equity and permitted the deed to be corrected to show proper grantees. *Spaulding v. Gobold*, 92 Ark. 63, 29 L. R. A. (N. S.) 282, 19 Ann. Cas. 947, 121 S. W. 1063 (1909).

(c) In *Silverman v. Kristufek*, 162 Ill. 222, 44 N. E. 430 (1896), a deed to "Townsend Nenns & Co." conveyed nothing at law. Consistently followed in *The Decatur Coal Company et al. v. Ira W. Clokey*, 332 Ill. 253, 163 N. E. 702 (1928).

(d) Title remains in grantor, but equitable title passes, held in *Tidd v. Rines*, 26 Minn. 201, 2 N. W. 497 (1879) (deed to "Todd Gorton & Co." conveyed no legal title); *Africa et al. v. Trexler*, 232 Pa. Sup. Ct. 493, 81 A. 707 (1911), citing 42 Pa. Super. Ct. 542, 547 (1910).

(e) As to effect of a deed to a truly fictitious person see *Wiehl, Probasco & Co. v. Robertson*, 97 Tenn. 458, 37 S. W. 274, 39 L. R. A. 423 (1896) and note.

⁹ *Wray v. Wray*, [1905] 2 Ch. 349 for an early example.

¹⁰ (a) *Byam v. Bickford*, 140 Mass. 31, 2 N. E. 687 (1885). The argument sustaining the decision goes to considerable length in inference.

(b) *Walker v. Miller*, 139 N. C. 448, 52 S. E. 125, 1 L. R. A. (N. S.) 157, 4 Ann. Cas. 601, 11 Am. St. Rep. 805 (1905). The firm name was "Jas. Webb, Jr., & Bro." There was no living member whose name appeared in the old firm name at the time the deed was executed. The court held that a deed to the old firm name could be said to have passed legal title, or at least since a perfect equitable title rested in the living members of the firm, the plaintiffs could maintain an action at law based upon the sufficiency of their title.

try in the absence of statute. Massachusetts did not follow the trend indicated in that case, but thereafter remained in harmony with common law decisions.

Before reverting to the original purpose of this article as already expressed, it seems of value to pursue further the question of the legal entity of a partnership. The American courts have consistently viewed the partnership as an aggregation of individuals, although in other countries, the legal entity or juristic person theory has been acceptable. In America, as early as 1902, and until 1913, considerable discussion took place among law teachers and authorities as to the possible codification of partnership law. In such codification, the possible benefit to be derived from an acceptance of the legal entity theory was warmly suggested and likewise repudiated. In 1902 a conference of the Commissioners on Uniform State Laws and the Committee on Commercial Law of the American Bar Association secured the services of Dean Ames of the Law School of Harvard University, as expert to draft the act. Dean Ames was succeeded by Dr. William Draper Lewis, and in 1910 drafts of a partnership act were prepared and submitted both along the line of the mercantile or entity theory, and also along the line of the aggregate or common law theory. In all, eight drafts were prepared and submitted, and final decision as to the theory to be adopted was resolved in favor of the common law or aggregate theory, subject to the modification that partners be treated as owners of partnership property holding by special tenure or tenancy which was called tenancy in partnership. Further amendments and refinements produced the Uniform Partnership Act as recommended for adoption to the legislatures of all the states.¹¹

The straddle between the entity theory and the aggregate theory resulted in the retention of the common law

¹¹ Uniform Laws Annotated, Vol. 7, Partnership, p. 3, 4.

except as to partnership property. Here, however, the entity theory greatly modified or superceded the common law rules, and undoubtedly the effects will not be capable of appreciation until cases are presented to and decided by the higher courts. So far the cases are few, but the change is inescapable, and decisions will undoubtedly be reported that may eventually point the way to further adoption of the entity theory.¹²

It is interesting to note that although the idea of the partnership as a juristic person has been almost universally denied in the absence of code, yet it would not be impossible to point out in almost every jurisdiction cases where, at some time and for some purpose, the courts have given a partnership that status. The Massachusetts case of *Byam v. Bickford*¹³ has already been mentioned, and but one further example will be cited. In Illinois, a great rock of the common law, as early as 1867¹⁴ and again as late as 1922¹⁵ the Supreme Court said, "A partnership is recognized as a legal entity distinct from and independent of the persons composing it,—at least in respect to property." Read without context, this isolated statement would persuade one to think that Illinois believed in the juristic person, whereas in fact the contrary is true. However, the case cited was in a criminal appeal, wherein it had been charged and necessarily had to be proved that the property stolen belonged to a partner-

¹² The sections dealing with property and property rights where the most fundamental changes were made are sections 8, 10, 24, 25, 26, 27, and 28.

For fairly recent cases affected by the sections other than section 8 see *Rosen v. Rosen*, 212 N. Y. S. 405 (1925); *Wharf v. Wharf*, 306 Ill. 79, 137 N. E. 446 (1922); *Roder v. Goldoff et al.*, 228 N. Y. S. 453 (1928); *Savings & Loan Corporation v. Bear*, 155 Va. 312, 154 S. E. 587, 75 A. L. R. 980 (1930); *Charleston First Nat'l Bank v. White*, 268 Ill. App. 414 (1932).

¹³ See footnote 10.

¹⁴ *Jones v. Bliss*, 45 Ill. 143 (1867). Bill to compel payment of book accounts to his partner. The court said: "A partnership creates an artificial entity, distinct from the members of the firm. . . ."

¹⁵ *The People v. Zangain*, 301 Ill. 299, 304 (1922). Theft of property where proof of ownership by partnership was essential. The court said: "A partnership is recognized as a legal entity distinct from and independent of the persons composing it, or at least in respect to property."

ship. Undoubtedly the prisoner was guilty, although three judges dissented on the exact point presented, and the statement was not dictum.

Paragraph 3 of section 8 of the Uniform Partnership Act reads as follows: "Any estate in real property may be acquired in the partnership name. Title so acquired can be conveyed only in the partnership name." The uniform act is partly declaratory of the common law and partly an attempt to improve upon, make uniform, and simplify certain aspects of the law of partnership in which there was much discord among the several states. As to partnership property it was the avowed intent of the commissioners to change existing law.¹⁶ Unless the section under consideration conflicts with other statutory provisions relating to deeds or conveyances, or is unassimilable, there is no apparent reason why there should be conflict. The Uniform Partnership Act has made partnership property personalty, whether it be personal or real in fact, or real when held in other tenures. Perhaps to be accurate and to follow the exact language of the act, partnership property is held by tenancy in partnership. The partners' interests are personal property. These provisions of the statute give a logical basis for disregarding the common law decisions.¹⁷

The Supreme Court of Illinois in 1922 in the case of *Wharf v. Wharf*,¹⁸ in considering the provisions of the act for the first time said,

The act made material changes in the law of this state relating to partnerships. . . . It purports to be a complete code declaring the law as to all these subjects and makes material changes in the law of this state relating to partnership, but whatever its intrinsic merits or demerits, it represents the judgment of the legislature as to the law of partnership.¹⁹

¹⁶ Uniform Laws Ann., Vol. 7, U. P. A., p. 16 commissioners' note.

¹⁷ Sections 25, 26, U. P. A.

¹⁸ 306 Ill. 79, 137 N. E. 446 (1922).

¹⁹ The court continued, "Related in some way to the question here involved, it [the act] contains the following provisions:

"In part 2, paragraph 3 of section 8 is as follows: (3) Any estate in real

The Supreme Court then concluded for the first time, by force of the statute, and contrary to previous holdings at common law, that partnership property shall for all purposes of partnership be considered personalty; that a partner's interest in the partnership is his share of the profits and surplus, which is personal property; that partnership land shall not be subject to dower, curtesy, and allowances to heirs; and that when dissolution is caused by death, each partner as against his copartner and all persons claiming through him in respect to their interest in the partnership, unless otherwise agreed, may have the partnership property applied to discharge its liabilities and the surplus applied to pay in cash the net amount owing to the respective partners. The latter is inconsistent with the doctrine heretofore held that upon the settlement of the partnership affairs real estate resumes its original character and descends to heirs.

Litigation involving our own particular provisions seems to have arisen in Minnesota more than in any other state. In the case of *Angell v. White Eagle Oil & Refining Co. et al.*,²⁰ decided in 1926, the court held that a partnership was not a legal entity, but further stated as dictum, As respects the right to take and convey title to real property, this doctrine has been modified in some respects by the Uniform Partnership Act. See sections 6, 8, and 10 (sections 7389, 7391, and 7393, G. S. 1923).

At a later date, in the case of *Windom National Bank et al. v. Klein et al.*,²¹ the Supreme Court of Minnesota

property may be acquired in the partnership name. Title so acquired can be conveyed only in the partnership name."

It was not necessary to cite this particular section of the statute in determining the issues in the case although, as the court said, the statutory provision was related in some way to the question involved. This is the nearest approach in Illinois to a case involving paragraph 3 of section 8 as yet.

²⁰ 169 Minn. 183, 210 N. W. 1004 (1926). Angell and Ness were partners engaged in performing a contract of employment with the oil company. Angell died from injuries sustained in such employment, and his widow was awarded compensation. The court said that since a partnership is not a legal entity, the members could individually enter into contracts of employment.

²¹ 191 Minn. 447, 254 N. W. 602 (1934).

considered the attempted assignment of a partner's interest in specific property and held it to be void. The decision was based upon construction and application of the Uniform Partnership Act, although the court stated that the same conclusion had been reached on similar facts in Iowa,²² without the aid of the statute.

The Minnesota court quoted freely from the Minnesota act and, although only dictum, further stated,

Contrary to the common law rule, real property may be acquired by the partnership and title taken and conveyed in the "partnership name." Subject to the rules of section 10 (Mason's Minn. St. 1927, §7393), a partnership now holds real estate under the same conditions as to tenure and disposition as it does personal property.

Although the law as quoted was not necessary to the decision in the case, still it does presage the future attitude of the court when the question will be squarely presented. Decision and not dicta should be cited, but as to section 8 paragraph 3, dicta is all that is to be found as yet.

In the same case under consideration, as to application and construction of the Uniform Partnership Act, the court further said, "The law is not to be restricted so as to perpetuate any of the incidents of partnership dealings, or of the tenure and disposition of partnership property, which it was the intention to abrogate or change."

One more Minnesota case, as recent as 1935, must be considered. In *Keegan v. Keegan*,²³ unfortunately for our purpose, only as dicta, the court said,

At common law a partnership is not a person or an entity. . . . The common law as to partnerships has been markedly changed. Although the Uniform Partnership Act does not make a partnership an entity for all purposes, it does so treat it in certain respects and for certain purposes. Under that Act (adopted in

²² *Malvern National Bank v. Halliday*, 195 Iowa 734, 192 N. W. 843 (1923).

²³ 194 Minn. 261, 260 N. W. 318 (1935). A proceeding under Workmen's Compensation Act by a widow for death of husband who was a member of the respondent partnership firm.

Minnesota in 1921, Mason's Minn. St. 1927, §§7384-7428) a partnership may take title to real estate and convey it in the firm name. Section 7393. This could not be done at common law.

The court in Wisconsin, as early as 1883,²⁴ held that legal title passed by a deed to "Gilmore & Ware," where evidence was offered and admitted to show that Gilmore and Ware were partners at the time of delivery of the deed. The court's intimations were sustained in *City Bank of Portage v. Plank*.²⁵ The state passed the Uniform Partnership Act in 1915, but no case bearing upon title to the firm in the firm name has been litigated since. Through historical preference, as well as by inference from the Supreme Court's statement in the case of *Mattson v. Wagstad*,²⁶ the Uniform Partnership Act will be given complete effect as to any partnership problem which falls within its provisions.

In an action by a lien-claiming materialman to be subrogated to the rights of a vendee under a land contract, the Supreme Court of Michigan said,

A partnership may buy and sell real estate. It may be conveyed only by the partnership. The signatures of the wives are not necessary for the conveyance thereof. Section 8, Act No. 72, Public Acts 1917: section 7966 (8) (3) 1922 Supp. C. L. 1915.²⁷ While the actual record title is not given in the opinion, so that the question of "firm name" is not made clear, the decision nevertheless quotes from the Michigan statutes the provisions which would be parallel to section 8, subsection 3, of the Uniform Partnership Act. The plaintiff lost the case, however, for failure to claim his lien through procedure within statutory limitations.

In South Dakota, the Uniform Partnership Act was cited to hold void a chattel mortgage by two of four

²⁴ *Sherry v. Gilmore*, 58 Wis. 324, 17 N. W. 252 (1883).

²⁵ 141 Wis. 653, 124 N. W. 1000 (1910).

²⁶ 188 Wis. 556, 206 N. W. 865 (1926). Action for an account by heirs of deceased partner's interest against surviving partner. The U. P. A. is cited to show that both real and personal property belonging to the firm are partnership property: a partner's interest therein is personalty and the property is not subject to allowances to widows, heirs, or next of kin.

²⁷ *Scheurman v. Farhman et al.*, 245 Mich. 688, 224 N. W. 604 (1929).

partners, by which they attempted to convey an undivided one-half interest in growing crops which were partnership property. The court stated that since the real ownership and legal title to partnership property was vested in the "firm," a sale or mortgage by less than all of the partners in specific partnership property could never pass title or create a lien on it; that the mortgagee took nothing but surplus after settlement of partnership business.²⁸ The application of the decision to our particular provision is only potential and persuasive.

In Massachusetts, the firm entity theory and the vesting of title to partnership property in the entity was made the occasion for defeating a suit to recover damages to a truck owned by the partnership, but registered in the name of one of the partners.²⁹ The court referred to the Uniform Partnership Act, sections 24 and 25, in arriving at its decision. That case involved only personal property, but although no Massachusetts decision has been given involving real property since the Uniform Partnership Act, annotators of the laws of Massachusetts note that real estate is held as personalty for partnership purposes, but when not needed for such purposes it then descends as real estate to the heirs.³⁰ Since the Uniform Partnership Act of Massachusetts is identical in the controlling provisions with the act in Illinois, in which state the view of the Massachusetts annotator is expressly repudiated by a supreme court decision,³¹ the statement of the annotator is confusing or indicative of a conclusion contrary to Illinois decisions. The writer finds no case in

²⁸ Valley Springs Holding Corp. v. Carlson et al., 56 S. D. 163, 227 N. W. 841 (1929).

²⁹ Kilduff et al. v. Boston Elevated Ry. Co., 247 Mass. 453, 142 N. E. 98 (1924). The court accepted the clever contention of the defendant and said that as the legal title to the truck was in the partnership, as a firm or entity, the registration in the name of the individual partner was illegal, and the truck was a trespasser on the highway; and recovery was denied.

³⁰ Annotated Laws of Massachusetts (Lawyers Co-op. Pub. Co.), Vol. 3, Ch. 108A, sec. 8. Partnership Property defined—annotation, p. 607.

³¹ Wharf v. Wharf, 306 Ill. 79, 137 N. E. 446 (1922).

Massachusetts falling under section 8, subsection 3, since the state adopted the act.

In New York, in *In re Dumarest's Estate*,³² the court did not have occasion to consider our provision but did cite the New York Partnership Law, section 51, subd. 2(a), 2(e), to sustain the statement that "a partner has no personal right in any specific property of a partnership of which he is a member . . . and such property is not subject to conjugal rights." Too strong an inference should not be drawn from the case as to the application of New York partnership law to facts concerning conveyance of title in the firm name. Long prior to the Uniform Partnership Act, New York recognized "tenancy in partnership," and the courts had many times announced that "a partner's interest in the partnership is his share of the profits and surplus." That was true long before the act was passed.³³

But our law has never adopted the civil law theory of the form as a juristic entity; the Uniform Partnership Law as little as any other. That statute recognizes the partners as co-owners (tenants in partnership) of the "specific" firm property (section 51 N. Y. Partnership Law) and while it is often said, and truly, that the firm is treated at times as if it were an "entity," the doctrine has never become considerable excuse for its adoption. *Francis v. McNeal*, 228 U. S. 895, 35 S. Ct. 701, 57 L. Ed. 1029, L. R. A. 1915E 706.³⁴

In view of the language quoted, the writer hesitates to say that the New York courts will construe our particular provision of the act as have the courts of Illinois, Minnesota and Michigan. No New York case directly in point has been decided as yet.

In *Savings & Loan Corporation v. Bear*,³⁵ the court had for decision the question of priority of liens against individual and partnership property. The court barely

³² 262 N. Y. S. 450 (1933).

³³ *Rossmore v. Commissioners of Internal Revenue*, 76 F. (2d) 520 (1935).

³⁴ *Ibid.*

³⁵ 155 Va. 312, 154 S. E. 587, 75 A. L. R. 980 (1930).

suggests by a phrase that, in Virginia, real estate could be conveyed to the firm in the firm name, but said nothing further. It might be added, though, that the court was considering liens and priority under the uniform act.

Although Iowa is considered a "code" state, and has statutory provisions concerning partnership, whereby the firm may be sued as an entity, the courts still repudiate the entity in so far as taking title to real estate is concerned. This view is clearly set forth in a recent case of *Bankers Trust Co. v. Knee, Sheriff et al.*³⁶

As a conclusion, although based for the most part upon cases wherein our particular section was not put directly in issue, and although based upon a review of apparently but few cases (because but few have been decided since the Uniform Partnership Act became law), it seems safe to say under the provisions of the Uniform Partnership Act section 8, subsection 3, and only by authority of the statute, and in derogation of common law, that a conveyance of real property to a partnership in the firm name (whether fictitious or otherwise) vests legal title in the firm, and for that purpose at least, the partnership has the status of a legal entity or juristic personality.

³⁶ 263 N. W. 549 (Iowa, 1935).