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PARTNERSHIP — ATTACHMENT OF PARTNERSHIP PROPERTY — CONSTRUCTION OF SECTIONS 25(2) AND 28(1) OF UNIFORM PARTNERSHIP ACT — A judgment creditor of a separate partner issued an attachment execution thereon, seeking to attach particular partnership property and summoning the partners as garnishees. The partnership was a going concern and there had been no settlement of partnership accounts or money lent by the debtor member to the partnership. *Held*, the interest of the separate partner in specific firm property was not subject to attachment execution under the Uniform Partnership Act; the court intimated that a petition for a charging order was the proper procedure. *Northhampton Brewery Corp. v. Laude*, 133 Pa. Super. 181, 2 A. (2d) 553 (1938).[1]

The decision seems to be in accord with the weight of authority[2] and falls squarely within the letter and spirit of sections 25(2) and 28(1) of the Uniform Partnership Act.[3] Section 25(2-c) provides that, "A partner's right in specific partnership property is not subject to attachment or execution, except on a claim against the partnership." The proper procedure for reaching a separate partner's interest is set out in section 28(1) as follows: "On due application to a competent court by any judgment creditor of a partner, the court . . . may

[1] Noted in 23 MINN. L. REV. 539 (1939).

[2] The pertinent portions of the Uniform Partnership Act were derived from the English Partnership Act, 53-54 Vict. c. 39, § 23 (1890), and the decision here is in accord with the English decisions under the act as well as the majority of the American decisions. See, Brown & Co. v. Hutchinson & Co., [1895] 1 Q. B. 737, approving the issuance of a charging order. Also, Windom Nat. Bank v. Klein, 191 Minn. 447, 254 N. W. 602 (1934); Spitzer v. Buten, 306 Pa. 556, 160 A. 444 (1932); Rader v. Goldoff, 223 App. Div. 455, 228 N. Y. 453 (1928).

[3] 59 Pa. Stat. Ann. (Purdon, 1930), §§ 72(2), 75(1).

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. . . . " The confusion in the instant case is supposed to have arisen from the Uniform Partnership Act commissioners' notes on section 25 [4] which reads as follows: "For all practical purposes, while the reasoning of the courts is more or less conflicting, the net result of the remedial law, as worked out in law and at equity, is that a judgment creditor of a separate partner may attach and sell his debtor's interest in partnership property as that interest is defined in section 26 (see section 28). . . ." [5] Standing alone, this statement seems to lend support to the plaintiff's claim, but when read in connection with section 26—as it clearly was intended that it should be read—the statement supports the decision. Section 26 reads as follows: "A partner's interest in the partnership is his share of the profits and surplus, and the same is personal property." Thus the true meaning of the commissioners' note appears to be that the judgment creditor may attach and sell only the partner's share of the profits of the business as a going concern and his share of the surplus assets upon a winding up of the business. The term "attach" is unfortunate in that it conveys a somewhat erroneous impression,[6] but on reading the note as a whole it becomes clear that "attach" was used in the sense of a "charging order" as provided in section 28. The conclusion reached in the case seems desirable in that it enables a separate creditor to reach the partner's interest with the least possible disturbance of the rights of the other partners in carrying on the business.[7]

[4] Principal case, 133 Pa. Super. Ct. at 185: "The commissioners' note to Section 25, subdivision (2-c) . . . either used the word 'attach' carelessly, or, as applied to Pennsylvania practice, in the sense of 'levy upon.' "

[5] 7 UNIFORM LAWS, ANNOTATED 39 (1922).

[6] See note 4, supra.

[7] The older view was that the officer proceeding under a separate creditor's execution could seize the whole of the partnership property, actually take possession, and sell the debtor's interest. Heydon v. Heydon, 1 Salk. 392, 91 Eng. Rep. 340 (1693); Daniel v. Owens & Co., 70 Ala. 297 (1881); Weber v. Hertz, 188 Ill. 68, 58 N. E. 676 (1900); Andrews vs. Keith, 34 Ala. 722 (1859); Clark v. Cushing, 52 Cal. 617 (1878); Smith v. Orser, 42 N. Y. 132 (1870) (holding the purchaser entitled to possession). The undesirable features of such a procedure in respect to the other partners are obvious.