

TRADING PARTNERSHIPS WITH MARRIED WOMEN.

should be considered as sustaining that character in point of law. When it happened that, under positive covenants, they were entitled to shares in banking houses, &c., their husbands were entitled and became partners in their stead. "The right of a married woman or of her husband," it is observed, "to vote in respect of shares held by her has not been judicially considered. Speaking generally, however, and without reference to the regulations of any particular company, it would seem that, if the shares belong to her as part of her separate estate, her husband has no right to vote in respect of them, and her vote is valid, notwithstanding his disapproval thereof. But, if the shares do not form part of her separate estate, she alone cannot in point of law be a member in respect of them, and cannot, therefore, vote; nor is her husband entitled to vote in respect of such shares, until he has become a member of the company in respect of them. Nor does it follow, from the fact that he is subject to liabilities in respect of his wife's shares, that he is entitled to the privilege of voting in respect of them." (1 Lind. Part. 575, 3rd ed.) The principle that marriage operated as an assignment to the husband of the wife's share in a partnership is forcibly exemplified by the decision of *Nerot v. Burnand*, 4 Russ. 260, 2 Bli. N. S. 215; and see *Wrexham v. Hudlestone*, 1 Swanst. 517 n., holding that the marriage of a feme sole partner operated as a dissolution of the partnership. This doctrine proceeds upon the ground that, in the absence of express agreement to the contrary, the marriage operated against the principle of *delectus persone*, or the consent of the parties, by the introduction of a stranger into the partnership. It has, indeed, been treated by Collyer, and by other text-writers of authority, as only taking effect as a dissolution at will, but we rather incline to hold with Dixon that, in this case, the partnership (apart from the statute law, of which more hereafter) would be dissolved *ipse facto*. And it would seem to follow that, if the business were continued by the other co-partner and the husband, an entirely new partnership would be constituted between them. We are not aware that the question has ever arisen as to what would be the effect, as regards a partnership, of the

marriage of a feme sole partner with a man who is *civiliter mortuus*. But, it will be borne in mind that a married woman, in such case, is competent to contract, and would be bound by the contracts of a partner. It may also be noticed here that, by the custom of London, a feme covert, trading without the interference of her husband, was considered in the city courts as a sole trader. Collyer infers thence that she might also trade in partnership. We would rather incline to hold, however, that an authority to involve herself in the complex transactions, responsibilities and duties of partnership, would not necessarily be imported, from her husband's consent that she should carry on trade as sole, unless, indeed, the trade could not otherwise be carried on either necessarily, conveniently or beneficially. We find similar laws, with respect to trading by married women, in France, Holland, Spain, Louisiana, &c. And, by-the-bye, it is said by Collyer that, when a husband and wife are partners in a foreign country where it is competent for them to contract in partnership, it would still be incompetent for them to sue in this country as partners. We should certainly think that this doctrine is not maintainable as a doctrine of public law; neither is it by any means borne out in its full latitude by the case of *Cosio v. De Bernales*, 1 C. & P. 266, n., Ry. & M. 102. In this country it followed, *a fortiori*, from the principles to which we have adverted, that, at common law, a husband and wife could not enter into a contract of trading partnership with one another. Could they do so in equity? There, if the wife have separate estate, she is regarded as a feme sole. And since debts and obligations incurred by her either expressly or impliedly on the credit of that estate could be enforced against it, although not against her personally, there seems no reason why it should not be liable for the debts of a partnership, or why, in a limited sense, she should not be considered as a partner. Then, as between husband and wife themselves, the doctrines of equity have also gone very far, as in *Woodward v. Woodward* 8 L. T. N. S. 749, where it was held that a married woman was entitled to sue her husband for money lent to him out of her *separate estate*, the Lord Chancellor observing that, "The old