

authorized it, one partner could bind the firm by a sealed instrument executed in its name.\* But Lord Kenyon, in a case where it was contended that the partnership having been instituted by writing under seal, that fact gave authority to each partner to bind the others by deed, said: "But I deny that consequence; . . . for a general partnership agreement, though under seal, does not authorize the partners to execute deeds for each other, unless a particular power be given for that purpose. This would be a most alarming doctrine to hold out to the mercantile world; if one partner could bind the others by such a deed as the present, it would extend to the case of mortgages, and would enable a partner to give to a favourite creditor a real lien on the estates of the other partners"† The conveyance, as well as the descent of realty is regulated by statute, and is not affected by any general law of partnership, wherefore the acting partner of a mercantile partnership cannot transfer the real property of the firm in the same manner as its personal property.‡ For the same reason, one partner cannot execute a bond under seal, in the partnership name, so as to bind the other partner;§ and the plea of *non est factum* will be sustained in an action against the firm on a bond so executed, even though it was executed under an authority from the copartner, not under seal, to execute a note in his name.¶ In short, at common law, one partner cannot do any act under seal to affect the interests of his copartner, unless it is to release a debt.¶

II. *Parol or Verbal Authority, when Sufficient.*—In a well-considered case, decided in the Superior Court of the City of New York,\*\* Jones, C.J., after reviewing the English and American cases on this subject, says: "The principle that a partner cannot, by virtue of the authority he derives from the relation of copartnership, bind his copartner by deed, has been too long settled to be now shaken. It is the technical rule of the common law applicable to deeds which has been engrafted into the commercial law system of the law of partnership. . . . The reasons for the restrictions are not very satisfactory, for all the mischiefs which the expositors of the rule ascribe to the authority of members of a copartnership to seal for their copartners, may flow almost as extensively, and nearly with equal facility, from the use of the name and signature of the copartnership. The dangers of allowing the use of a seal to the members of a copartnership are supposed to consist in these two attributes of the seal: that it imports a consideration, and that it is competent to convey absolutely, or to

\* In *Napier v. Catron*, however, cited in the preceding note, where in the agreement of partnership, under seal, each partner was authorized to bind his copartners by deed, and such agreement expired by its own limitation, and was continued by a written agreement, not under seal, it was held that the continuance did not carry with it the power, and that a mortgage of real estate, executed by one of the firm to secure the partnership, did not bind the other members.

† *Harrison v. Jackson*, 7 T. R. 207, 210.

‡ *Platt v. Oliver*, 3 McLean (U. S.), 27; affirmed on other grounds, 3 How. 333.

§ *Gerard v. Fisse*, 1 Dall. (U. S.) 110; *Hart v. Withers*, 2 Penn. (N. J.) 285; *Buxton v. Hampson*, Wright (Ohio), 93; *McDonald v. Eggleston*, 26 Vt. 154; *Pierson v. Hooker*, 3 Johns. (N. Y.) 68.

¶ *Henry County v. Gates*, 26 Mo. 315.

¶ *McBride v. Hagan*, 1 Wend. (N. Y.) 326.

\*\* *Gram v. Seton*, 1 Hall (N. Y.), 262.