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# Liens—Unrecorded, for the Non-Payment of Federal Taxes

The estate in entirety is limited to the continuation of the marriage relationship and cannot exist independent of it. In this case, the marriage was terminated by death and, both parties having perished at the same instant, the estate in entirety descended in equal moieties to the heirs of each, as if the husband and wife had been tenants in common.

While tenancy in entirety has been abolished by statute in some American States and in others held to be inferentially abolished by the passage of statutes giving to married women the rights of *femes sole*, yet it still exists in a great many States as at common law or by statute. See Section 2175. R. S. Missouri, 1919.

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LIENS.—UNRECORDED, FOR THE NON-PAYMENT OF FEDERAL TAXES.

In the case of United States v. Curry, 201 Fed. 371, the defendant was a manufacturer of oleomargarine, that product being subject to an excise duty levied by the Federal Government. An assessment was received by the Internal Revenue Collector and demand was made on the defendant, and at that time she was the owner of certain real estate situated in the State of Maryland. Shortly after demand for payment of the tax was made, the defendant conveyed and mortgaged said real estate to innocent purchasers and mortgagees who are joined as defendants in this action.

Section 3186, Revised Statutes of the United States (U. S. Compiled Statutes, 1901, p. 2073) provides that "if any person liable to pay any tax neglects or refuses to pay the same on demand, the amount shall be a lien in favor of the United States from the time the assessment list was received by the Collector—." The action was brought by the United States under this statute to set aside the conveyances to these purchasers to the extent that they conflicted with the Government's lien on the property. It was held by the Court that the lien of the Government for delinquent taxes attached to all the real estate of the defendant at the time of the assessment and demand by the Collector and that said lien had priority over any subsequent conveyance or mortgage whatever, even though it be to an innocent purchaser without notice of the lien.

The Supreme Court of the United States has also held that the Government's lien is unaffected by the fact that a subsequent purchaser became such without knowledge that the Government had a claim upon the property. Also that the lien of the Government is not subject to the laws of the State where the land is situated, respecting the recording of liens. United States v. Snyder, 149 U. S. 210; Blacklock v. United States, 135 U. S. 326; see also United States v. Turner, 28 Fed. Cases 232.

It will be seen that such a ruling (a strict enforcement of the statute) works a great hardship on bona-fide purchasers who have no notice, either actual or constructive, of the Government's lien. It was aptly stated by Judge Rose in the present case that it should be provided that the Collector of Internal

Revenue, at the time he makes the demand upon the taxpayer, should send a copy of the demand to some office in which liens upon real estate are recorded and "the records of which are consequently carefully examined by conveyancers."

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## PLEADING—"REAL PARTY IN INTEREST"—SUBROGATION OF INSURER.

The case of Sexton v. Anderson Electric Car Co., 234 S. W. 358, was a suit to recover damages for injury to an electric automobile. The owner had taken the car to defendant's place of business for inspection and overhauling. Previous to its return employees of defendant while testing it out collided with a lamp post wrecking the car. At the time of collision the owner carried $1,800 insurance on the car to cover loss resulting from such accidents. This amount was paid to owner by the Insurance Company and he transferred all his right, title, and interest in and to the wrecked car to the Insurance Company. The insurance policy contained a stipulation that in case the Insurance Company paid a loss as stated above they would be subrogated to all the rights of owner of car in an action for damages against any third party, and that such action should be brought in the name of the owner of the car. In accordance with this stipulation the Insurance Company brought a suit in the name of the car owner against the third party resulting in a verdict for plaintiff. After the overruling of a motion for a new trial, defendant appealed. Defendant claimed the court erred in refusing to give the peremptory instruction to the effect that the owner was not the "real party in interest." Upon being questioned, the owner of car said that after he had received the money from the Insurance Company he had no interest in the result of the lawsuit; that he claimed no right of action personally and that he considered the action brought for the benefit of the company. It would seem that altho the company could properly bring such an action they should bring it in their own name and not in the name of the owner of the car.

The Supreme Court held, however, that the bringing of suit in the name of the owner of car was proper and the judgment of the lower court was affirmed. The Judge in the opinion cited a number of cases supporting the doctrine of subrogation in cases such as the one under consideration. Railway Co. v. Blunt & Ward (C. C.) 165 Fed. loc. cit. 260; Norwich Union Fire Ins. Soc. v. Standard Oil Company, 59 Fed. 987; Foster v. Railway, 143 Mo. App. 547; Matthews v. Railroad, 142 Mo. 645. There can be no doubt as to the doctrine of subrogation set forth in the above cases or in the case of Sexton v. Anderson Electric Car Co., 234 S. W. 358, but there might possibly be a question as to why in that case action was not brought in the name of the Insurance Company rather than the owner of the car. At common law this would have been the action since it had to be brought in the name of the assured. Hartford Fire Ins. Co. v. Wabash Railway Co., 74 Mo. App. 106, and L. & G. W. Steamship Co. v. Phoenix Ins. Co., 129 U. S. 397, are cases similar to above, both