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*Clagett vs. Kilbourne.*

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**CLAGETT vs. KILBOURNE.**

1. A joint stock company formed for the purpose of buying and selling lands is a partnership.
2. The separate creditor of a member of an association dealing in lands has the same rights, and no others, against his debtor's share in the lands of the association, that the separate creditors have against the partnership goods of an ordinary mercantile firm.
3. The creditor may levy his execution on his debtor's share of the joint property, but he sells only the debtor's interest in it, after payment of all the partnership debts.
4. The purchaser under the execution takes the estate which the judgment debtor would have been entitled to after a final settlement of the partnership accounts.
5. The purchaser of one partner's share or interest in the lands of an association cannot maintain ejectment for it; his remedy is in equity, where he may call for an account, and thus entitle himself to all that the judgment debtor could have claimed after payment of the partnership liabilities.

Writ of error to the District Court of the United States for the district of Iowa.

The case is fully stated in the opinion of the court.

*Mr. Dixon*, of Iowa, for plaintiff in error.

*Mr. Mason*, of Iowa, and *Mr. Gillet*, of Washington city, for defendants in error.

*Mr. Justice NELSON.* This suit is an ejectment by Claggett to recover from the defendant an undivided one-sixth of certain parcels of land situate in the county of Lee, and State of Iowa. The plaintiff claims under a sheriff's deed of the property on a sale under a judgment and execution against one Isaac Galland. The principal question in the case turns upon the effect of this sale and conveyance to pass the title to the purchaser.

An association or joint-stock company was formed in 1836 by several persons, in which Isaac Galland, the judgment

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debtor, was a member, for the purpose of dealing in the purchase and sale of lands in the State of Iowa, then the Territory of Wisconsin, lying between the Mississippi and Des Moines rivers, known as the Half-breed tract.

By the articles of association, the lands purchased were to be conveyed to certain trustees named, to hold as joint tenants in trust, for the benefit of the persons composing the association. The stock or capital was divided into forty-eight shares, and held in unequal parts by the stockholders representing the moneys paid into the association. Isaac Galland was the owner of 8-48 or one-sixth of the whole.

The articles stipulated that the trustees should purchase the lands situate as above stated, cause them to be surveyed, lay out sites for towns, villages, and cities, as they might deem eligible, and cause the property to be examined in respect to water power and hydraulic privileges, and lay out the same with reference thereto. The trustees were also authorized to sell and convey any part of the lands purchased, and take such securities for the purchase money as they might deem fit, make contracts, and do all lawful acts necessary and proper to carry into effect the objects of the association.

It is then stipulated that the purchase money, and the costs of the improvements, taxes, assessments, &c., were to be charged on the property, and paid out of the first proceeds of the sales; and that the proceeds, after paying all expenses, charges, improvements, disbursements, &c., should be applied to the repayment of the purchase money until the whole amount be paid.

They were to keep regular books of account, in which all the purchases, sales, and proceedings, in respect to the property, should be kept, and semi-annual accounts were to be rendered to the associates; and that, when the trustees should have realized money enough from the sales, and other disposition of the property, to satisfy all the purchase money, improvements, interest, taxes, assessments, &c., their power to sell said property should cease, and a division of the lands and moneys belonging to the association, if any, made among the stockholders.

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The lands were to be divided into two classes: the first to include sites of towns, villages, and cities, and hydraulic privileges; the second should embrace the residue of the property, and each class to be divided into forty-eight shares, the original number of shares of the association.

It appears from the bill of exceptions that, in 1841, partition was made of the half-breed tract among the proprietors, and that the trustees of this association drew shares in the tract, among others, numbered 43, 56, 84, and 93.

The judgment against Isaac Galland was recovered in 1843, and the sale took place in 1851. The sheriff's deed is dated in 1852. The lots of which 8-48 parts or one-sixth were sold, and to recover the possession of which this suit is brought, were included in the shares above mentioned, and represent the interest of Galland, as claimed, in the several lots. It was admitted that the defendant was in possession of these lots, and that he claimed titles under deeds from the trustees of the association.

The evidence being closed, the counsel for the defendant took objection to the admissibility of the judgment and sale, on the ground that Marsh, Lee, and Delevan, the trustees, were the sole owners of the land under the partition and decree; and that Isaac Galland had no legal title to the same, upon which the judgment could operate as a lien, or be sold on execution, and the court excluded the judgment, execution, and sale.

The joint-stock company, of which the judgment debtor in this case was a member, constituted a partnership for the purpose of dealing in real estate; and the law governing the rights of creditors, representing the separate debts of a partner, must determine the rights of the plaintiff. The judgment was for the individual debt of Galland, and is sought to be enforced against the partnership funds.

The proceedings for this purpose assume that the share of the judgment debtor in the association is an interest in the lands; and though legal title be in the trustees, is liable to be seized on the execution and sold, and the purchaser put in possession.

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The settled law is otherwise. We do not deny but that the execution may be levied on the joint property, with the view of reaching the undivided interest of the judgment debtors; but in such case the levy is not upon his individual share, as if there were no debts of the partnership, or lien on the same, for the balance due to the other partners. It is upon the interest only of the judgment debtor, if any, in the property, after the payment of all the partnership debts, and other charges thereon. The purchaser takes the same interest in the property which the judgment debtor would have upon a final adjustment of all the accounts of the partnership. It is not only an undivided, but an unascertained interest, and the purchaser is substituted to the rights and interests of the judgment debtor in the property sold. Neither does the sale transfer any part of the joint property to the purchaser, so as to entitle him to take it from the other partners; for that would be to place him in a better situation than the partner (judgment debtor) himself.

The remedy of the purchaser is, to go into equity and call for an account, and thus entitle himself to the interest of the judgment debtor, if any, after the settlement of the partnership liabilities.

The fact that the property in this case consists of real estate, does not change the principles of law governing the ultimate rights and interests concerned. The real property belonging to the partnership is treated in equity as part of the partnership fund, and is disposed of and distributed the same as the personal assets.

In this case the legal title is in the trustees, who are bound to account to the stockholders the *cestuis que trusts*, according to their respective shares, after all debts of the association have been discharged. The equity of the judgment creditor is the interest in the land, after a sufficient portion of it has been disposed of for this purpose.

It is quite clear the plaintiff has mistaken his remedy, as he obtained no title, legal or equitable, to the particular lots in question.

It is proper to add, even if an equitable title had been ac-

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quired, it would not have helped him, as it will not sustain an ejection in the Federal courts. (23 How., 235, 249; 21 ib., 481.)

There are other questions discussed by the learned counsel for the respective parties; but as the examination of them is not material to the decision of the case, we forbear noticing them.

*Judgment affirmed.*

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### FARNEY vs. TOWLE.

1. In a case where an alleged violation of the Constitution of the United States is the ground of error, the Supreme Court has no jurisdiction, unless the point presented by the assignment and joinder was raised and decided in the State court to which the writ is directed.
2. It must appear that the point was raised in the State court; that the party called attention to the particular clause in the Federal Constitution relied upon, and to the right claimed under it, and that the question thus distinctly presented was ruled against him; and if these things do not appear, the judgment of the State court cannot be reviewed here.

Error to the Superior Court of the city of New York.

Inasmuch as this case was dismissed for want of jurisdiction, it is unnecessary to state the arguments of counsel upon points not alluded to in the opinion of the court. That opinion contains all that is necessary to a full understanding of the question decided.

*Mr. Field, of New York, for plaintiff in error.*

*Mr. Ellingwood, of New York, for defendant in error.*

*Mr. Chief Justice TANEY.* This is a writ of error to the Superior Court of the city of New York, and the error assigned is that the court maintained the validity of a statute of that State by which new trustees had been substituted in place of