

1928

Partnership Law As Applied to Members' Rights in Property of Non-Profit Voluntary Associations

Morris E. Cohn
Los Angeles Bar Association

Follow this and additional works at: https://openscholarship.wustl.edu/law_lawreview



Part of the [Law Commons](#)

Recommended Citation

Morris E. Cohn, *Partnership Law As Applied to Members' Rights in Property of Non-Profit Voluntary Associations*, 13 ST. LOUIS L. REV. 268 (1928).

Available at: https://openscholarship.wustl.edu/law_lawreview/vol13/iss4/6

This Note is brought to you for free and open access by the Law School at Washington University Open Scholarship. It has been accepted for inclusion in Washington University Law Review by an authorized administrator of Washington University Open Scholarship. For more information, please contact digital@wumail.wustl.edu.

**PARTNERSHIP LAW AS APPLIED TO MEMBERS' RIGHTS
IN PROPERTY OF NON-PROFIT VOLUNTARY
ASSOCIATIONS**

When a group of people organize under an agreed name for a purpose which does not contemplate business transactions for profit, and which does not contemplate legal proceedings, the result is one which puzzles the courts. A legal tribunal must have some thing or person on which to exercise its jurisdiction. There must be some entity capable of being recognized in law which a court can lay hands on, first for the purpose of commanding it, and second, for the purpose of enforcing its decrees. And that is the difficulty with nonprofit associations. The group as a whole can hardly be considered as a legal entity, and most courts agree on that proposition. That which is not an entity cannot in legal contemplation hold property. Title can vest only in a legal person, natural or artificial. It follows, then, that when an association purports to hold property the ownership is in the members constituting the association. So far the course of reasoning is clear. The difficulty occurs when the courts determine the nature of the ownership of each of these members. At this point there is confusion, and conflicting decisions are to be had from what is apparently the same course of reasoning.

A number of courts have held that the members' rights in the property of an association is to be determined by the law of partnership. It is not difficult to understand this holding. A partnership is perhaps more nearly like an association than any other organization, and especially was this true at the time of the early decisions which have influenced the trend of the law. Rather than create a new body of law which will be adapted to the special needs of associations, the courts have been inclined to borrow from the law of partnership. Of course, this tendency has not been universal or unanimous. Occasionally there have been holdings and dicta which would lead one to believe that the law of associations is different from that of partnership. But even in those cases, the source of the holdings obviously has been partnership law; the court may twist and slightly vary the principles, but their source is apparent.

One of the earlier cases which shows the tendency of the courts as heretofore mentioned is *Beaumont v. Meredith*.¹ In that case there was an organization for the relief of the members in case of illness, and the trustees made a distribution of the organization's money to its various members. The plaintiffs were five members of the organization who were dissatisfied with the distribution, and they petitioned the chancellor for an accounting. The court, in deciding the case, said: "This society can be considered in this court only as a partnership; and neither has, nor can have a corporate character. The bill is therefore to be considered merely that the partnership, which is as-

¹ 3 V. and B. 180 (Eng. Ch., 1814).

serted to have existed, shall be considered as continuing to exist; and therefore that these sums are to be brought into court; though throughout the pleading this society is treated as having much more of a corporate character than can belong to them." By this statement the court decisively refuses to consider the association as an entity. In refusing to grant the accounting the court went on to say: "The case is one of plaintiffs suing in behalf of themselves and all the other members; and the plaintiffs, so suing, have no right to come against these defendants without bringing in the other forty-seven,"²

This case, it seems, laid the foundation for a number of American decisions. A New York case³ apparently bases its decisions on that holding. In the New York case four members of a boating club tried to sue the defendant to recover \$500 paid him by the organization on account of his promise to build a boat, which he failed to do. The court reasons that the organization is not strictly a partnership because its purpose through transactions with third persons was pleasure and not profit.⁴ But the court goes on to say that the rights of the associates in the organization's property and the method for the enforcement of those rights are not materially different from those of partners in partnership property. In reaching this conclusion the court relied on *Beaumont v. Meredith*, *supra*. In the discussion which follows it is apparent that the court is of the opinion that the defendant's agreement was made with the organization as a whole, and that these plaintiffs, or any plaintiffs less than all the members of the organization could not recover on the defendant's breach of contract.

"The agreement and the right of action upon it, and the result of an action are the property of the association as such, and there is no separate ownership by an individual associate, save in the residuum after the liabilities are discharged The associates did not as a body, through any officers or agents thereto authorized assign and transfer to the plaintiffs, nor did all the associates as individuals assign and transfer" The clear implication in this statement is that all the members of the association could by individual assignment transfer the property of the association so as to divest it and themselves of title and vest it in the assignee. That is clearly the law of partnership as indicated by the majority holdings.⁵ An earlier New York case relied on was

² There have been a number of early cases which apparently indicate that the courts are in accord with the view taken by *Beaumont v. Meredith*, *supra*. See *Ellison v. Bignold*, 2 Jac. and W. 503, where the court held an association to be a partnership for the purpose of determining its rights under a marine insurance policy. See also *Wood v. Wood*, L. R. 9 Exch. 190, *Pearce v. Piper*, 17 Ves. Jr. 15, *Babb v. Reed*, 5 Rawle 159, *Koehler v. Brown*, 2 Daly, 78.

³ *McMahon et al. v. Rauh et al.*, 47 N. Y. 67. See also *Park v. Spalding*, 10 Hun. 131.

⁴ *Kent Com.*, 23; *Collyer Part.*, 263.

⁵ See *Ex Parte Ruffin*, 6 Ves. Jr., p. 119, where an assignment of the partnership property by all the partners divested it of title. *Case v. Beauregard*, 99 U. S. 119, 25 L. Ed. 370, separate assignment by all the members of a partnership divested the firm of title. Also *Doner v. Stauffer*, 1 Pen.

Hobick v. Pemberton.⁶ In that case an associate sued on a note made by the defendant in favor of the organization. The defendant's demurrer was sustained, the court intimating that the plaintiff should have sued as a partnership by joining all the members. "Indeed, the complaint somewhat inconsistently avers that the society itself is such lawful holder and owner, thus treating it as having an independent organized existence, and not averring that its name is the name and style of a partnership."

In the case of *Belton v. Hatch*⁷ the plaintiff was the assignee of one who had been expelled from membership in the Stock Exchange and he brought suit for the proceeds received by the organization from a sale of his seat in the Exchange. There again the court recognized the fact that the association was not a partnership in the true sense of the word. But the court declared that the members' rights in the partnership property are to be determined by partnership law. The headnote of the case says: "While the New York Stock Exchange is not a co-partnership, yet insofar as the rights of the members in the property of the organization are concerned, they are not substantially different from those of partners." However, in that case a specific agreement of the association was determinative. One of the by-laws was to the effect that if a member be expelled from the association he shall cease to have any rights in the property of the organization, and therefore the plaintiff assignee got nothing by the assignment.

A case very similar to *Belton v. Hatch*, *supra*, is *Cornet Band v. Bean*.⁸ There the court found the organization to be a partnership, but held the by-laws of the organization to be decisive in the case when the plaintiff was suing in trover for his instrument. The by-law was to the effect that if any member withdrew he would be required to leave his instrument with the band. The court upheld the by-law and the plaintiff failed in his suit. In a Missouri case⁹ the court relied on *Belton v. Hatch*^{9a} and *McMahon v. Rauhr*^{9b} in arriving at the same determination of the property rights of members of an association. The Missouri court seems to have difficulty in finding that a court of equity is the proper tribunal for the determination of the affairs of an association; and it is only by assuming the property rights of the associates to be similar to those of a partner in partnership property that the court is able to decide that the court of equity is the proper place.

There are a number of decisions, probably the majority, which hold that the associates are joint tenants in the property owned by the organization. In *Branagan v. Buckman*¹⁰ the court was deciding whether or not a transfer by an associate of his interest in the property of the

and W. (Pa.) 198. But see *Menagh v. Whitwell*, 52 N. Y. 146, where the effect of the decision was to hold a partnership a legal entity.

⁶ 4 Sandf. (S. C.) 658.

⁷ 109 N. Y. 593.

⁸ 54 N. H. 524.

⁹ *Mo. Bottlers v. Feunerty*, 81 Mo. App. 525, 534.

^{9a} *Supra*, footnote 7.

^{9b} *Supra*, footnote 3.

¹⁰ 67 Misc. 242, 122 N. Y. S. 610.

association constituted the transferee a tenant in common with the other associates. "The plaintiff's claim rests solely upon the legal contention that he bought the interest of Foster and thereby became a tenant in common with the other members of the association in its property and entitled to use it as one tenant in common may use the property held by himself and others in such tenancy; but the uniform course of authority is that in such an association its property is not held by the tenants in common, but as joint tenants."¹¹ This view of course is the one which was held by early judges in regard to partner's interest in partnership property.¹² Today, the inequity of that rule has been relaxed. Partners are regarded as joint tenants only for the purpose of enabling the surviving partner to apply the partnership property to the payment of partnership debts.¹³ To accomplish this result, the courts regard partnership realty as personal property,¹⁴ and therefore under the rules of administration the debts of the deceased partner are to be paid before any rights of distributees or heirs accrue.¹⁵ Since, as has been stated, associates hold as joint tenants, there is an obvious analogy between their property rights and those of partners.

In spite of the rulings that associates hold as joint tenants, the decisions seem to incline to the view that membership is not transferable. A joint tenant ordinarily has the right to alienate his interest in the property, as also has a tenant in common. Partners may transfer their interest in the surplus by individual assignment, but they cannot, of course, constitute the assignee a partner without his consent and that of the other partners, because of the principle of *delectus personarum*. Associates, it seems, are even more restricted. One may not, by his individual action either transfer what interest he may have or constitute the transferee a member of the association.¹⁶

The reasoning here seems to originate from a doctrine similar to the *delectus personarum* of partnership law. The assumption is that associates shall have the right to choose other associates, especially since such organizations are by nature voluntary and not formed for profit, but rather, in a number of cases, for pleasure and mutual social bene-

¹¹ See in accord: *Burt v. Oneida Community*, 137 N. Y. 346, 33 N. E. 307, 19 L. R. A. 297; 4 Cyc. 302. See also 25 Am. Eng. Enc. Law 1132; 4 Cyc. 310; *Ostrom v. Greene*, 161 N. Y. 361, 55 N. E. 919.

¹² 184 N. Y. S. 840. See note 48 A. S. R. 63.

¹³ *Goldwaite v. Janney*, 102 Ala. 431, 15 So. 560; *Ruffner v. McConnel*, 17 Ill. 212, 63 Am. Dec. 362; *Dillon v. Brown*, 11 Gray (Mass.) 179.

¹⁴ *Clagget v. Kilbourne*, 1 Black 346; *Ware v. Owens*, 42 Ala. 212; *Buffum v. Buffum*, 49 Me. 108, 77 Am. Dec. 249.

¹⁵ There is conflict as to the extent of this conversion of partnership real estate into personalty. There is the so-called English rule of the "out and out" conversion. *Woodward Co. v. Mudd*, 58 Minn. 236, 59 N. W. 1010; *Adams v. Church*, 42 Ore. 270, 27 L. R. A. 476. The American rule holds the conversion effective merely for the payment of debts. *Riddle v. Whithill*, 135 U. S. 621, 34 L. Ed. 282; *Darrow v. Calkins*, 154 N. Y. 503, 49 N. E. 61.

¹⁶ *Ostrom v. Greene*, *Burt v. Oneida Community*, *supra*, note 11. *Clark v. Brown*, 108 S. W. 421.

fit. In a partnership, the *delectus personarum* rests with each partner, and a single partner can refuse to permit a proposed person from becoming a partner with him. In the case of associations there is a distinction to be mentioned: that in most cases the *delectus personarum*, if it might so be termed, rests not with each associate, but with a majority of the associates. Such qualifications are usually the result of the by-laws of the association¹⁷ and are a matter of express agreement. Another interesting comparison exists between devising partnership and association property. In the former case, a partner may usually devise his interest in the surplus of the partnership property after the payment of firm debts and subject to the ordinary law of decedents' estates. But associates are more nearly true joint tenants in the association property. Generally one joint tenant cannot devise his interest in the property,¹⁸ and that principle has been applied to associates; the holding was that an associate, after having been a member in a voluntary fire organization for over fifteen years, could not devise his interest in the property.¹⁹

In regard to an heir's right in the association's property the decisions are fairly unanimous. Ordinarily he cannot take. The principle seems to be that an associate's rights in the property of the organization are terminated on his withdrawal and his death is equivalent to his withdrawal. It follows, then, that an heir cannot take or exercise the rights of the deceased. In the case of *Schriber v. Rapp*²⁰ the deceased had been a member of a religious society and had brought into the association some \$8,000. On his death, his heir wished to exercise the right guaranteed to members of the association to secede and withdraw their funds when they wished. The court found that the heir had no such right.

That ruling is, of course, consistent with the principles pertinent to joint tenancy. However, the holdings are not entirely unanimous. There is an early Massachusetts case²¹ which held that a deed to an association vested the title in the associates as tenants in common. In that case the court does not discuss the issue, nor does it give any reason for the holding; it merely states the conclusion. But that case is probably an isolated instance. However, there is a later case in Arkansas²² which gives an interesting sidelight on the question. There, two officers of an association sold their interests in a lease in oil lands to third parties. The plaintiffs wished these officers to be declared trustees and to force them to account for the money so obtained. The court found

¹⁷ *Mayer v. Stonecutter's Association*, 47 N. J. Eq. 519, 20 Atl. 492; *Ulmer v. Minster*, 16 Misc. 42, 37 N. Y. S. 679.

¹⁸ *Wilkins v. Young*, 144 Ind. 1.

¹⁹ *Mason v. Atlanta Fire Co.*, 70 Ga. 604. Here it was held also that the statute of limitations would not run so as to vest title to the property in the associate.

²⁰ 5 *Watts* 351, 30 Am. Dec. 327, 330. See also *Mason v. Fire Association*, *supra*.

²¹ 140 Mass. 31, 2 N. E. 687.

²² *Ferguson v. Crawford*, 151 Ark. 503, 236 S. W. 837.

that they were acting in their individual capacities, not as officers of the association, when they sold their interests, and so were not subject to an account. The interesting point is that the court concluded that associates hold property jointly and yet permitted these defendants to sell their individual interests without the consent of the association. It is apparent that this case is contrary to the general run of judicial decisions on this point, and has not been cited or followed since.

Perhaps the best that can be gathered from this brief survey is that there is confusion and misconception abounding in the entire field. The difficulty is, as has been stated previously, that these associations are too attenuated. They move in a mist through which no legal entity is visible to which the courts can fasten the duties and obligations of those who deal with third persons. It is questionable whether the law should permit unincorporated organizations. Certainly, the law would be clearer if there were no nonentities. But there must be considered the interests of the persons involved. One must weigh the advantages to be had from a body of unambiguous laws against the disadvantages concomittant with incorporation.

MORRIS E. COHN, '29.