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## The Uniform Partnership Act and Its Effect Upon the West Virginia Decisions and Statutes

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THE UNIFORM PARTNERSHIP ACT AND ITS EFFECT  
UPON THE WEST VIRGINIA DECISIONS AND  
STATUTES.

By J. R. TROTTER\*

The primary purpose in the annotation of the Uniform Partnership Act is to indicate briefly the changes its adoption would bring about in the law of West Virginia. To this end no attempt has been made to give all the citations; and on those sections on which there seem to be no state decisions at all comments have been made only when it seemed necessary.

The committee on Commercial Law of the Commissioners on Uniform State Laws of the American Bar Association has been at work on this Act for eighteen years. It has had the assistance in its preparation of practically all the leading teachers of, and writers on, partnership, as well as other lawyers who have made a special study of the subject. Dean James Barr Ames of Harvard University was secured in 1903 as an expert to draft the Act upon the mercantile theory. On the death of Dean Ames in 1910 the work was continued by Dean Wm. Draper Lewis of the University of Pennsylvania who, with the aid of the various drafts and notes of Dean Ames prepared a draft, the third, of the Act on the so-called entity or mercantile idea. He expressed his belief, however, that, with certain modifications, the aggregate or common-law theory should be adopted. The committee acting on this suggestion requested Dean Lewis to prepare a draft of a Partnership Act on the so-called common-law theory. After several drafts were prepared and presented to the Commissioners and by them referred back to the committee with suggestions of changes, the committee finally in 1914 presented the Act in its present form to the Commissioners who passed a resolution, recommending the Act for adoption, to the legislatures of all the states. The Act has been adopted in Idaho, Illinois, Maryland, Michigan, New Jersey, New York, Pennsylvania, Tennessee, Wisconsin and Wyoming.

The objection usually offered against the adoption of the various

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uniform acts that they would work changes in the law as already announced has but little weight in West Virginia so far as the Uniform Partnership Act is concerned, as we have scarcely any statutory provisions governing ordinary partnerships and remarkably few decisions. The benefits to be had from its adoption are many. It will make the law uniform; it will state it in compendious form in which it will be susceptible of easier reference and more exact determination; it will settle uncertain questions of law without costly litigation.<sup>1</sup>

Up to the present time three of the uniform laws have been adopted in this state: The Uniform Negotiable Instruments Act, enacted in 1907; The Uniform Warehouse Receipts Act, enacted in 1917; and The Uniform Family Desertion Act, enacted in 1917.

## AN ACT TO MAKE UNIFORM THE LAW OF PARTNERSHIPS

### PART I.

#### PRELIMINARY PROVISIONS

SECTION 1. ]Name of Act.[ This act may be cited as Uniform Partnership Act.

SEC. 2. [Definition of Terms.] In this act, "Court" includes every court and judge having jurisdiction in the case.

"Business" includes every trade, occupation, or profession.

"Person" includes individuals, partnership, corporations, and other associations.

"Bankrupt" includes bankrupt under the Federal Bankruptcy Act or insolvent under any state insolvent act.

"Conveyance" includes every assignment, lease, mortgage, or encumbrance.

"Real property" includes land and any interest or estate in land.

SEC. 3. [Interpretation of Knowledge and Notice.] (1) A person has "knowledge" of a fact within the meaning of this act not only when he has actual knowledge thereof, but also when he has knowledge of such other facts as in the circumstances shows bad faith.

(2) A person has "notice" of a fact within the meaning of this act when the person who claims the benefit of the notice.

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<sup>1</sup> See Samuel Williston, "The Uniform Partnership Act, with Some Remarks on Other Uniform Commercial Laws", 63 UNIV. PA. L. REV. 169.

(a) States the fact to such person, or

(b) Delivers through the mail, or by other means of communication, a written statement of the fact to such person or to a proper person at his place of business or residence.

SEC. 4. [Rules of Construction.] (1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this act.

(2) The law of estoppel shall apply under this act.

(3) The law of agency shall apply under this act.

(4) This act shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact it.

(5) This act shall not be construed so as to impair the obligations of any contract existing when the act goes into effect, nor to affect any action or proceedings begun or right accrued before this act takes effect.

SEC. 5. [Rules for Cases not Provided for in this Act] In any case not provided for in this act the rules of law and equity, including the law merchant, shall govern.

## PART II.

### NATURE OF A PARTNERSHIP

SECTION 6. [Partnership Defined.] (1) A partnership is an association of two or more persons to carry on as co-owners a business for profit.

This is the general rule and is followed in this state. *Setzer v. Beale*, 19 W. Va. 274; *Hi Williamson & Co. v. Nigh*, 58 W. Va. 629, 53 S. E. 124; *Murphy v. Fairweather*, 72 W. Va. 14, 77 S. E. 321; *Taylor v. Teter et al*, 75 W. Va. 217, 83 S. E. 906; *Duffield v. Reed*, 99 S. E. 481 (W. Va.). As to authority of a corporation to enter into partnership relation see *Wilson et al. v. Carter Oil Co.*, 46 W. Va. 469, 33 S. E. 249.

(2) But any association formed under any other statute of this state, or any statute adopted by authority, other than the authority of this state, is not a partnership under this act, unless such association would have been a partnership in this state prior to the adoption of this act; but this act shall apply to limited partnerships except in so far as the statutes relating to such partnerships are inconsistent herewith.

SEC. 7. [Rules for Determining the Existence of a Partnership.] In determining whether a partnership exists, these rules shall apply:

(1) Except as provided by Section 16 persons who are not partners as to each other are not partners as to third persons.

(2) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not of itself establish a partnership, whether such co-owners do or do not share any profits made by the use of the property.

Accord, *Mankin v. Jones*, 68 W. Va. 422, 69 S. E. 981.

(3) The sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived.

This is the rule in West Virginia. *Tyler v. Teter*, *supra*.

(4) The receipt by a person of a share of the profits of a business is *prima facie* evidence that he is a partner in the business, but no such inference shall be drawn if such profits were received in payment:

(a) As a debt by installments or otherwise,

The subsection makes no departure from the law as laid down in *Dils' Admr. v. Bridge et al.*, 23 W. Va. 20.

(b) As wages of an employee or rent to a landlord,

This is the general rule and is followed in *Sodiker v. Applegate*, 24 W. Va. 411.

(c) As an annuity to a widow or representative of a deceased partner,

(d) As interest on a loan, though the amount of payment vary with the profits of the business,

(e) As the consideration for the sale of a good-will of a business or other property by installments or otherwise.

Subsections (c), (d), and (e) follow the general rule. No decisions in West Virginia.

SEC. 8. [Partnership Property.] (1) All property originally brought into the partnership stock or subsequently acquired by purchase or otherwise, on account of the partnership, is partnership property.

(2) Unless the contrary intention appears, property acquired with partnership funds is partnership property.

*Snyder v. Lumsford*, 9 W. Va. 223. Real estate acquired for partnership with partnership funds though deeded to individuals is partnership property. *Scott & Callaway v. Dixie Ins. Co.*, 70 W. Va. 533, 74 S. E. 659.

(3) Any estate in real property may be acquired in the partnership name. Title so acquired can be conveyed only in the partnership name.

This is a change in the existing law, it being held in practically all jurisdictions that a firm or partnership, as such, cannot hold legal title to real estate.

(4) A conveyance to a partnership in the partnership name, though without words of inheritance, passes the entire estate of the grantor unless a contrary intent appears.

Where any real estate is conveyed, devised, or granted to any person without any words of limitation, such devise, conveyance, or grant shall be construed to pass the fee simple or the whole estate or interest which the testator or grantor had power to dispose of in such real estate, unless a contrary intention shall appear by the will, conveyance or grant. W. VA. CODE, c. 71, § 8.

### PART III

#### RELATIONS OF PARTNERS TO PERSONS DEALING WITH THE PARTNERSHIP.

SECTION 9. [Partner Agent of Partnership as to Partnership Business.] (1) Every partner is an agent of the partnership for the purpose of its business, and the act of every partner, including the execution in the partnership name of any instrument, for apparently carrying on in the usual way the business of the partnership of which he is a member binds the partnership, unless the partner so acting has in fact no authority to act for the partnership in the particular matter, and the person with whom he is dealing has knowledge of the fact that he has no such authority.

This is the law in West Virginia. *Duffield v. Reed*, 99 S. E. 481 (W. Va.)

(2) An act of a partner which is not apparently for the carrying on of the business of the partnership in the usual way does not bind the partnership unless authorized by the other partners.

(3) Unless authorized by the other partners or unless they have abandoned the business, one or more but less than all the partners have no authority to:

(a) Assign the partnership property in trust for creditors or to the assignee's promise to pay the debts of the partnership,

In Virginia and West Virginia a resident partner who has control of the partnership may make an assignment binding on the partnership if his partner resides outside the state, though it does not seem that this power is limited when his absent partner has abandoned the business. *McCullough*

v. *Summerville*, 8 Leigh 415 (Va.); *Forkner v. Stewart*, 6 Gratt. 197 (Va.); *Scruggs v. Burruss*, 25 W. Va. 670; *Williams v. Gillespie*, 30 W. Va. 586, 5 S. E. 210.

(b) Dispose of the good-will of the business,

(c) Do any other act which would make it impossible to carry on the ordinary business of a partnership,

(d) Confess a judgment,

(e) Submit a partnership claim or liability to arbitration or reference.

(4) No act of a partner in contravention of a restriction on authority shall bind the partnership to persons having knowledge of the restriction.

SEC. 10. [Conveyance of Real Property of the Partnership.]

(1) Where title to real property is in the partnership name, any partner may convey title to such property by a conveyance executed in the partnership name; but the partnership may recover such property unless the partner's act binds the partnership under the provisions of paragraph (1) of Section 9, or unless such property has been conveyed by the grantee or a person claiming through such grantee to a holder for value without knowledge that the partner, in making the conveyance, has exceeded his authority.

(2) Where title to real property is in the name of the partnership, a conveyance executed by a partner, in his own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of paragraph (1) of Section 9.

(3) Where title to real property is in the name of one or more but not all the partners, and the record does not disclose the right of the partnership, the partners in whose name the title stands may convey title to such property, but the partnership may recover such property if the partners' act does not bind the partnership under the provisions of paragraph (1) of Section 9, unless the purchaser or his assignee, is a holder for value, without knowledge.

(4) Where the title to real property is in the name of one or more or all the partners, or in a third person in trust for the partnership, a conveyance executed by a partner in the partnership name, or in his own name, passes the equitable interest of the partnership, provided the act is one within the authority

of the partner under the provisions of paragraph (1) of Section 9.

(5) Where the title to real property is in the names of all the partners a conveyance executed by all the partners passes all their rights in such property.

SEC. 11. [Partnership Bound by Admission of Partner.] An admission or representation made by any partner concerning partnership affairs within the scope of his authority as conferred by this act is evidence against the partnership.

The Virginia decisions hold that the admissions of one partner, made after the dissolution of the firm are not binding on the other partners. *Shelton v. Cooke*, 3 Munf. 191 (Va.). They are binding if the admission is made in connection with the winding up of the partnership business. *Garland v. Ager's Admr.*, 7 Leigh 362 (Va.).

SEC. 12. [Partnership Charged with Knowledge of or Notice to Partner.] Notice to any partner of any matter relating to partnership affairs, and the knowledge of the partner acting in the particular matter, acquired while a partner or then present to his mind, and the knowledge of any other partner who reasonably could and should have communicated it to the acting partner, operate as notice to or knowledge of the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

SEC. 13. [Partnership Bound by Partner's Wrongful Act.] Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership or with the authority of his co-partners, loss or injury is caused to any person, not being a partner in the partnership, or any penalty is incurred, the partnership is liable therefor to the same extent as the partner so acting or omitting to act.

Followed in *Reynolds v. Waller's Heirs*, 1 Wash. 207 (Va.); *Brown's Exr. v. Higginbotham*, 5 Leigh 583 (Va.); *Citizen's Nat. Bank of Parkersburg v. Blizzard*, 80 W. Va. 511, 93 S. E. 338.

SEC. 14. [Partnership Bound by Partner's Breach of Trust.] The partnership is bound to make good the loss:

(a) Where one partner acting within the scope of his apparent authority receives money or property of a third person and misapplies it; and

(b) Where the partnership in the course of its business receives money or property of a third person and the money

or property so received is misapplied by any partner while it is in the custody of the partnership.

SEC. 15. [Nature of Partner's Liability.] All partners are liable

(a) Jointly and severally for everything chargeable to the partnership under Section 13 and 14.

This is the universal rule as to tort liability.

(b) Jointly for all other debts and obligations of the partnership; but any partner may enter into a separate obligation to perform a partnership contract.

The general rule in this state seems to be that partners are liable jointly, not jointly and severally. W. VA. CODE, c. 125, §§ 17, 52. But if one partner die the debts and obligations become joint and several. W. VA. CODE, c. 99 § 13. Note, however, that W. VA. CODE, c. 121, § 7, allows motion for judgment against one or all of joint defendants but evidently plea in abatement will be allowed for non-joinder.

SEC. 16. [Partner by Estoppel.] (1) When a person, by words spoken or written or by conduct, represents himself, or consents to another representing him to any one, as a partner in an existing partnership or with one or more persons not actual partners, he is liable to any such person to whom such representation has been made, who has, on the faith of such representation, given credit to the actual or apparent partnership, and if he has made such representation or consented to its being made in a public manner he is liable to such person, whether the representation has or has not been made or communicated to such person so giving credit by or with the knowledge of the apparent partner making the representation or consenting to its being made.

(a) When a partnership liability results, he is liable as though he were an actual member of the partnership.

(b) When no partnership liability results, he is liable jointly with the other persons, if any, so consenting to the contract or representation as to incur liability, otherwise separately.

This section clears up some doubts and confusions of our existing law though the points have never been passed upon in this state. The section provides that to be liable one must hold himself out or consent to the holding and that consent is a matter of fact. Under some of the decisions he would be liable if he knew that he is being held out as a partner unless he prevent such holding out.

In *Moore v. Harper*, 42 W. Va. 39, 24 S. E. 633, and in *Waldron v. Hughes*, 44 W. Va. 126, 29 S. E. 505, the general rule is laid down that one who holds himself out as a partner will be held liable as a partner to any person who relying on such holding out gave credit to the firm.

The section also provides that when on partnership results, that is, if A holds himself out as a partner of B who is in business by himself, without the consent of B, those who rely on the statement of A will not thereby gain priority on the property in the business over the creditors of B who trusted only B.

(2) When a person has been thus represented to be a partner in an existing partnership, or with one or more persons not actual partners, he is an agent of the persons consenting to such representation to bind them to the same extent and in the same manner as though he were a partner in fact, with respect to persons who rely upon the representation. Where all the members of the existing partnership consent to the representation, a partnership act or obligation results; but in all other cases it is the joint act or obligation of the person acting and the persons consenting to the representation.

SEC. 17. [Liability of Incoming Partner.] A person admitted as a partner into an existing partnership is liable for all the obligations of the partnership arising before his admission as though he had been a partner when such obligations were incurred, except that this liability shall be satisfied only out of partnership property.

Ordinarily when a new partner is admitted the result is a new partnership and the property received from the old firm becomes the property of the new firm, and as such is subject to the prior claims of the creditors of the new firm. This section makes the property subject to the claims of existing and of subsequent creditors, that is to say, of the creditors of the old firm and the creditors of the new firm.

## PART IV

### RELATIONS OF PARTNERS TO ONE ANOTHER

SECTION 18. [Rules Determining 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.

The West Virginia authorities are in accord. *McCormick v. Bailey*, 17

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W. Va. 585 (*dictum*); *Gore v. Vines*, 72 W. Va. 783, 79 S. E. 820; *Fouse v. Shelley*, 64 W. Va. 25, 63 S. E. 208; *Cole v. Moxley*, 12 W. Va. 730; *Demaine v. Houston*, 70 W. Va. 306, 73 S. E. 923.

(b) The partnership must indemnify every partner in respect of payments made and personal liabilities reasonably incurred by him in 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.

This paragraph settles what has heretofore been in doubt. Perhaps the weight of authority is that, it being impossible until an accounting is had to determine whether the partner making an advance is a debtor or a creditor, no interest will be allowed. On the other hand some courts hold that advances are loans and interest should be allowed.

(d) A partner shall receive interest on the capital contributed by him only from the date 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 remuneration for acting in the partnership business, except that a surviving partner is entitled to reasonable compensation for his services in winding up the partnership affairs.

*Patton's Exrs. v. Calhoun's Exrs.*, 4 Gratt. 138 (Va.), holds that a surviving partner is not entitled to compensation for settling up the business of the firm, "but the tendency is to deal with such questions on their particular circumstances, rather than by absolute rules." *Thayer v. Badger*, 171 Mass. 279, 50 N. E. 541. It is held as to a going concern that no partner is entitled to remuneration. *Roots v. Mason City Salt & Mining Co.*, 27 W. Va. 483; *Hyre v. Lambert*, 37 W. Va. 26, 16 S. E. 446; *Smith v. Brown*, 44 W. Va. 342, 30 S. E. 160; *Gay v. Householder*, 71 W. Va. 277, 76 S. E. 450.

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

This represents the West Virginia law. *Setzer v. Beale et al.*, 19 W. Va. 274.

(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 consent of all the partners.

This seems to be the common law. It is generally held that in a firm of two members each has the same authority as the other in transactions within the scope of the business and there is no reason to suppose that the judgment of one should control the judgment of the other.

In a firm of more than two members, the majority will control in all matters within the scope of the business but the majority has no such power in matters beyond the scope of the firm business. Indeed in such matters one partner may block all the others be they ever so numerous.

SEC. 19. [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.

This states the general rule. *Benedetto v. Di Bacco et al.*, 83 W. Va. 620, 99 S. E. 170.

SEC. 20. [Duty of Partners to Render Information.] Partners shall render on demand true and full information of all things affecting the partnership to any partner or the legal representative of any deceased partner or partner under legal disability.

This is the general rule.

SEC. 21. [Partner Accountable as a Fiduciary.] (1) Every partner must account to the partnership for any benefit, and hold 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.

There has been some doubt as to whether a partner under such circumstances was a trustee or only a debtor. This section removes the doubt and follows the decisions in this state. *McKinley v. Lynch*, 58 W. Va. 44, 51 S. E. 4; *Newcomb v. Brooks*, 16 W. Va. 32; *Fouse v. Shelley*, *supra*, *Marshall v. Anderson et al.*, 80 W. Va. 228, 92 S. E. 421; *Teter v. Moore*, 80 W. Va. 443, 98 S. E. 342.

SEC. 22. [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 21,

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

This does not seem to change the law as generally understood unless it be in subsection (d), and in this provision there might be some difficulty in determining when it would be just and reasonable.

SEC. 23. [Continuation of Partnership Beyond Fixed Term.]

(1) When a partnership for a fixed term or particular undertaking is continued after the termination of such terms 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.

This is a statement of the general rule.

PART V

PROPERTY RIGHTS OF A PARTNER

SECTION 24. [Extent of Property Rights of a Partner.] The property rights of a partner are (1) his rights in specific partnership property, (2) his interest in the partnership, and (3) his right to participate in the management.

SEC. 25. [Nature of a Partner's Right in Specific Partnership Property.]

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

(2) 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 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.

It is now universally held that partners are co-owners of the firm property and of each separate, specific part of the property. The early courts declared that partners were joint tenants, and that all the legal incidents of joint tenancy attached to the firm property. As many of these incidents have no bearing on the partnership relation the courts have attempted to escape the results of applying the legal incidents of joint tenancy to partnership affairs with the result that the subject is very greatly confused. Subsections 2 (a) and (b) state rules generally recognized, but subsection (c) clears up much confusion. The difficulty heretofore has been to know the rights and duties of an officer under an attachment issued in a suit against a partner. In some jurisdictions he must not seize any firm property for he would be thereby guilty of a trespass against the other partner, who owned a moiety of all the goods, and a moiety of a moiety. In other jurisdictions he must seize part, and in still other he must seize all. As early as *Garrard & Co. v. Henry & Co.*, 6 Munf. 110 (Va.) it was held that the officer must seize all the goods and sell a moiety thereof undivided, and the purchaser becomes a joint owner with the other partner. This, of course, leaves the property subject to the so-called partner's lien, and in effect means that the purchaser acquires the interest of the partner after the debts of the partnership are paid. In this state a debt due the partnership cannot be suggested on a suit against an individual partner. *Lacy v. Greenlee*, 75 W. Va. 517, 84 S. E. 921. It seems that *Garrard & Co. v. Henry & Co.*, *supra*, is the only case on attachment of tangible assets, but *Lacy v. Greenlee*, *supra*, is not *contra*, it applying only to suggestion of intangible property.

But a judgment creditor of a separate partner may levy on and sell his debtor's interest in partnership property as that interest is defined in Section 26. *Kenneweg v. Schilousky et al.*, 45 W. Va. 521, 31 S. E. 949.

As the partnership property is devoted first to payment of firm debts and the residue is then applicable to individual debts it necessarily follows and is universally held that no rights may be claimed by a partner or his representative in partnership property under homestead or exemption laws.

But if a partner's interest in the partnership is attached for his separate debts he has a right to claim exemption.

(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.

This does not change the general rule.

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

This is the rule in the Virginias. *Pierce's Admr. v. Trigg's Heirs*, 10 Leigh 406 (Va.); *Martin v. Smith*, 25 W. Va. 579.

SEC. 26. [Nature of 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.

SEC. 27. [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 entitled 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.

Practically all the authorities hold that mere assignment of his interest by a partner dissolves the partnership. In *Conrad v. Buck*, 21 W. Va. 396, 407, R. made an assignment for benefit of his creditors. This was held to dissolve the firm. But as an assignment may be by way of collateral security for a loan it is evident that there is not always an intention to dissolve the partnership. The sale of a partner's interest also is universally held to dissolve the partnership. *Ballard v. Callison*, 4 W. Va. 326. This section therefore seems to change the existing law completely. It provides that the purchaser of a partner's interest does not step into his vendor's shoes in the management but simply stands by and receives his share of the profits.

SEC. 28 [Partner's Interest Subject to Charging Order.] (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 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.

This section states specifically the method of proceeding against a partner's interest and avoids all the uncertainty about attaching or levying on specific property. See Section 25 (c) above.

Subsection (3) Holds that after firm debts are paid a partner may claim his rights under exemption laws against his individual creditor.

*(To Be Continued).*