THE UNIFORM PARTNERSHIP ACT

(Continued)

Rights and Duties of Partners 1724m—15.[1] This section defines the rights of partners inter se, in the absence of specific provisions in the partnership agreement to the contrary. Subsection a states the order of distribution recognized by the decisions in this state.[2] Subsection b, providing for the indemnity of partners for personal losses or liabilities incurred in the scope of their activities as agents of the firm, states the accepted agency rule.[3]

Sir Frederick Pollock in his DIGEST OF PARTNERSHIP[4] contends that the rule in partnership is broader than the agency rule, stating that "this duty imposed on the firm to indemnify any one of its members against extraordinary outlays for necessary purposes is one of a class of duties *quasi ex contractu,* which are recognized by the English law very sparingly and under special circumstances." The authorities, however, particularly the American

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[1] 1724m—15. [Rights and Duties of Partners.] The rights and duties of the partners in relation to the partnership shall be determined, subject to any agreement between them, by the following rules:

(a) Each partner shall be repaid his contributions, whether by way of capital or advances to the partnership property and share equally in the profits and surplus remaining after all liabilities, including those to partners, are satisfied; and must contribute towards the losses, whether of capital or otherwise, sustained by the partnership according to his share in the profits.,

(b) The partnership must indemnify every partner in respect of payments made and personal liabilities reasonably incurred by him iu the ordinary and proper conduct of its business, or for the preservation of its business or property.

(c) A partner, who in aid of the partnership makes any payment or advance beyond the amount of capital which he agreed to contribute, shall be paid interest from the date of the payment or advance.

(d) A partner shall receive interest on the capital contributed by him only from the data when repayment should be made.

(e) All partners have equal rights in the management and conduct of the partnership business.

(f) No partner is entitled to remnneration for acting in the partner-cases, fail to recognize the quasi-contractual nature of the obligation, and base it on the agency theory.[5]

The provisions of subsection c and d as to the allowance of interest, represent the prevailing mercantile practice. The Wisconsin courts have treated the question of allowing interest as a question of fact, determined by the circumstances of the particular case; in general the rule as to open accounts is followed.[6] Where advances are made in addition to the capital contributed, in order to take up loans to the firm or to provide funds for the current business, the practice is to treat the advance as respects interest, like loans made by strangers.[7] As to other items in the account and interest on capital, the rule is that no interest will be allowed until an account is taken and a balance struck.[8] Special circumstances may justify interest; as where the defendant by his conduct has unreasonably delayed the settlement, since interest is assessed as representing the value of the nse of the funds from the date when the plaintiff was entitled to demand them.[9]

Subsection e adopts the universal rule as to partners' rights in the management and control of the firm's business.[10]

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ship business, except that a surviving partner is entitled to reasonable compensation for his services in winding up the partnership affairs.

(g) No person can become a member of a partnership without the consent of all the partners.

(h) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners; but no act in contravention of any agreement between the partners may be done rightfully without the consent of all the partners.

[2] *Beardsley* v. *Tuttle*, 11 Wis. 74; *Miller* v. *Price*, 20 Wis. 117; *Logan* v. *Trayser*, 77 Wis. 579; *Bright* v. *Carter*, 117 Wis. 631; *Torbe* v. *Strauss*, 155 Wis. 518.

[3] 2 Cyc. 793; MECHEM ON AGENCY, Sec. 1603 et seq.

[4] POLLOCK'S DIGEST OF PARTNERSHIP, (10th ed.) 82.

[5] BURDICK ON PARTNERSHIP, (3rd ed.) 326; GILMORE ON PARTNERSHIP, 388; LINDLEY ON PARTNERSHIP, (8th ed.) 430; *Morgan* v. *Hodge*, 145 Wis. 151.

[6] *Marsh* v. *Fraser*, 37 Wis. 149; *Shipman* v. *State*, 44 Wis. 458.

[7] 30 Cyc. 699.

[8] *Gilman* v. *Vaughn*, 44 Wis. 646; *Carroll* v. *Little*, 73 Wis. 52; *Green* v. *Stacy*, 90 Wis. 46; *Hart* v. *Hart*, 117 Wis. 639; *Hoff* v. *Hackett*, 148 Wis. 32; *Lemma* v. *Blanding*, 139 Wis. 156.

[9] *Carroll* v. *Little* (*supra*); *Green* v. *Stacy* (*supra*); *Hart* v. *Hart* (*supra*).

[10] *Shields* v. *Fuller*, 4 Wis. 102; *Zimmerman* v. *Chambers*, 79 Wis. 20; *Wipperman* v. *Stacy*, 80 Wis. 345.

Subsection f. Each partner undertakes to devote himself to the firm business; the fact that he has devoted more time and energy to the business than his co-partners does not of itself entitle him to extra compensation. In entering the partnership, he takes the risk that the illness or incapacity of his co-partner will throw on him extra burdens.[11] The clause as phrased would seem to exclude compensation in all cases except where an express or implied agreement is shown. Sir Frederick Pollock in commenting on a similar provision in the English Act[12] observes, "The second branch of it does not prevent a partner from recovering compensation for the extra trouble thrown upon him by a co-partner who has disregarded the first branch by wilful inattention to business." The question of special compensation is fully considered in *Emerson* v. *Durand*,[13] where the plaintiff in an action for an account and dissolution, claimed $2500 per year for his services as the active partner in carrying on the firm's business. The trial court ruled as a matter of law that no compeusation could be allowed. On appeal, the majority of the court allowed compensation on the ground that while there was no express contract, a contract was implied from the circumstances that the plaintiff devoted his entire time to the business, while the defendant acted in an advisory capacity only, his time being fully employed in Chicago as general agent for a large insurance company. Orton, J., dissented from the construction placed on the facts by the majority of the court. The general rule against compensation in the absence of an express or implied contract was also recognized in *Drew* v. *Ferson*.[14]

The provision for reasonable compensation to the surviving partner for his services in winding up the firm changes the general rule, winding up constituting one of the duties incident to the partnership.[15] The English partnership act makes no provision for compensating the surviving partner.[16]

Subsection g. The clause recognizes the *delectus personarum*, one of the fundamentals of partnership law.[17] While the transferee

[11] GILMORE ON PARTNERSHIP, 384; BATES ON PARTNERSHIP, 733.

[12] POLLOCK'S DIGEST OF PARTNERSHIP, 84.

[13] 64 Wis. 111.

[14] 22 Wis. 651.

[15] GILMORE ON PARTNERSHIP, 356; *Rowell* v. *Rowell*, 122 Wis. 1.

[16] 53 and 54 Vict. Chap. 39, Sec. 24, para. 6.

[17] LINDLEY ON PARTNERSHIP (5th ed.) *262, *263; *Rommerdahl* v. *Jackson*, 102 Wis. 444.

of the partner's interest does not become a partner, his rights are recognized elsewhere in the act.[18]

Subsection h. In case of differences between the partners as to ordinary matters in the conduct of the firm's affairs, the majority controls. The same rule is recognized generally in other cases of group action, and is essential to the conduct of business.[19] This provision has been criticised as not providing for the cases where there is an equal division of the partners or where there are but two partners, on which point the authorities are in conflict.[20] The draftsman of the Act replies that "a contract made by one of two partners is not made by a majority and therefore the implication of the section as worded is that such a contract, the third person knowing of the protest, would not be a partnership contract."[21] This interpretation is within the decisions except in those cases involving the receipt of funds due to the firm or the payment of firm obligations.[22] In case of a deadlock, either partner can terminate the partnership agreement at his pleasure, subject to liability for damages if his action is not justified by the co-partner's conduct.[23]

Partnership Books 1724m—16.[24] Partners Must Render Information 1724m—17.[24]

These sections state the universally accepted rule and follow as a necessary consequence from the fiduciary character of the relationship.[25] The provision as to the place where books shall be kept is new, and corresponds to the rule in the case of corporations. Al-

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[18] 1724m—23.

[19] LINDLEY ON PARTNERSHIP, 5th ed., *313; GILMORE ON PARTNERSHIP, 364; POLLOCK'S DIGEST OF PARTNERSHIP, 86.

[20] 28 Harv. Law Rev. 762 at 781.

[21] 29 Harv. Law Rev. 291 at 302.

[22] GILMORE ON PARTNERSHIP, 368; *Bird* v. *Fake*, 1 Pin. 290; *Wipperman* v. *Stacy*, 80 Wis. 345.

[23] 1724m—26, Sec. 2.

[24] 1724m—16. [Partnership Books.] The partnership books shall be kept, subject to any agreement between the partners, at the principal place of business of the partnership, and every partner shall at all times have access to and may inspect and copy any of them.

1724m—17. [Partners Must Render Information.] Partners shall render on demand true and full information of all things affecting the partrership to any partner or the legal representative of any deceased partner or partner under legal disability.

[25] GILMORE ON PARTNERSHIP, 371; LINDLEY ON PARTNERSHIP (5th ed.), *404; PARSONS ON PARTNERSHIP (4th ed.), Sec. 154; *Diamond* v. *Henderson*, 47 Wis. 172; *Knapp* v. *Edwards*, 57 Wis. 191.

though no limitation is placed in terms on the right to inspect and copy books, the partner will be restrained from making use of the information for purposes hostile or injurious to the firm, before and after he has ceased to be a partner.[26]

Partner Accountable as a Fiduciary 1724m—18.[27] The section recognized the salutory rule, applied to agents and trustees generally. Having undertaken to act for a principal, acestui que trust, or a firm, the law requires the complete subservience of the personal advantage of the actor to the interest of the persons beneficially involved.[28] The section not only makes the partner liable, but makes him liable as a trustee, thus enabling his copartners or the firm creditors to enforce a claim against the separate estate of the offending partner, and also to have a priority over his individual creditors in his separate estate in all cases where the misappropriated fund or profit can be traced.[29] The Wisconsin decisions are in accord.[30]

Right to an Account 1724m—19.[31] In general, a formal account is recognized as a necessary step in winding up proceedings.[32]

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[26] POLLOCK'S DIGEST OF PARTNERSHIP, 87. Commenting on a similar provision in the English Act.

[27] 1724m—18. [Partner Accountable as a Fiduciary.] (1) Every partner must account to the partnership for any benefit, and bold as trustee for it any profits derived by him without the consent of the other partners from any transaction connected with the formation, conduct, or liquidation of the partnership or from any use by him of its property.

(2) This section applies also to the representatives of a deceased partner engaged in the liquidation of the affairs of the partnership as the personal representatives of the last surviving partner.

[28] MECHEM ON AGENCY, 2nd ed., Sec. 1188 et seq; PERRY ON TRUSTS, 6th ed., Sec. 209, Sec. 427, note; PARSONS ON PARTNERSHIP, 4th ed., Sec. 158.

[29] BATES ON PARTNERSHIP, Sec. 790 et seq; GILMORE ON PARTNERSHIP, 378; 30 Cyc. 458.

[30] *Jennings* v. *Chandler*, 10 Wis. 21; *Grant* v. *Hardy*, 33 Wis. 668; *Daniels* v. *McCormick*, 87 Wis. 255; *Weirich* v. *Dodge*, 101 Wis. 621; *Jones* v. *Kinney*, 146 Wis. 130.

[31] 1724m—19. [Right to an Account.] Any partner shall have the right to a formal account as to partnership affairs:

(a) If he is wrongfully excluded from the partnership business or possession of its property by his co-partners,

(b) If the right exists under the terms of any agreement,

(c) As provided by section 1724m—18,

(d) or Whenever other circumstances render it just and reasonable.

[32] *Talford* v. *Talford*, 44 Wis. 547; *Knapp* v. *Edwards*, 57 Wis. 191; *Zimmerman* v. *Chambers*, 79 Wis. 20; *Teipner* v. *Teipner*, 135 Wis. 380; *Schmidt* v. *Mertes*, 145 Wis. 468.

The specific provisions for an account, where a party is excluded wrongfully from the firm, or when a partner is charged with breach of a fiduciary duty, in form extends the right, though in practice, the wrongful exclusion or the breach of fiduciary duty is usually the foundation of a suit for dissolution for which the accounting is a prerequisite. As each partner has access to the books of the firm and the right to full information as to partnership affairs under sec. 1724m—20 of the act, the occasion for a formal account under subsection d would be rare.

After a Fixed Term Partnership Continues as a Partnership at Will 1724m—20.[33] After the date fixed for the termination is passed, if the business is continued, the rights of the partners are presumably governed by the original agreement, except that any partner can terminate the partnership at pleasure without liability.[34]

Property Rights of a Partner 1724m—21.[35] This section deals with one of the most confused topics in partnership law, a confusion due to uncertainty as to the nature of a partuership and of a partner's interest therein. Under the entity or continental view of a partnership, the question is disposed of in substantially the same way, as the common law disposes of a stockholder's interest in the property of a corporation, and for a similar reason;

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[33] 1724m—20. [After Fixed Term Partnership Continues as Partnership, at Will.] (1) When a partnership for a fixed term or particular undertaking is continued after the termination of such term or particular undertaking without any express agreement, the rights and duties of the partners remain the same as they were at such termination, so far as is consistent with a partnership at will.

(2) A continuation of the business by the partners or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is *prima facie* evidence of a continuation of the partnership.

[34] GILMORE ON PARTNERSHIP, 570; BATES ON PARTNERSHIP, Sec. 571; LINDLEY ON PARTNERSHIP, 5th ed., *122.

[35] 1724m—21. [Property Rights of a Partner.] (1) The property rights of a partner are his rights in specific partnership property, his interest in the partnership, and his right to participate in the management.

(2) A partner is co-owner with his partners of specific partnership property holding as a tenant in partnership.

(3) The incidents of this tenancy are such that:

(a) A partner, subject to the provisions of this act and to any agreement between the partners, has an equal right with his partners to possess specific partnership property for partnership purposes; but he since if the firm is an entity, the property belongs to it, and the partner has neither title to the property nor power by assignment or otherwise, to give to third persons any direct interest in it. Since the common law did not accept the entity theory, but regarded the partners as joint tenants in the firm property, it was found difficult to hold that joint tenants in partnership stood on a different footing as to their interest and control, than joint tenants who were not partners. The equity courts at once began to engraft limitations on the common law incidents of joint tenancy. The incident of survivorship, the most characteristic feature of joint tenancy, was held not to apply to the beneficial interest, when the joint tenants were partners.[36] The right of each joint tenant to convey his undivided interest to third persons was limited not merely as to those taking with notice of the partnership, but absolutely. This was accomplished by means of a legal fiction, the doctrine of out and out conversion, by which the law treated all firm property as personalty, and subject to firm debts, the partner's only right in equity being to have an account, and a payment in money of any balance found in his favor after the payment of firm obligations.[37] The American courts reach the same result, though a majority of them have not accepted the doctrine of out and out conversion, but hold that the real estate of the firm is converted only to the extent necessary to pay firm obligations, the remainder being

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has no right to possess such property for any other purpose without the consent of his partners.

(b) A partner's right in specific partnership property is not assignable except in connection with the assignment of rights of all the partners in the same property.

(c) A partner's right in specific partnership property is not subject to attachment or execution, except on a claim against the partnership. When partnership property is attached for a partnership debt the partners, or any of them, or the representatives of a deceased partner, cannot claim any right under the homestead or exemption laws.

(d) On the death of a partner his right in specific partnership property vests in the surviving partner or partners, except where the deceased was the last surviving partner, when his right in such property vests in his legal representative. Such surviving partner or partners, or the legal representative of the last surviving partner, has no right to possess the partnership property for any but a partnership purpose.

(e) A partner's right in specific partnership property is not subject to dower, courtesy, or allowances to widows, heirs, or next of kin.

[36] Co. Litt. 182a. *Jeffereys* v. *Small*, 1 Vern. 217.

[37] LINDLEY ON PARTNERSHIP, 8th ed., 816; GILMORE ON PARTNERSHIP, 154.

treated as realty to be divided by partition proceedings at the suit of a partner or his representatives.[38] The doctrine of partial conversion results in a marshalling of firm property in much the same way as real and personal property is marshalled in settling the estate of a deceased person.[39]

Another consequence of the doctrine is the recognition of a right to dower by the widow of a deceased partner in the undivided interest of her hnsband in the residue of the firm realty,[40] a right denied in all jurisdictions adopting the theory of an out and out conversion. American courts have also recognized the right to exemptions to individual partners under exemption statutes, where property is seized under an exeeution, either at the suit of firm or individual creditors. The possibility of such a ruling is again due to the common law conception of a partnership, and the application of the same rule to partners as to other joint tenants.[41] Creditors of individual partners by similar reasoning were permitted to reach their debtor's interest in the firm by seizure of the firm's property under an execution, the purchaser at the sale obtaining not the title of the debtor in the specific property seized, but his interest in the partnership, subsequently determined by an account. The seizure of the firm assets was symbolical only, a means of reaching the right of the partner to an account and the proceeds, a right that could not be seized under a common law execution.[42]

The provisions of this section compared to the rights of a partner in firm property, and its assignment and seizure under an execution or attachment, as worked out by equity, show that the changes affected are mainly in form and not of substance.[43] The incidents of a tenancy in partnership are the ineidents already engrafted by courts of equity on joint tenancy, where the tenants are partners. Subsection e abolishing dower, etc. indicates a change in those jurisdictions that have accepted the doctrine of partial conversion. The English courts and the minority of American decisions following the English rule of out and out conver-

[38] GILMORE ON PARTNERSHIP, 155; BURDICK ON PARTNERSHIP, 3rd ed. 107.

[39] See note 38.

[40] BURDICK ON PARTNERSHIP, 3rd ed., 109; GILMORE ON PARTNERSHIP, 165.

[41] BURDICK ON PARTNERSHIP, 3rd ed., 112; GILMORE ON PARTNERSHIP, 409.

[42] BURDICK ON PARTNERSHIP, 3rd ed., 270; LINDLEY ON PARTNERSHIP, 8th ed., 418; GILMORE ON PARTNERSHIP, 411.

[43] 29 Har. L. Rev. 291 at 292.

sion, have never recognized these rights. In this connection, it is of interest to note that the English partnership act reaches the same result sought by the phrasing of the uniform act by adopting the out and out conversion theory of the equity courts.[44]

Subsection d changes the rule accepted by most courts, but again it is a change in form, since it vests the title of all the property of the firm in the surviving partners irrespective of whether it is personalty or realty. This was the common law rule, where the legal title stood in the names of all the partners. In many jurisdictions, Wisconsin among the number, as a result of legislation making persons holding under a common title and conveyance, tenants in common rather than joint tenants, the undivided interest in real estate passed to his heirs on the death of a partner,[45] subject of course to the surviving partner's right to have the property applied to firm debts. This clause makes the legal title to real estate survive as has always been the rule in the case of personal property.

The Wisconsin courts have followed the majority American rule as to partial conversion,[46] and have allowed the individual partners statntory exemptions where the property was severable.[47] On the question of the right of an individual creditor of a partner to attach firm property, the court in *Brande* v. *Bond*[48] observes, after discussing the uncertainty of the partner's interest prior to an aceount, "In view of these considerations, and others which might be suggested, it is exceedingly doubtful, whether the law should allow the partnership property to be attached or garnished at the

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[44] 53 and 54 Vict. c. 39 Sec. 22. Where land or any heritable interest therein has become partnership property, it shall unless the contrary intention appears be treated as betweeu the partners (including the representatives of the deceased partner), and also as between the heirs of the deceased partner and his executors and administrators, as personal or movable and not real or heritable estate.

[45] Wis. Stats., Sec. 2068.

[46] *Pierce* v. *Covert*, 39 Wis. 252; *Martin* v. *Morris*, 62 Wis. 418; *Kruschke* v. *Stefan*, 83 Wis. 373; *Kyle* v. *Carpenter*, 130 Wis. 310.

[47] *Gilman* v. *Williams*, 7 Wis. 329; *Wright* v. *Pratt*, 31 Wis. 99; *Russell* v. *Lennon*, 39 Wis. 570; *O'Gorman* v. *Finke*, 57 Wis. 649; *Gall* v. *Hubbell*, 61 Wis. 293;*First National Bank* v. *Hackett*, 61 Wis. 335; *McNair* v. *Rewey*, 62 Wis. 167; *First National Bank* v. *Baker*, 68 Wis. 442; *Severson* v. *Porter*, 73 Wis. 70; *Ladwig* v. *Williams*, 87 Wis. 615; *Bong* v. *Parmentier*, 87 Wis. 129; *Lamont* v. *Wooton*, 88 Wis. 107; *In re Ellenbecker*, 205 Fed. 396; *In re Camp*, 91 Fed. 745; *In re Frederick*, 95 Fed. 283.

[48] 63 Wis. 140.

suit of a creditor of one of the partners, before the partnership affairs are settled, and it is made to appear that such partner had an interest in the partnership funds, which can be applied to the payment of his individual debts.'' The decision went off on another point.

In *Powers* v. *Large*,[49] the court inferentially recognizes the propriety of the attachment of firm property on a judgment against an individual partner, but decides that an attaching creditor of the firm who attaches prior to the sale under the individual creditor's execution, is entitled to the proceeds of the sale. It is intimated, however, if the firm creditor's attachment had been made after the sale, his right would have been cut off; yet if the sale only disposed of the partner's interest in the firm, which is the view generally accepted, it is difficult to see how the sale could affect the rights of the firm creditor.

The decisions recognize the prevailing rule as to the legal and equitable rights of the surviving partner to the firm property.[50]

Partner's Interest in the Partnership 1724m—22[51]. The preceding sections dealing with the incidents of tenancy in partnership, assignability, and dower, obviously lead to the definition of a partner's interest as set out in this section.

Assignment of a Partner's Interest 1724m—23.[52] A preceding section (1724m—21 Par. b) forbids the assignment of a part-

[49] 69 Wis. 621.

[50] *Shields* v. *Fuller*, 4 Wis. 102; *Jennings* v. *Chandler*, 10 Wis. 21; *Rogers* v. *Brightman*, 10 Wis. 55; *Roys* v. *Vilas*, 18 Wis. 169; *Sherman* v. *Kreul*, 42 Wis. 33; *Logan* v. *Dixon*, 73 Wis. 533; *Logan* v. *Trayser*, 77 Wis. 579; *Weld* v. *Johnson Mfg. Co.*, 86 Wis. 552; *Sweet* v. *Davis*, 90 Wis. 409; *Shearer* v. *Browne*, 102 Wis. 585; *Rowell* v. *Rowell*, 122 Wis. 1; *Stehn* v. *Hayssen*, 124 Wis. 583; *Davis* v. *Davis*, 137 Wis. 640.

[51] 1724m—22. [Partner's Interest in the Partnership.] A partner's interest in the partnership is his share of the profits and surplus, and the same is personal property.

[52] 1724m—23. [Assignment of Partner's Interest.] (1) A conveyance by a partner of his interest in the partnership does not of itself dissolve the partnership, nor, as against the other partners in the absence of agreement, entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs, or to require any information or account of partnership transactions, or to inspect the partnership books; but it merely entitles the assignee to receive in accordance with his contract the profits to which the assigning partner would otherwise be entitled.

(2) In case of a dissolution of the partnership, the assignee is en-

ner's interest in specific firm property. This section recognizes the right of the partner to assign his interest in the partnership, a right which, as the discussion under 1724m—21 points out, was always recognized by the courts of equity; indeed it is held by the great weight of authority that an assignment purporting to transfer the individual interest of the partner in specific property, passed only the right to any surplus shown to be due the assigning partner on an account, the rule being the same whether the assignment was voluntary or involuntary. This section adopts the equity rule with additional provisions concerning the rights and powers of the assignee about which the authorities have not been in accord.[53]

These restrictions apparently make the assignee's rights strictly subservient to the rights of the firm, with no rights to force a settlement of his interest, except on a winding up of the firm in due course. Since an assignment does not operate as a dissolution, the assignee is not in as favorable a position as his assignor, who under subsequent provisions of the Act,[54] can force a dissolution at any time regardless of the provisions of the partnership agreement.

Partner's Interest Chargeable as such with Judgment Lien 1724m—24.[55] The preceding section deals with the rights of an

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titled to receive his assignor's interest and may require an account from the date only of the last account agreed to by all the partners.

[53] PARSONS ON PARTNERSHIP, 4th ed., Sec. 305; GILMORE ON PARTNERSHIP, 75, 578; LINDLEY ON PARTNERSHIP, 8th ed., 660; *Noonan* v. *McNab*, 30 Wis. 277.

[54] 1724m—26, Sec. 2.

[55] 1724m—24. [Partner's Interest Chargeable as Such With Judgment Lien.] (1) On due application to a competent court by any judgment creditor of a partner, the court which entered the judgment, order, or decree, or any other court, may charge the interest of the debtor partner with payment of the unsatisfied amount of such judgment debt with interest thereon; and may then or later appoint a receiver of his share of the profits, and of any other money due or to fall due to him in respect of the partnership, and make all other orders, directions, accounts and inquiries which the debtor partner might have made, or which the circumstances of the case may require.

(2) The interest charged may be redeemed at any time before foreclosure, or in case of a sale being directed by the court may be purchased without thereby causing a dissolution:

(a) With separate property, by any one or more of the partners, or

(b) With partnership property, by any one or more of the partners assignee under a voluntary assignment. The present section copied from the English Act[56] is designed to afford a means of reaching the partner's interest in the firm by a judgment creditor of a partner. It does away with the cumbersome method of attachment and sale of specific partnership property under the guise of which the partner's interest in the firm was disposed of. It will be observed that such an order does not give the creditor in whose favor the order is made any greater rights against the other partners or the firm than the partner himself enjoyed. On the other hand, the other partners can redeem the interest subjected to the order with firm or individual funds. The Commissioners on Uniform State Laws adopted the term charging order; the Act as adopted uses the term judgment lien, which may be significant, in view of the ruling of the English court that a charging order is not an execution protected by the Bankruptcy Act nor a transaction protected by another section of the same Act.[57] Hence, if a receiving order is made against a judgment debtor upon an act of bankruptcy committed prior to the charging order, the title to the trustee in bankruptcy will prevail over that of the judgment creditor.[58]

The provision of subsection 3, that nothing in the Act shall deprive the partner of his right, if any, under the exemption laws is interpreted by the draftsman as saving to the partner his right to exemption, if the interest in the partnership is attached for his separate debt.[59]

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with the consent of all the partners whose interests are not so charged or sold.

(3) Nothing in this act shall be held to deprive a partner of his right, if any, under the exemption laws, as regards his interest in the partnership.

[56] 53 and 54 Vict. c. 39 Sec. 23.

[57] *Re Hutchinson* 16 Q. B. D. 515; *Wild* v. *Southwood,* (1897) 1 Q. B. 317; *O'Shea's Settlement,* (1895) 1 Ch. 325.

[58] Lindley on Partnership, 8th ed., 418–422.

[59] Uniform Partnership Act Pamphlet, Draftsman's Note Sec. 25 (c).