

for a partnership debt, and the creditor afterwards releases the copartner from all partnership debts, the simple debt being merged in the specialty, the copartner is released, but the specialty still binds the partner who signed the partnership name.* Thus, where two of three partners were present, and one wrote and the other sealed a note, given in the name of the firm, it is competent to go to the jury on the joint execution. It is not material to the liability of the two that they used the name of the firm without the third partner's assent.† Again, partners are tenants in common of land owned by the firm, and a deed by all the firm, but executed by one partner only, is effectual to convey that partner's undivided interest.‡ Such a conveyance, by one member of a solvent firm, of his undivided interest in the real estate of the partnership, to a stranger, whether made upon a sale, or by way of payment of his individual debt, is valid as against the copartners; and they cannot maintain an action to have it set aside, on the ground that it was made without their consent and impairs the credit of the firm.§ But in *Fisher v. Perden*,|| where, upon the face of the instrument, it appeared that one signed, sealed and delivered it, in order to bind the firm of which he was a member, and not as his own individual deed, it was held that he was not individually bound. The case, however, in the opinion of the present writer, is not in accord with the trend of the well-considered adjudications.

VI. *The Scope and Extent of the General Rule.*—This rule, of common law origin and still continuing vigour, prevents one partner from binding the other to execute a deed with covenants of a particular kind, as of warranty.¶ Even a surviving partner cannot, alone, convey realty belonging to the firm he represents.** Again, a bond given for the purpose of obtaining a dissolution of an attachment of partnership property, and executed in the name of the firm, by only one of two partners named as principals therein, cannot be enforced against a surety without evidence of the assent of the other partner to its execution.†† And where one partner signs the partnership name to a forthcoming bond, in a case in which the partnership is defendant, the bond is void as to the partners not signing it.‡‡ So, also, one partner cannot bind his copartner by warrant of attorney, under seal, in the firm-name, without authority;§§ or by executing an appeal bond for both, under his general authority.||||

VII. *Cases of Exhibiting its Limits and Exceptions.*—The adjudications upon this subject are not, however, so harmonious as not to leave the question still, to some extent, an open one in some few jurisdictions. Thus it has been held that one partner may execute a power of attorney,¶¶ or a charter party under seal,***

* *Clement v. Brush*, 3 Johns. (N. Y.) Cas. 180; *S. P., Williams v. Hodgson*, 2 Harr. & J. (Md.) 474.

† *Potter v. McCoy*, 26 Pa. St. 458.

‡ *Jackson v. Stanford*, 19 Ga. 14; *Layton v. Hastings*, 2 Harr. (Del.) 147; *Jones v. Neale*, 2 Patt. & H. (Va.) 339.

§ *Treadwell v. Williams*, 9 Bosw. (N. Y.) 649.

|| *7 Jones* (N. C.) L. 483.

¶ *Ruffner v. McConnell*, 17 Ill. 212.

** *Galbraith v. Gedge*, 16 B. Mon. (Ky.) 531.

†† *Russell v. Annable*, 109 Mass. 72.

‡‡ *Doe v. Tupper*, 4 Sm. & M. (Miss.) 261; *Turbeville v. Ryan*, 1 Humph. (Tenn.) 113.

§§ *Ellis v. Ellis*, 18 Vr. (N. J.) 69.

|||| *People v. Judges of Dutchess*, 5 Cow. (N. Y.) 34; *Charman v. McLane*, 1 Oreg. 339.

¶¶ *Re Barrett*, 2 Hughes (U. S.), 444.

*** *Straffin v. Newell*, T. U. P. Charit. (Ga.) 163.