PROPERTY RIGHTS OF A PARTNER*

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GENERAL SCOPE

The Civil Code enumerates the property rights of a partner as: (1) his right in specific partnership property; (2) his interest in the partnership; and (3) his right to participate in the management.[1] It, however, provides for other rights which may also be regarded as among his property rights or at least related to them. These are his right of access to the partnership books,[2] right to demand true and full information of all things affecting partnership affairs,[3] right to formal accounting,[4] and right to reimbursement for advances and indemnification for risks.[5]

RIGHT IN SPECIFIC PARTNERSHIP PROPERTY

I. CO-OWNERSHIP

The Code regards a partner as co-owner of specific partnership property.[6] This notion is taken from the U.S. Uniform Partnership Act from which the whole of Article 1811 of the Code was copied verbatim. The result is that the Code here incurs in juridical inconsistency. For the Uniform Partnership Act was framed on the common law or aggregate theory of partnership under which, because it is not considered an entity or a legal person, a partnership cannot hold title and hence partnership property is deemed held or owned in common by the partners for the benefit of the partnership.[7] But our Code, true to its civil law origin, expressly adheres to the entity or legal-person theory[8] implicit in which

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1 Art. 1810.
2 Art. 1805.
3 Art. 1806.
4 Art. 1809.
5 Art. 1796.
6 Art. 1811, first par.
7 City Bank Farmers Trust Co. v. U.S., 47 F. Supp. 98 (1942); Lewis, *The Uniform Partnership Act — A Reply to Mr. Crane's Criticism*, 29 HARV. L.R. 158, 162, 296 (1915-1916).
8 Art. 1768.

is that the entity or juridical person owns the partnership property and the partners are merely its agents.[9]

Under the notion of co-ownership thus adopted, each partner has been said to be possessed of a joint interest in the whole of partnership property, but does not own individually any particular article or any separate or aliquot part thereof.[10]

Accordingly, since a partnership cause of action belongs to the partners jointly, not to them in their individual capacity,[11] one partner may not sue thereon in his own name and for his own benefit.[12]

In this sense, a partner's co-ownership in specific partnership property is no different from any other kind of co-ownership. Apart from this, however, it is a co-ownership *sui generis* with special incidents specifically defined by the Code.

II. Incidents of Co-ownership

1. Equal Right to Possess

The first of these incidents is that a partner has, as a rule, an equal right with his partners to possess partnership property for partnership purposes. This right of equal possession includes use and control, including the power of sale and disposition, such as applying partnership property to partnership debts,[13] even without the consent of the other partners. It is, however, subject to several limitations.

Not exclusive

The fact that he can possess, use and dispose of such property independently of the other partners does not mean that his right to do so is exclusive in him. The others have equal right to such possession, use and disposition and he has no right to petition for, nor would it be proper for the court to issue, a mandatory injunction giving him sole possession of partnership assets.[14] Neither would he be justified, in a manner that would free him from criminal liability, in resisting by force or by threat of force a co-partner's attempt to take possession of partnership property.[15] But if one of the partners thus wrongfully deprives the other partner or partners of their right of possession, an action for replevin or recovery of possession brought by them would not lie.[16] The reason is that the posses-

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[9] Lewis, *op. cit., supra,* note at 162.

[10] Berry v. U.S., 267, F.2d 298 (1959); Cook v. Lanten, 117 N.E.2d 414 (1954); Swirsky v. Horwich, 47 N.E.2d 452 (1943); Valley Springs Holding Corporation v. Carlson, 227 N.W. 841 (1929).

[11] Tsuonis v. Silverstein, 192 N.Y.S.2d 400 (1959).

[12] Godwin v. Vinson, 111 S.E.2d 180 (1959).

[13] McNulty v. Heine, 137 F.Supp. 327 (1956).

[14] Cook v. Lauten, 8 N.E.2d 280 (1948).

[15] State v. Roby, 254 P. 210 (1927).

[16] Few v. Few, 122 S.E.2d 829 (1961); Buckley v. Carliste, 2 Cal. 420 (1852).

sion of one partner is deemed the possession of the other or all partners.[17] Besides, the very principle itself that one partner is not entitled to the exclusive possession or control of the firm assets militates against the action.[18] But the excluded partner or partners would have a ground to ask for, and if refused to compel, a formal account from the excluding partner [19] and/or to petition for a decree of dissolution.[20]

For partnership purposes only

Another limitation to the right of a partner to possess partnership property is that it extends only to partnership purposes. He has no right to possess it for any other purpose without the consent of his partners.[21] Without such consent, he may not donate partnership property; nor may he apply partnership funds for his private uses, such as the payment of his debts,[22] or otherwise use and possess it to benefit himself to the exclusion of his partner or partners.[23] If he does, he is accountable for the value of such use as well as for any profits he may have derived therefrom.[24] If he converts partnership money to his own use, he shall be liable not only for the amount converted but also for interest and damages from the time of such conversion. [25]

Whether a partner may be held criminally liable for theft or misappropriation of partnership property is a question as to which American decisions give conflicting answers. The majority of decisions, mostly coming from common law jurisdictions where parties are regarded as co-owners of specific partnership property, hold that, as each partner is the ultimate owner of an undivided interest in all the partnership property, none of such property can be said, with reference to any partner, to be the property of another within the meaning of a general theft or larceny statute.[26] In Louisiana, where the civil law system and the entity theory of partnership prevail, the state Supreme Court, overruling a previous decision,[27] recently held that a partnership, being a legal entity, is "another" within the contemplation of a criminal provision defining theft as "the misappropriation or taking of anything of value which belongs to another."[28] It pointed out that, in Louisiana, during the existence of a partnership its assets are not held in indivision by the partners, and the partners are not co-proprietors

17 Amusement Syndicate C. v. Martling, 196 P. 1058 (1921).
18 *Id.*, Few v. Few, *supra*, note 16.
19 CIVIL CODE, Art. 1809(1).
20 CIVIL CODE, Art. 1831.
21 CIVIL CODE, Art. 1811(1); Bode v. Prettyman, 30 N.W.2d 627 (1948).
22 Robbins v. Passaic National Bank, 82 A.L.R. 1368, 1370 (1932).
23 State v. Atlantic, 129 A.2d 293 (1957).
24 Art. 1807.
25 Art. 1788, second par.
26 See State v. Elsbury, 175 P.2d 430, 169 A.L.R. 364 (1946).
27 State v. Peterson, 95 So.2d 608 (1957).
28 State v. Morales, 240 So.2d 714 (1970).

of the assets; rather, the assets belong to a single owner, the fictitious person, the partnership.

It still has to be judicially decided which view obtains in the Philippines insofar as theft is concerned. It would be an interesting inquiry because the Philippines adheres to the entity theory of partnership but at the same time adopts the common law doctrine that partners are co-owners of partnership property. It may be observed that even under the partners' co-ownership doctrine something of value is surely taken from the other partners when a partner misappropriates partnership property. The difficulty lies in determining the value of what is taken from such other partners, and value is the basis of penalty imposable in theft as in estafa. The task, as will be noted below,[29] has been described as an impossible one.

These observations also apply to the question whether a partner could be held criminally liable for estafa with respect to partnership funds or property. But, unlike that in regard to theft, this question is one which Philippine courts have already had occasion to resolve. To date there have been at least four Philippine decisions dealing with the question.

In the first case,[30] the complainant entered into a contract of partnership with Pedro Tarug, Eusebio Clarin, and Carlos de Guzman whereby he would provide the capital for the latter three to use in the buy and sale of mangoes, one-half of the resulting profits to appertain to him and the other half to the three. Pursuant to the contract, the complainant delivered to Tarug ₱172 for the latter's use, in company with Clarin and De Guzman, in the agreed venture. The three did in fact trade in mangoes and obtained ₱203 from the business, but did not deliver to the complainant his half of the profits; nor did they render him any account of the capital. The complainant charged them with estafa, but the provincial fiscal filed the information only against Clarin, accusing him of appropriating to himself not only the ₱172 but also the complainant's share (amounting to ₱15) of the profits. The Supreme Court held that when the complainant put the ₱172 into the partnership which he formed with Tarug, Clarin, and De Guzman, he invested his capital in the risks or benefits of the business of the purchase and sale of mangoes, and even though he had reserved the capital and conveyed only the usufruct of his money, it would not devolve upon one of his three partners to return his capital to him, but upon the partnership of which he himself formed part, or if it were to be done by one of the three specifically, it would be Tarug, who was the person who received the money directly from him. The ₱172 having been received by the partnership and the business having commenced and profits having accrued, "the action that lies with the partner who furnished the capital for the recovery of his money is not a criminal action for estafa, but a civil one arising from the partnership contract for a liquidation of the

[29] See discussion on non-assignability, *infra*.
[30] U.S. v. Clarin, 17 Phil. 84 (1910).

partnership and a levy on its assets if there should be any. No. 5 of Article 535 [31] of the Penal Code, according to which those are guilty of *estafa* 'who, to the prejudice of another, shall appropriate or misapply any money, goods, or any kind of personal property which they may have received as a deposit on commission for administration or in any other character producing the obligation to deliver or return the same,' (as, for example, in *commodatum, precarium* and other unilateral contracts which require the return of the same thing received) does not include money received for a partnership; otherwise the result would be that, if the partnership, instead of obtaining profits, suffered losses, as it could not be held liable civilly for the share of the capitalist partner who reserved the ownership of the money brought in by him, it would have to answer to the charge of estafa, for which it would be sufficient to argue that the partnership had received the money *under obligation to return it.*" The complaint for *estafa* was, therefore dismissed without prejudice to the institution of a civil action. This ruling of the Supreme Court was followed by the Court of Appeals in *People v. Alegre* [32] where it held that the failure of the accused partner to account for the purchase price of cosmetics which he sold for the partnership gave rise to a civil obligation only, the unaccounted amount being "a debt from a partner, as part of the partnership funds."

In another case, however, the Supreme Court refused to apply the *Clarin* ruling. In that case — *People v. De la Cruz*[33] — the managing and capitalist partner of a partnership engaged in purchasing and selling pigs delivered ₱2,999 to the industrial partner, the defendant, with instructions to go to Villasis, Pangasinan and, after paying various debts to certain persons there, to use the remainder of the money in the purchase of pigs. Instead of paying the debts and buying pigs, the defendant appropriated the money for his own use. He was held guilty of estafa under Subdivision 1(b), Art. 315 of the Revised Penal Code. Holding the Clarin ruling inapplicable, the Supreme Court said: "It was held in the case of Clarin that the failure on the part of an industrial partner to return to the capitalist partner the capital brought into the partnership by the latter, does not constitute the crime of estafa. But it will be noted that in that case there was a mere failure on the part of the industrial partner to liquidate the affairs of the partnership and to pay to the persons interested the amount respectively due them. The *estafa* in the present case does not consist in the failure to pay over the profit, but consists in the fraudulent appropriation by one of the partners of money which had been delivered to him with specific directions to apply it to the uses of the partnership."

This ruling was also followed by the Court of Appeals in a subsequent case. In this case,[34] the complainant and the accused were partners in the

[31] Now subdivision 1(b), Art. 315 of the Revised Penal Code.
[32] G.R. No. 7244-R, Sept. 16, 1952, 48 O.G. 5341 (1952).
[33] G.R. No. 21732, cited in GUEVARA, REVISED PENAL CODE 469 (1957).
[34] People v. Campos, C.A., G.R. No. 18678-R, Oct. 29, 1957, 54 O.G. 681 (1957).

farming of a 47-hectare land leased by the complainant from one Juan Alonzo for the agreed rental of 75 cavans of palay. When the palay had been harvested from the land and was ready for threshing, the accused so informed the complainant. The complainant sent his nephew, Manuel Matias, to observe the threshing with specific instructions to give the share of the tenants and the partners' respective shares, and then segregate the 75 cavans of palay for the rentals. After the division of the produce, the share of the complainant was deposited at the warehouse in Cabiao, while the share of the accused was deposited in his house. Manuel Matias, as instructed by the complainant, delivered the 75 cavans of palay set aside for the rentals (valued at ₱750) to the accused for the purpose of delivering the same to the landowner, Juan Alonzo. Instead of making the delivery, the accused misappropriated the 75 cavans of palay. Prosecuted for *estafa,* the accused raised the defense that no accounting and liquidation had been effected between the partners and that a balance of more than ₱1,000 was still due him from the partnership. The appellate court held that there was a liquidation of the partnership as far as the harvest in question was concerned; "for it is improbable that the shares of the partners were set aside, without taking into account their obligations to each other; and it is not very likely also that the 75 cavans of palay for the rentals were segregated without some sort of accounting. Granting for the purposes of argument that the partnership had not been liquidated, still we hold that appellant is responsible for *estafa.* The 75 cavanes of palay were segregated from the partnership, and delivered to the appellant for the express purpose of delivering or paying the same to Alonzo. The said palay no longer belonged to the partnership. Instead of complying with his duty, the appellant converted and misappropriated the said goods to his own personal use and benefit. A partner is guilty of estafa if he fraudulently appropriates partnership property delivered to him, with specific directions to apply it to uses of the partnership."

Whether these rulings still obtain under the new Civil Code is a legitimate matter for inquiry. It is to be noted that the Supreme Court made its rulings before the new Civil Code took effect. At that time the concept of partners' co-ownership of partnership property was unknown to Philippine law. And while the Court of Appeals cases were decided after the effectivity of the new Civil Code, it does not seem that the court took account of the concept of co-ownership introduced by the Code. When account is taken of this concept the difficulties pointed out with respect to theft also present themselves with respect to estafa.

Subject to agreement and provisions of Code

The equal right of a partner to possess partnership property for partnership purposes is further subject to modification by agreement and to the

provisions of the Code governing partnerships.[35] By agreement exclusive possession and control of partnership property may be vested in one partner for the better management of partnership affairs and for partnership purposes.[36] By express provision of the Code: (1) none of the partners may, without the consent of the others, make any important alteration in the immovable property of the partnership even if such alteration may be useful to the partnership;[37] (2) the partner who has been appointed manager in the articles of partnership may execute all acts of administration despite opposition of his partners, unless he should act in bad faith;[38] (3) if any of the partners should oppose the acts of the other partners, the decision of the majority shall prevail or, in case of a tie, the decision of those owning the controlling interests;[39] and (4) certain acts enumerated in Article 1818 must be authorized by all the partners.

2. Nonassignability

Another incident of a partner's co-ownership in specific partnership property is that his right therein is not assignable, except in connection with the assignment of the rights of all partners in the same property.[40] This rule obtains even if the assignment is made after dissolution of the partnership but before its termination by the completion of the winding up of its business.[41]

Effect of separate assignment

Any separate assignment of such right, or any attempt at such assignment is null and void,[42] except when real property is involved and the provisions of Article 1819 of the Code relative to the interest of an innocent purchaser apply.[43] But while such assignment is void and ineffective as an assignment of the partner's right in specific partnership property, it may in a proper case be regarded and held as a valid assignment of his interest in the partnership.[44]

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[35] CIVIL CODE, Art. 1811(1).

[36] Crandall v. Schnouser, 279 P. 778 (1929); Haight v. Haight, 90 P. 197 (1907). See also 60 AM. JUR. 2d 30 (1972), citing Constans v. Ross, 235 P.2d 113 (1951) and other cases.

[37] Art. 1803(2).

[38] Art. 1800, first par.

[39] Art. 1803(1) in relation to Art. 1801.

[40] Art. 1811(2).

[41] Smithfield Oil Company v. Furlonge, 126 S.E.2d 167 (1962); Security First Nat. Bank v. Whittaker, 50 Cal. Rptr. 652 (1966).

[42] Gold Fork Lumbr Co. v. Sweany Smith Co., 205 P. 554 (1922); Windom Nat. Bank Klein, 254 N.W. 602 (1934); Shapiro v. United States, 83 F.Supp. 375 (1949); In re Decker, 295 F.Supp. 501 (1969).

[43] Windom Nat. Bank v. Klein, *supra*, note 42.

[44] In re Decker, 295 F.Supp. 501 (1969).

Reasons for nonassignability

The prohibition — against separate assignment or disposition by a partner of his right or interest in specific partnership real or personal property — is dictated by several fundamental considerations. The first of these stems directly from the nature of a partner's right in specific partnership property — his right to possess and use the property for a partnership purpose. If the law recognized the right of a partner to assign his right in particular partnership property to a third person, the assignee would *pro tanto* become a partner, since he would have the right to possess the property for partnership purposes irrespective of the desires of the other partners. But partnership is a voluntary relation, and the other partners cannot have a new partner thrust upon them without their consent.[45]

Consistently with this principle, outsiders should not be allowed to interfere in the conduct of partnership business and the possession, management and disposition of partnership property.[46] In addition, neither other partners nor firm creditors may be deprived of the right to have all firm assets applied to the payment of firm debts.[47] Similarly, a creditor of one partner may not, and should not be permitted to attach or in any manner acquire a lien on specific partnership property to the exclusion of firm creditors.[48]

Furthermore, it is often impossible to measure or value a partner's beneficial interest in a particular partnership asset.[49] This impossibility is explained by the commissioners who drafted the U.S. Uniform Partnership Act as follows:

> x x x. In a sense, each partner, having thus a beneficial interest in the partnership property considered as a whole, has a beneficial interest in each part, and such beneficial interest might be regarded as assignable if it were not impossible, except by purely arbitrary and artificial rules, to measure a partner's beneficial interest in a specific chattel belonging to the partnership, or any other specific portion of partnership property.
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> A single illustration will make clear the impossibility of determining a partner's beneficial interest in any single piece of partnership property. Let us suppose A and B are partners. The value of partnership property is $100,000; the liabilities amount to $50,000. A has contributed $15,000 and has a three-fourths interest in the profits; B $10,000 and has one-fourth interest in the profits. A attempts to assign his interest in certain definite chattels belonging to the partnership, the value of these chattels

[45] In re Decker, 295 F.Supp. 501 (1969); digested *supra*, citing *Commissioners' Note*, 7 U.L.A. 145 (1949); Goldberg v. Goldberg, 99 A.2d 474, 39 A.L.R.2d 1359 (1953).

[46] Goldberg v. Goldberg, *supra*, note 45, citing Horton's Appeal 13 Pa. 66 (1850); Lewis, *The Uniform Partnership Act*, 24 YALE L.J. 617, 631 (1915). See also In re Decker, *supra*, note 44 at 512.

[47] Goldberg v. Goldberg, *supra*, note 45, citing Blaker v. Sands, 29 Kan. 551. See also In re Decker, *supra*, note 44 at 512.

[48] Goldberg v. Goldberg, *supra*, note 45.

[49] *Id.*

> being $5,000. The chattels themselves must be still used for partnership purposes. On dissolution, if still part of the partnership property, they must be sold. If A conveyed anything, it was not a right in these chattels, but in a fractional part of his interest in the partnership. But how is it to be determined what fractional part of his interest in the partnership A intended to assign? Did he intend to give B a lien for $5,000 on his interest; or a lien on his interest for three-fourths — his share of the profits — of $5,000? Or did he intend to give him a lien on his interest in the partnership which in amount should bear the same proportion to the total value of the chattel, $5,000, as the amount which he would receive should the partnership be liquidated, bears to the total of the present partnership property? It is impossible to answer these questions. If the assigning partner did not intend to dissolve the partnership it is even impossible to analyze the possible intentions. Of course, in practice, a partner who assigns his "interest in particular partnership chattels", has only the vaguest notion of what he intends.[50]

Scope of prohibition

The prohibition, however, is by no means as broad and all-embracing as its terms, standing alone and without consideration of the reasons therefor as well as other provisions of the Code, seem to indicate. It is limited to (1) an assignment by one partner to a third party or stranger unless it is joined in by all the other partners, or (2) an assignment to a partner not executed by all the other partners.[51] It does not preclude or apply to an assignment by a partner to his sole remaining partner, or even to two or more remaining partners, with the consent of all.[52] In either of these latter instances, the reasons behind the prohibition do not apply. No outsider could interfere with the conduct, possession or management of the partnership or partnership property. No new partner is admitted to the partnership. No other partner, or no partnership creditor, is deprived of his right to have the partnership assets applied to the payment of partnership debts. And no other partner nor partnership creditors are prejudiced and neither are subordinated to the claims of creditors of individual partners.[53] Furthermore, paragraphs (1) and (2) of Article 1840 of the Code impliedly but clearly authorize the assignment by one or all retiring partners of his or their rights in partnership property to the partner or partners continuing the business.[54] These are specific provisions to which the general provision of Article 1811(2), prohibiting separate assignment by a partner of his right in specific partnership property, must yield and by which it must be deemed qualified.[55]

3. Not Subject to Attachment or Execution

The Code likewise provides, as another incident of a partner's co-owner-

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[50] *Commissioners' Note*, 7 U.L.A. 146 (1949).
[51] Becker v. Hercules Goundries, Inc., 33 N.Y.S.2d 367, 368 (1942); Goldberg v. Goldberg, *supra*, note 45.
[52] *Id.*
[53] Goldberg v. Goldberg, *supra*, note 45.
[54] *Id.*
[55] Stilgenbaur v. United States, 115 F. 2d 283 (1940).

ship of specific partnership property, that his right in such property is not subject to attachment, except on a claim against the partnership.[56]

Rationale

By this provision, a partner's interest in specific property of the firm is taken out of the reach of his individual creditors. It is a logical consequence of the prohibition against separate assignment by a partner of his right in such property. As stated so well by Dr. William Draper Lewis, the draftsman of the Uniform Partnership Act: "If a partner's right in specific partnership property is not assignable by voluntary assignment for a separate purpose of the assigning partner, his separate creditors should not be able to force an involuntary assignment. The beneficial rights of the separate creditors of a partner in partnership property should be no greater than the beneficial rights of their debtor."[57] It follows that the reasons that lie behind the prohibition against separate voluntary assignment also hold true against this one against involuntary assignment through attachment or execution. Principally, however, it was adopted to save the other partners from the undesirable consequences of the ruling enunciated in several court decisions which authorized the officer proceeding under a separate creditor's execution to seize the whole of the partnership property, actually take possession of it, and sell the debtor's interest. One of such decisions even held the purchaser at execution sale entitled to possession of the property.[58]

Application and scope

By virtue of this provision, tax officers have been restrained from proceeding with the distraint, levy and sale of partnership property to enforce the tax liability of one of the partners.[59] Under the same provision, it has been held that an attachment may not reach the property of a partnership or of its partners for the fraud of one of them.[60] It has also been held that where a valid chattel mortgage was given by the partners on certain partnership property, purchased by the mortgagee at sale on foreclosure,

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[56] Art. 1811(3).

[57] *Commissioners' Note*, 7 U.L.A. 150 (1949).

[58] See *Comment*, MICH. L.R. 421, 422n.7 (1940), citing several cases. See also Taylor v. S. & M. Lamp Co., 12 Cal. Rptr. 323, 327 (1961).

[59] Bushmiaer v. United States, 146 F.Supp. 329 (1956); Adler v. Nicolas, 166 F.2d 674, 678 (1948).

[60] Rubin v. Lesser, 228 N.Y.S.2d 798, 800 (1962). This ruling should be limited to cases where the fraud is not committed in the transaction, in the ordinary course, of partnership business; otherwise Article 1822 of the Code, making the partnership liable for the fraud to the same extent as the partner committing it, will apply. The rule seems to be misapplied in the *Rubin* case because the partner who presumably committed the fraud apparently acted in the ordinary course of his firm's business, as may be gathered from the following statement of facts: "The plaintiffs made purchase of the stock of the defendant Agricultural Development, Inc. Some of this stock was purchased through the defendant A.T. Bond & Co. as broker. The plaintiff Jacob Rubin acted on behalf of all the plaintiffs in making the purchases and in doing so dealt solely with the defendant A.T. & Co."

the same could not be levied on under an execution issued under a subsequent judgment recovered against the partners individually, even though the execution was issued before the bill of sale was given to the mortgagee.[61]

The provision's inhibition extends to a court injunction having the effect of an actual levy upon firm property, and such is the nature of an injunction obtained by a partner's individual creditor restraining the transfer of partnership funds deposited in a bank.[62] By the same token, a *lis pendens* against property of the partnership based on a claim against an individual partner comes within the prohibition. For the *lis pendens*, no less than the injunction, destroys the rights and property of the partnership itself as distinguished from the rights of the individual partner against whom the claim is made.[63] It applies to garnishment of partnership funds for individual debts of a partner, even though the only other partner is his husband or wife.[64] And it would not change the rule that the garnishee paid partnership funds into court, for any claimant may interplead in garnishment proceedings and the garnishee is powerless to affect the rights of the third parties to the sum that he pays in.[65] Neither would it make a difference that the attachment, execution or garnishment is effected after the dissolution of the partnership so long as there has been no settlement of the debtor-partner's partnership account, nor segregation of his interest in the partnership, and no money has been lent by him to the partnership.[66]

Remedy of partner's separate creditors

Although a partner's separate creditors are prevented from reaching the specific property of the partnership or his rights therein, they are not without a remedy. They may proceed against the partner's interest in the partnership in accordance with the procedure laid down in Article 1814 of the Code[67] — i.e., obtain from the court a charging order or lien, have the court appoint a receiver and make all orders, directions, accounts and inquiries which the debtor partner might make, including, where necessary, the sale of the debtor partner's interest in the partnership.[68] Their right to such a charging order will not be defeated by an attempted[69] or planned

[61] Karchiunes v. Mitsias, 257 Ill. App. 95 (1930).
[62] Rader v. Goldoff, 228 N.Y.S. 453 (1928).
[63] Weisenger v. Rae, 188 N.Y.S.2d 10 (1959).
[64] Hilke v. Bank of Washington, 251 S.W.2d 963 (1952), citing Macks v. Drero, 86 Mo. App. 224.
[65] Hilke v. Bank of Washington, *supra*, note 64, citing Gates v. Tusten, 14 S.W. 827 (1886); Current News Features v. Pulitzen Pub. Co., 81 F.2d 288 (1936).
[66] Northampton Brewery Corporation v. Lande, 2 A.2d 553 (1938); Citizens' Nat. Trust & Savings Bank of Los Angeles v. McNeny, 52 P.2d 492 (1935).
[67] Rader v. Goldoff, digested *supra*, note 62; Northampton Brewery Corporation v. Lande, *supra*, note 66; Central Petroleum Corp. v. Korman, 177 N.Y.S.2d 761 (1958).
[68] Frankil v. Frankil & Cy. Rep., 15 Pa. Dist. 103, cited in 23 MINN. L.R. 540 (1939).
[69] Charleston First Nat. Bank v. White, 268 Ill. App. 414 (1932), cited in 25 MINN. L.R. 540 (1940).

dissolution of the partnership.[70] With such a charging order they or the receiver appointed for the purpose may have a purported mortgage of the debtor partner's interest or right in the specific partnership property in violation of Article 1811(2) of the Code, set aside.[71] In the manner laid down by Article 1814, separate creditors of a partner are enabled to reach his interest in the partnership with the least possible disturbance of the rights of the other partners in carrying on the business, in keeping with the objectives specifically sought to be achieved by Article 1811.[72]

Partnership debts

While a partner's right in specific partnership property may not be attached, executed upon, or garnished by his separate creditors, partnership creditors may do so.[73] The fact that the judgment is rendered against one partner alone [74] has been held not to preclude garnishment by the judgment creditor of partnership property if the judgment is based on a partnership note.[75]

Homestead and exemption rights

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.[76] This is in consonance with the law's policy of keeping the partnership property intact for partnership creditors and partnership purposes.[77] To the extent that the partners or any of them can claim exemption or homestead rights, to that extent the partnership property is diminished from the point of view of creditors and at the same time permitted to be devoted to other than partnership purposes.[78] The partnership property is not supposed to take care of the personal needs of the partners. Besides, none of them has any separate, determinable property in any specific partnership asset and, as already noted, any beneficial interest he has therein is impossible of measurement. It would therefore constitute an arbitrary measurement of such beneficial interest if any portion of partnership property were set aside as within the exemption right of a partner.

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[70] Spitzer v. Buten, 160 A. 444 (1932).

[71] Windom Nat. Bank v. Klein, *supra*, note 42.

[72] See 38 MICH. L.R. 422 (1940) and 23 MINN. L.R. 540 (1939).

[73] CIVIL CODE, Art. 1811(3).

[74] In the Philippines, where a partnership is endowed with a legal personality separate and distinct from that of each individual member, the action must be brought, and hence, the judgment must be rendered against, the partnership, not the individual members.

[75] L.C. Jones Trucking Co. v. Superior Oil Co., 234 P.2d 802 (1951).

[76] CIVIL CODE, Art. 1811(3).

[77] Windom Nat. Bank v. Klein, *supra*, note 42.

[78] See: In re Safady Bros., 228 F.538 (1915): "The partner's interest is inalienable x x x. Even a surviving partner could not have any exemption, because he is not allowed 'to possess the partnership property for any but a partnership purpose.'"

4. Not Subject to Support

A partner's right in specific is not subject to support.[79] Again this incident follows from the nature of such right and from the basic policy of the law to keep intact partnership property for creditors and for partnership purposes. A partner has no personal property in any specific property of the partnership,[80] and he has no right to possess or use it except for a partnership purpose.

INTEREST IN PARTNERSHIP

1. WHAT IT CONSISTS OF

The Code defines a partner's interest in the partnership as his share of the profits and surplus.[81]

"Profit" means the gain realized from the business or investment over and above expenditures[82] or the excess of the value of returns over the value of advances.[83]

"Surplus" means the excess of assets over liabilities.[84]

From these definitions, it is apparent that "profits" and "surplus" are not the same. There may be a surplus but there may not be any profits at all; in fact, instead of profits, there may be losses in spite of the existence of surplus. In other words, surplus is simply what is left of the assets of a firm after all its liabilities have been satisfied. If it is more than capital investment or advances then it represents both the profits and the capital investment or advances. If it is less than the capital investment or advances, then the difference is the extent of the loss.

Another difference is that profits may be determined and distributed from time to time before the dissolution of the partnership and consequent winding up and liquidation of its affairs. Surplus is usually determined and distributed only after dissolution, winding up and liquidation.

The interest of the partner in the partnership has thus been otherwise described as the net balance remaining to him after all partnership debts or claims against it have been paid and the equities and accounts between such partner and his co-partners have been adjusted.[85]

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[79] CIVIL CODE, Art. 1811(4).
[80] In re Dumarests' Estate, 262 N.Y.S. 450 (1933).
[81] Art. 1812.
[82] Citizens Nat. Bank v. Corl, 33 S.E.2d 613, 616 (1945); Fairchild v. Gray, 242 N.Y.S. 192 (1930).
[83] Crawford v. Surety Insurance Co., 139 P. 481, 484 (1970).
[84] Tupper v. Kroc, 494 P.2d 1275 (1972); Anderson v. U.S., 131 F.Supp. 501 (1955), Aff'd 232 F.2d 794 (1956); Balaban v. Bank of Nevada, 477 P.2d 860 (1970).
[85] Claude v. Claude, 228 P.2d 776 (1951); Preston v. State Industrial Accident Commission, 149 P.2d 975 (1944); Swirsky v. Horwich, 47 N.E.2d 452 (1943); Cunningham v. Cunningham, 135 N.E. 21 (1922).

At least one decision distinguishes between the nature of a partner's interest in the partnership before, from that after, its dissolution. Before dissolution, according to this decision,[86] that interest is in the partnership as a going business or concern. Upon dissolution, a partner's interest is no longer in the firm as a going business but in the property remaining after all debts and liabilities to outside creditors have been satisfied. His interest then (upon dissolution) comprises any debts due him by way of advances, salary or interest, if any, his capital contribution and his proper share of the remaining assets (profits and/or surplus). While under this distinction the partner's interest after dissolution more literally corresponds with the Code's definition his interest before dissolution must also be deemed embraced in the defintion. For his interest in the partnership as a going business or concern is nothing more than his interest in its success or its capacity to produce profits.

II. Nature and Characteristics; Differentiated from Right in Specific Property

A partner's interest in the partnership is property distinct and separate from the partnership or underlying assets.[87] It is not a mere expectancy; it is personal property (intangible in nature) and present interest.[88] And it has been said that under the modern concept a partner's only personal, in the sense of separate and exclusive, property right is his interest in the partnership.[89]

Unlike his rights in specific partnership property, a partner's interest in the partnership is assignable irrespective of the consent of the other partners.[90] It may be reached by the partners' separate creditors by means of a charging order and the other remedies specified in Article 1814. And the partner can, with respect to it, claim rights under the exemption laws.[91]

III. Assignment

The right of a partner to assign his interest in the partnership is recognized in Article 1813 of the Code.

1. When Assignment Prohibited by Agreement

The partners may, however, agree that one of them cannot sell or assign his interest without the consent of the other or others;[92] or they

[86] Lindley v. Murphy, 56 N.E.2d 832, 836 (1944).
[87] Swiren v. CIR, 183 F.2d 656 (1950), certiorari denied 71 S.Ct. 293, 340 U.S. 912, 95 L.Ed. 659.
[88] Cramichael v. Carmichael, 31 Cal. Rptr. 514 (1963); In re Finkelstein's Estate, 245 N.Y.S. 2d 225 (1963).
[89] In re Finkelstein's Estate, *supra*, note 88.
[90] Civil Code, Art. 1813; In re Decker, *supra*, note 45 at 510.
[91] Civil Code, Art. 1814, last par.
[92] Pokrzywnicki v. Kozak, 47 A.2d 144 (1946).

may enter into an agreement prohibiting such assignment altogether.[93] Such agreement is not a violation of the partnership law,[94] and an assignment made in contravention therewith has been held to the invalid so that the person to whom it is made is not entitled to maintain an action for dissolution, accounting, and receivership of the partnership.[95]

2. When No Agreement Prohibits

When no such agreement exists, a partner may assign his interest in the partnership to his copartners or any of them, or to a third person. The assignment to a partner or copartners may be made at the partner's own accord or in pursuance of an option granted to the other partners or any of them in the partnership agreement, such option to be exercised upon the occurrence of certain conditions or within a certain period fixed therein. In any case, an assignment to a partner will be sustained only when made in good faith, for fair consideration, after fair and complete disclosure of all important information as to value by the purchaser.[96]

3. Rights of Assignee

The transfer by a partner of his partnership interest to a third person does not make the assignee of such interest a partner in the firm.[97] Consequently, during the continuance of the partnership he is not entitled, as against the other partners in the absence of agreement, 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,[98] nor does it give him any interest or title in the firm assets as such or any specific item thereof;[99] it merely entitles him to receive in accordance with his contract the profits to which his assignor would otherwise be entitled.[100] In case of dissolution of the partnership, the

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[93] Chaiken v. Employment Security Commission, 274 A.2d 707 (1971).

[94] *Id.*

[95] Pokrzywnicki v. Kozak, *supra*, note 92: Edna Pokrzywnicki and Andrew R. Kozak were partners trading as "Colonial & Grill" in the operation of a business in Ambridge, Beaver County, Pennsylvania. Their partnership agreement provided, among others, that one partner cannot sell or assign his or her interest without the consent of the other partner. Edna assigned her interest in the partnership to Anthony Pokrzywnicki, but Kozak refused to give his consent. He refused to recognize the assignment and to accept Anthony as a partner. Basing his claim on the assignment by Edna, Anthony filed a bill of equity against Kozak and others praying for a dissolution, accounting and receivership of the partnership. HELD: We agree with the conclusion of the learned court below that plaintiff has no standing to maintain the bill because he has no valid assignment of the partnership interest, and that to recognize him in the case would be to destroy entirely the aforesaid provision of the partnership agreement.

[96] Hagen v. Dundore, 50 A.2d 570 (1947).

[97] Hazen v. Warwick, 152 N.W. 342 (1926); Windom Nat. Bank v. Klein, *supra*, note 42, Charles First Nat. Bank v. White, *supra*, note 69.

[98] CIVIL CODE, Art. 1813; Valley Springs Holding Corp. v. Carson, 227 N.W. 841 (1929).

[99] Rossmore v. Anderson, 1 F. Supp. 35 (1932); Security-First Nat. Bank v. Whittaker, 50 Cal. Rptr. 652 (1966).

[100] Art. 1813, second par.

assignee is also entitled to an accounting from the date only of the last account agreed to by all the partners and to receive, after all the partnership affairs have been settled and adjusted, his assignor's share of the residue, if any, of partnership assets.[101] He is also entitled, according to one case,[102] to those remedies for settlement of partnership affairs that existed in favor of his assignor.

For a third party purchaser to become a partner, it is not enough that the non-assigning members of the firm accept him as such. He must have the intention to become a member, for a person might purchase an interest in the net profits of a business without intending to become a partner therein.[103] If he has such intention and the non-assigning partners agree to his joining them in the business, he becomes a full member of the partnership without need of contributing money or property.[104]

4. Rights, Obligations and Disabilities of Assigning Partner after Assignment

An assignment of partnership interest does not necessarily divest the assigning partner of his status as partner and of his other rights and obligations as such. It all depends on the terms of the assignment as well as on the intention of the parties, the other partners included. Thus, it has been held that a mortgage by a partner of his entire interest as security for an indebtedness does not make him cease as partner, nor does it deprive him of his rights as such. Neither does it make him lose his right to dissolution, accounting and settlement.[105] The same is true of an assignment whereby a partner gives his partnership interest as security for advances made by the other partner to the firm, so that after those advances are paid the assigning partner still has an interest in any surplus assets of the firm.[106] It is likewise true that in determining what rights or interests pass under an assignment the intention of the parties as manifested in the instrument is controlling.[107]

Even an absolute conveyance or assignment would not operate to terminate the assignor's status as partner and take away from him the rights proper to such status if by the partners' conduct or otherwise it is manifest that they do not intend or consider the conveyance or assignment as severing their partnership relation. It is upon this principle that it was held in one case that the plaintiff's right to hold his parnter to fiduciary duty was not affected by the assignment of his interest to his wife where the business had never regarded as dissolved. In that case —

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101 *Id.;* Leon v. Glaser, 281 N.Y.S.2d 441 (1967); Wood v. American Fire Insurance Co., 44 N.E. 80 (1896); Saunders v. Reilley, 12 N.E. 170 (1887).

102 Chatten v. Martell, 333 P.2d 364 (1958).

103 Parchen v. Anderson, 5 P.588, 599 (1885).

104 Gorder v. Pankonin, 119 N.W. 449 (1909); Paul v. Cullum, 132 U.S. 539, 33 L.Ed. 430, 10 S.Ct. 151 (1889).

105 Herman v. Pepper, 166 A. 587 (1933), citing cases.

106 Donnelly v. McArdle, 105 N.Y.S. 331 (1907).

107 Sweet v. Erickson, 333 P.2d 364, 368 (1958); Chatten v. Martell, *supra*. note 102.

Meinhard vs. Salmon, 164 N.E. 545 (1928): Salmon held a lease of a hotel in his own name for himself and Meinhard as a joint adventure, using, after the necessary changes, the hotel as shops and offices. Salmon was the sole manager of the joint adventure, Meinhard merely contributing to the necessary funds. Before the expiration of the original lease, Salmon obtained a renewal lease covering not only the premises then occupied by additional adjoining premises for the benefit of a corporation controlled by him. without the knowledge or consent of Meinhard. Holding that Meinhard would be entitled to an interest in the renewal lease in proportion to his interest in the original lease since Salmon was, by his fiduciary duties as co-adventurer, charged as a trustee, the Court next considered the effect on such right of the assignment made, before the renewal lease was negotiated, by Meinhard to his wife of all his "right, title and interest in and to" the agreement with his co-adventurer. Salmon did not object to the assignment, but thereafter made his payments directly to the wife. There was a reassignment by the wife before the action was begun. HELD: We do not need to determine what the effect of the assignment would have been in 1917 if either co-adventurer had then chosen to treat the venture as dissolved. We do not even need to determine what the effect would have been if the enterprise had been a partnership in the strict sense with active duties of agency laid on each of the two adventurers. The form of enterprise made Salmon the sole manager. The only active duty laid upon the other was one wholly ministerial, the duty of contributing his share of the expenses. This he could still do with equal readiness, and still was bound to do, after the assignment to his wife. Neither by word nor by act did either partner manifest a choice to view the enterprise as ended. There is no inflexible rule in such conditions that dissolution shall ensure against the concurring wish of all that the venture shall continue. The effect of the assignment is then a question of intention. Durkee vs. Gunn, 41 Kan. 496, 500, 21 P. 637, 13 Am. St. Rep. 300; Taft vs. Buffum, 14 Pic. (Mass.) 322; cf. 69 Am. St. Rep. 417, and cases there cited.

Partnership Law (Cons. Laws, c. 39), Sec. 53, sub .1, is to the effect that "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." This statute, which took effect on October 1, 1919, did not indeed revive the enterprise if automatically on the execution of the assignment a dissolution had resulted in 1917. It sums up with precision, however, the effect of the assignment as the parties meant to shape it. We are to interpret their relation in the revealing light of conduct. The rule of the statute, even if it has modified the rule as to partnerships in general (as to this see Pollock, Partnership, p. 99, Sec. 31; Lindley, Partnership [9th Ed.] 695; Marquand vs. New York Mfg. Co., 17 Johns. 52)5, is an accurate statement of the rule at common law when applied to these adventures. The purpose of the assignment, understood by every one concerned, was to lower the plaintiff's tax by taking income out of his return and adding it to the return to be made by his wife. She was the appointee of the profits, to whom checks

> were to be remitted. Beyond that, the relation was to be made the same as it had been. No one dreamed for a moment that the enterprise was to be wound up, or that Meinhard was relieved of his continuing obligation to contribute to its expenses if contribution became needful. Co-adventurers and assignee, and most of all the defendant Salmon, as appears by his own letters, went forward on that basis. For more than five years Salmon dealt with Meinhard on the assumption that the enterprise was a subsisting one with mutual rights and duties, or so at least the triers of the facts, weighing the circumstantial evidence, might not unreasonably infer. By tacit, if not express, approval, he continued and preserved it. We think it is too late now, when charged as a trustee, to come forward with the claim that it had been disrupted and dissolved.

In another case [108] it was held that the fact that the plaintiff had sold his interest in the partnership, including goodwill, to the remaining partners did not preclude the plaintiff from acquiring title to the premises occupied by the partnership business, from refusing to renew the lease and from bringing a forcible entry and detainer action to secure possession of the premises after the expiration of the old lease.[109]

But if under the assignment the assignor does not lose his rights as a partner, he is at the same time not relieved of his obligations. Thus, it has been held that since a conveyance under Article 1813 gives no interest in the firm assets as such, it is ineffective, during the continuance of the partnership, to remove from the transferring partner his income tax burden on subsequent profits.[110] And if, as in the Meinhard case,[111] it was his obligation before the assignment to contribute to the expenses of the business whenever contribution became needful, such obligation continues after the assignment. Should he neglect to perform his duties, the other partners may dissolve the partnership undr Article 1831.[112]

5. Assignment Not of Itself Cause of Dissolution

Under the common law, transfer or assignment of a partner's interest in the partnership operated *ipso facto* to dissolve the partnership though that result was not intended.[113] The Uniform Partnership Act, imitated by our Code also in this respect, modifies this rule.[114] Under that Act and under our Code, an assignment by a partner of his interest to a copartner or to a third person does not in and of itself effect a dissolution.[115] Whether or not a dissolution results from the assignment depends on its nature as

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[108] Stone v. Lerner, 195 P.2d 964 (1948).
[109] *Cf.* Pang Lim v. Lo Seng, 42 Phil. 282 (1921).
[110] Rossmore v. Anderson, *supra*, note 99.
[111] Meinhard v. Salmon, 164 N.E. 545 (1928), digested *supra.*
[112] *Commissioners' Note,* 7 I.L.A. 160 (1949).
[113] Parker v. Donald, 477 S.W. 2d 947 (1972); *Commissioners' Note,* 7 U.L.A. 160 (1949).
[114] Kelley v. Kelley, 411 S.W. 2d 953, 1955 (1957); *Commissioners' Note, supra,* note 112.
[115] CIVIL CODE, Art. 1813; Leon v. Glaser, 281 N.Y.S. 2d 441 (1967); Chatten v. Martell, 333 P.2d 364 (1958).

much as on the intent or agreement of the parties, as may be gathered from the original partnership agreement, the written assignment, or from their subsequent conduct.[116]

An assignment which is merely by way of collateral security for a loan, the assigning partner in no wise intending to end the partnership relation, by its nature does not work a dissolution of the partnership.[117] And, as already noted, even an absolute conveyance, like a sale, operates as a dissolution of a partnership only when it is manifest that the parties contemplated and intended the entire withdrawal from the partnership of the assigning partner and the termination of the partnership as between the partners.[118] This principle as it applies to an assignment to a third person is illustrated in the *Meinhard* case.[119] As it applies to an assignment to a copartner, the following case provides an example.

> **Johnson vs. Munsell,** 104 N.W. 2d 314 (1960): The business of defendants, Munsell's Mineral Products Company, was originally organized and established in June 1920 by the husband of Mrs. Munsell and father of other originally named defendants, but the company was not then a partnership. The husband and father died June 8, 1928, and the company has continued operations since that time. Mr. Yoder, who was totally blind at all times, became associated with defendant company as an employee in 1925. He started as a stenographer and at times took care of affairs of the company while others interested therein were absent from the company office. When Mr. Munsell died, he left Mr. Yoder 10 shares in the company, and Mr. Yoder thereafter acquired a few more by gift or payment of little consideration therefor. The nature of the company's business was purchasing at wholesale and repacking, advertising, distributing, and selling food tablet supplements consisting of minerals and vitamins to retail dealers. The company had no sales agents as such, but distributed and sold such products to independent dealers who sold at retail in 8 or 10 states. The company's principal place of business was always in Lincoln, Nebraska. On October 1, 1937, defendants and Edwin Yoder entered into the partnership agreement heretofore set forth, and the business was carried on thereunder by them with Mr. Yoder holding a 17.26 percent interest in the partnership until June 24, 1946, when Mrs. Munsell assigned a 7.74 percent interest to him, thus giving him a 25 percent interest, which was done by a witnessed agreement in writing that the October 1, 1937, partnership agreement should remain in full force and effect except as to such change of percentage of ownership. Thus, the business was carried on until March 30, 1953, when Mrs. Hagen assigned her 12.22 percent interest in the partnership as a gift to her mother, Mrs. Munsell, who on June 12, 1953, as importuned by Edwin Yoder, assigned 12½ percent of her interest in the partnership to Mr. Yoder for life, with the remainder to Mrs. Munsell, which was done by a witnessed agreement in writing that the October 1, 1937, partnership agreement should remain

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[116] Fenix v. Celebreeze, 243 F.Supp. 816 (1965); Meinhard v. Salmon, *supra*, note 111; Johnson v. Munsell, 104 N.W. 2d 314, 323 (1960).

[117] *Commissioners' Note*, 7 U.L.A. 160 (1949); Donnelly v. McArdle, *supra*, note 106.

[118] Johnson v. Munsell, 104 N.W. 2d 314, 323 (1960).

[119] *Supra*, note 111.

> in full force and effect except as to such change of percentage of ownership, and the business then continued to so operate with Mr. Yoder's acquiescence, consent, and profit until his death on November 6, 1953. HELD: Contrary to plaintiff's contention, such assignments did not under the circumstances presented herein *ipso facto* dissolve the partnership and free the partners from the terms and conditions of the partnership agreement. As stated in 68 C.J.S. Partnership Sec. 346, p. 852: "A sale, sonveyance, transfer, or assignment by a partner of his interest in the partnership or in the partnership property to a copartner *** does not of itself dissolve the partnership, although the entire circumstances connected with such a transfer may be sufficient to bring about its dissolution. *** a partner's conveyance of his interest in the partnership property to a copartner operates as a dissolution of the partnership only when it is clear that the parties contemplated and intended the entire withdrawal from the partnership of such partner and the termination of the partnership as between themselves." In other words, the effect to be given such conveyance by one partner to another partner is primarily a question of intention or agreement by the parties herein, made clear in the manner heretofore set forth in both the original partnership agreement and in the written assignments. See, also, 40 Am. Jur., Partnership, Sec. 244, p. 299, and authorities cited.

IV. Charging Order

As already stated, the proper remedy of a partner's separate creditor is not to attach or execute against the debtor-partner's right in specific partnership property, but to proceed against his interest in the partnership in accordance with Article 1814.[120] Article 1814 reads as follows:

> ART. 1814. Without prejudice to the preferred rights of partnership creditors under article 1827, on due application to a competent court by any judgment creditor of a partner, the court which entered the judgment, 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.
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> 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.
>
> (1) with separate property, by any one or more of the partners; or
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> (2) 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.
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> Nothing in this Title shall be held to deprive a partner of his right, if any under the exemption laws, as regards his interest in the partnership.

[120] See text, *supra*, pp. 508-509.

1. Origin and Rationale

This article was taken from the U.S. Uniform Partnership Act, the provisions of which were in turn patterned after the English Partnership Act of 1890.[121] It would, therefore, help in the understanding of the article's provisions to know the reasons that motivated their adoption in England and the United States. The method by which a partner's separate creditor enforced his claim against the interest of his debtor in the partnership is picturesquely described by Lord Justice Lindley of the English Court of Appeals in the following manner:

> When a creditor obtained a judgment against one partner and he wanted to obtain the benefit of that judgment against the share of that partner in the firm, the first thing was to issue a *fi. fa.*,[122] and the sheriff went down to the partnership place of business, seized everything, stopped the business, drove the solvent partners wild, and caused the execution creditor to bring an action in Chancery in order to get an injunction to take an account and pay over that which was due by the execution debtor. A more clumsy method of proceeding could hardly have grown up.[123]

Prior to the Uniform Partnership Act, a similar situation obtained throughout the United States where under general execution statutes the procedure, as summarized by Professor Gose, "generally consisted of: (1) seizure of some or all the partnership property under a writ of execution; (2) sale of the debtor partner's 'interest in the property'; (3) acquisition of the debtor partner's interest 'in the property' by the purchaser at the execution sale, subject, however, to the payment of partnership debts and prior claims to the firm against the debtor partner; (4) compulsory dissolution and winding up of the partnership; and (5) distribution of the execution purchaser of the debtor partner's share of any property remaining after the winding up process was completed."[124] The result in both countries of such a procedure was the disruption of the business and a forced dissolution of the partnership, the unfairness of which to the other members of the firm is obvious.

It was for the purpose of correcting this anomalous method and avoiding or at least minimizing its unjust results that the provisions of what is now Article 1814 of our Code were embodied in the English Partnership Act of 1890 and the U.S. Uniform Partnership Act. They are designed to institute, in lieu of the old, a new method of reaching a partner's interest

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[121] *Commissioners' Note*, 7 U.L.A. 163 (1949).

[122] Short for *fieri facias*. It literally means that you cause to be made; and in practice, denotes a writ of execution commanding the sheriff to levy and made the amount of a judgment from the goods and chattels of the judgment debtor. BLACK'S LAW DICTIONARY, REV. 4th Ed. 754 (1968). It is the common law counterpart of the writ of execution and permitted the seizure of physical property only, as distinguished from an intangible one like a partner's interest in the partnership. See GOSE, *The Charging Order under the Uniform Partnership Act*, 28 WASH. L.R. 1, 2 (1953).

[123] Brown, Janson & Co. v. Hutchinson & Co., 1 Q.B. 737 (1895), cited and quoted in GOSE, *op. cit. supra*, note 122.

[124] GOSE, *op. cit. supra*, note 122, at 2.

in the partnership by his separate creditors with the least disturbance of the partnership business and the rights of the non-debtor partners.[125]

2. Remedies Under the Article

Under the article, the competent court, upon due application by a judgment creditor of a partner, is empowered to: (1) enter an order charging the interest of the debtor partner with payment of the unsatisfied amount of the judgment debt as well as the interest thereon; (2) appoint a receiver of the debtor partner's share of the profits and any other money due or to fall due to him in respect of the partnership; (3) make all other orders, directions, accounts and inquiries which the debtor partner might have made, or which the circumstances of the case may require; and (4) direct the sale of the interest charged.

The court need not resort to all these courses of action, although there may be cases calling for their simultaneous or successive application. Normally, resort must first be had to the entry of a charging order whereby the non-debtor partners are directed to refrain from making further payments of any kind to the debtor partner and instead required to pay to the judgment creditor any amounts which the partnership would otherwise pay to said partner, subject, of course, to any exemption right properly asserted by him. This may or may not require the appointment of a receiver, the taking of accounts, and the making of other orders, directions, and inquiries.[126] If the charging order and these subsidiary remedies prove unavailing, recourse may be had to the more drastic remedy, the sale of the debtor's interest in the partnership.[127] The sale may be effected through a receiver or through the sheriff, as in ordinary execution sales.[128] This step also may or may not necessitate the taking of accounts and making of other orders, directives and inquiries in order to determine the nature and extent of the debtor's interest in the partnership as well as to prescribe, where necessary, the manner in which sale is to be made.[129]

It thus appears that the article provides two basic remedies to enable a partner's separate judgment creditor to collect — the employment of a charging order and, if this proves inadequate, the sale of the debtor's interest in the partnership. The other remedies serve simply as aids to these two basic remedies.[130]

3. Reach of Remedies

A charging order, an appointment of a receiver and a sale made under Article 1814 can reach only the distributive share of the debtor partner,

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[125] See note 122, *supra.*
[126] CIVIL CODE, Art. 1814.
[127] Frankil v. Frankil, 15 Pa. Dist. & Co. Rep. 103 (1931), cited in GOSE, *supra,* note 122.
[128] *Id.*
[129] GOSE, *op. cit. supra,* note 122, at 16.
[130] See GOSE, *op. cit.,* note 122.

i.e., his share of such profits as may from time to time be distributed or of the net assets upon liquidation or after the partnership obligations have been fully satisfied.[131] This, after all, is all that is comprised by his interest in the partnership, which alone may be subject to these remedies. These remedies cannot extend to the partnership assets, although a partner is supposed to be a co-owner thereof, because these are reserved or intended to be kept intact for partnership creditors.[132]

Be this as it may, any diminution of partnership assets automatically entails diminution of the profits or surplus out of which the judgment of a partner's separate creditor may be satisfied. As such a judgment creditor of an individual partner has a positive interest in the preservation of the partnership assets. It is therefore within his right, or that of a receiver appointed to collect on his judgment, to avail of every measure to prevent unauthorized or illegal dissipation or transfer of partnership assets.[133] For instance, he can institute an action to nullify any mortgage or other assignment by some but not all of the partners of their right in specific partnership property.[134] Or if he cannot satisfy his charging lien because the partnership assets are transferred, without payment to the partnership of a fair and reasonable consideration, to a third person, who knows of the charging order, and thus placed beyond the reach of the lien, he may recover damages from such person on the ground of tortious conduct.[135] Such remedies come within the authority of the court to make orders "which the circumstances of the case may require".[136]

4. Redemption or Purchase of Charged Interest — Rights of Redeeming or Purchasing Partner

The law permits any one or more of the partners to redeem or to purchase the interest of a debtor partner which is charged with satisfaction of the judgment of his creditor. The redemption or purchase may be made with the separate property of the redeeming or purchasing partners or with partnership property, but in case partnership property is used the consent of all the partners whose interests are not so charged or sold must be obtained.[137] Redemption is required to be made "at any time before foreclosure", while the right to purchase may be exercised when sale of the charged interest is directed by the court.[138] Apparently, the word "foreclosure" is not to be understood here in its generally understood sense, and the suggestion is sound that "before foreclosure" should be taken to

131 Shirk v. Caterbone, 193 A.2d 664 (1943).
132 See Windom Nat. Bank v. Klein, *supra*, note 42. Also Arts. 1827 and 1839, CIVIL CODE.
133 *Id.*
134 *Id.*
135 Taylor v. S. & M. Lamp Co., 12 Cal. Rptr. 323 (1961).
136 CIVIL CODE, Art 1814; Windom Nat. Bank v. Klein, *supra*, note 42.
137 CIVIL CODE, Art. 1814, second par.
138 *Id.*

mean "before sale or before the expiration of a redemption period fixed by the court in its order of sale".[139] A redemption made after sale is entirely within the court's direction.[140]

By specific provision of the law, exercise of the option to redeem or purchase granted to any one or more of the partners will not affect a dissolution of the partnership.[141] But what will be its effect on the rights of the partners concerned? Does the redeeming or purchasing non-debtor partner acquire the interest of the debtor partner free and clear of the latter's claim or does he hold it in trust for him? This question has not been judicially resolved. The following analysis and observations of Professor Gose, however, provide a lot of elucidation on the matter:

> Considering the statute only, a possible distinction between the redemption and purchase situations can be urged. The price realized on a competitive sale theoretically represents the full value of the thing sold, although in practice this ideal result is seldom achieved. Upon a redemption before sale, however, there is not even a theoretical logical connection between the redemption price and the value of the redeemed interest. Normally the redemption price would be the amount of the creditor's claim and any identity between the amount of the claim and the value of the interest would be merely a coincidence.
>
> Under these circumstances it might be maintained with some force that the non-debtor partners who purchase at a sale held under the statute acquire the debtor partner's interest absolutely whereas the non-debtor partner who redeems has merely advanced moneys for the benefit of the debtor and holds the interest in trust for him. The theory would be that, in the former situation, the debtor's interest is entirely represented by the purchase money while, in the latter case, the value of the interest and its relation to the redemption price can be determined only by an accounting.
>
> More likely, however, the courts would in all cases invoke principles of fiduciary relationship which are so deeply rooted in the law of partnership and would in every instance require the non-debtor partners to account for the full value of the debtor partner's interest, less the amount paid by way of redeeming or purchase. Such a view was most emphatically advanced in two cases which arose in England under the old procedure prior to the Partnership Act. While both of these cases contained substantial evidence of bad faith on the part of the non-debtor partners, the scope and force of the fiduciary doctrine is such that bad faith would not seem essential to the debtor partner's case against his associates.[142]

Right to dissolve partnership

Redemption or purchase of the charged interest of a debtor partner does not, as already stated, have the effect of dissolving the partnership. But the mere sufferance by a partner of a charging lien on his interest in

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139 GOSE, *op. cit. supra*, note 122, at 17n. 53.
140 *Id.*
141 CIVIL CODE, Art. 1814, second par.
142 GOSE, *op. cit., supra*, at 17-18.

the partnership is sufficient ground for the other partners to dissolve the partnership under Article 1830(c) of the Code. There would thus seem to be no reason why redemption or purchase of the debtor partner's interest under Article 1814 will not suffice as a ground for dissolution which may be invoked by the other partners.

PARTICIPATION IN MANAGEMENT

This subject will be more fully treated in the next chapter, which is concerned with the relations and dealings of the partnership and the partners with third persons. For purposes of this chapter, discussion will be confined to aspects of the subject which properly pertain to the relationship among the partners.

I. GENERAL RULE

As stated in Chapter II, all partners have equal rights in the management and conduct of the partnership business. There cannot ordinarily be a partnership unless there is such a community of interest, as far as third persons are concerned, as empowers each member of the association to make contracts, incur liabilities, manage the business and dispose of its whole property.[143]

II. WHEN AGREEMENT EXISTS

But, as also pointed out in Chapter II, the above rule does not preclude the associates from vesting by agreement the management of the enterprise or any part of it in one or more members without thereby defeating their intent to form a partnership, the making of the agreement to relinquish control being, in that case, itself considered an exercise of the requisite right of control.[144]

When such an agreement exists, the Code provides certain rules which the partners must observe.

1. Extent of Authority

A partner who is appointed manager, either in the articles of partnership or by subsequent agreement, may execute all acts of administration.[145] If his powers are not specified, this power includes all acts that may be necessary to attain the object of the partnership,[146] including that of contract-

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[143] Municipal Paving Co. v. Herring, 150 P. 1067 (1915), cited in the concurring opinion in Evangelista v. Collector of Internal Revenue, 105 Phil. 140 (1957); Smith v. Grove, 118 P.2d 324 (1941).

[144] Art. 1800.

[145] CIVIL CODE, Art. 1800.

[146] Ng Ya v. Sugbu Commercial Co., C.A., G.R. No. 10318-R, April 23, 1954, 50 O.G. 4913 (1954).

ing the services of a third person,[147] dismissal or discharge of employees,[148] and issuance of official receipts for amounts collected for the firm.[149] If he is the sole managing partner, he can exercise such acts even against the opposition of his partners, unless he does so in bad faith.[150]

If the management of the firm is shared by one or more other partners and there is neither a specification of their respective duties nor a stipulation that one of them shall not act without the consent of all the others, each one of them may likewise separately execute all acts of administration (i.e., there is what is known as solidary management), but if any of them opposes the acts of any one or more of the others, the majority's decision shall prevail. In case of a tie, the matter shall be decided by the partners owning the controlling interest.[151] If the managing partner whose act is opposed disregards the opposition and proceeds to execute or consummate it without observing this procedure, his act shall be void as between or among the partners and even as to third persons having knowledge of the opposition.[152] This is on the assumption, of course, that the opposed act is not subsequently ratified by the necessary number of votes.

If there is an apportionment or specification of the respective duties of the managing partners, the decision is solely his within the scope of his authority, subject only to the limitation that he should not act in bad faith.[153]

If the agreement is one of joint management, i.e., it is stipulated that none of the managing partners shall act without the consent of the others, the concurrence of all, according to the Code, shall be necessary for the validity of the acts. In such case the absence or disability of any one of them cannot be alleged, unless there is imminent danger of grave or irreparable injury to the partnership.[154] This restriction, however, is addressed to the partner acting in the transaction, not to the third person with whom he is transacting business who is under no obligation to ascertain whether or not the partner has obtained the consent of his copartner or copartners, unless he has information to the contrary — a rule which is founded on the necessity of protecting third persons from fraud and deceit, to which otherwise they would be easy victims.[155] Moreover, the restriction obviously applies only to the execution of formal written contracts; it does not cover routine matters, like the ordinary purchases and sales made by a firm in the merchandising business, which are naturally comprehended within the general authority of one charged with managing a business.[156]

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147 Garcia Ron v. La Compania de Minas de Batan, 12 Phil. 130 (1908).
148 Martinez v. Conde, 5 Phil. 545 (1906).
149 Ng Ya v. Sugbu Commercial Co., *supra*, note 146.
150 Art. 1800.
151 Art. 1801.
152 5 TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 288 [1959], citing 11 PLANIOL & RIPERT 293-294, 5 Llerena 447.
153 *Id.*, also Art. 1800.
154 Art. 1802.
155 Litton v. Hill & Ceron, 67 Phil. 509 (1935).
156 Smith. Bell & Co. v. Aznar, G.R. No. 5427, Feb. 28, 1941, 40 O.G. 1881 (1941).

2. Revocation of Authority

If the appointment of the managing partner as such is made in the articles of partnership, his power is irrevocable without just or lawful cause.[157] The Code does not specify what would be considered as just or lawful cause. It has been opined, however, that all grounds for the revocation of agency may be considered as such.[158] But whether or not such cause exists, the revocation may be effected only by the vote of the partners representing the controlling interest.[158] The codal provision to this effect settles a matter which the old law left in doubt.[160]

The rule is quite different if the power was granted after the partnership has been constituted. Such a power may be revoked at any time.[161]

III. WHEN NO AGREEMENT MADE

When no stipulation is made regarding management, all the partners are considered agents and whatever any one of them may do alone, including the execution in the partnership name of any instrument, shall bind the partnership.[162]

This is, of course, subject to certain qualifications. The first is that this power of general agency embraces only what are referred to in civil law countries as *acts of administration* and in Anglo-American law as *acts for apparently carrying on in the usual way the partnership business*. It does not cover what are known as acts of disposition or acts not apparently for carrying on the partnership business in the usual way; nor does it extend to acts which have the effect of modifying the articles of partnership.[163]

The second is that the power is subject to the rule embodied in Article 1801 which makes the decision of the majority, or in case of a tie, that of the owners of the controlling interest prevail should any of the partners register an opposition to an act in exercise of said power.

The third is that no important alteration in any immovable property of the partnership may be made without the consent of the other partners. It is of no moment that such alteration may be useful to the firm. But the partner concerned may seek the intervention of the court if the other partners' refusal to give their consent is manifestly prejudicial to the interest of the partnership.[164] Such consent may also be presumed if the alteration

157 Art. 1800.
158 11 MANRESA 280-282 (1920).
159 Art. 1800.
160 See FRANCISCO, PARTNERSHIP 170 (1958).
161 Art. 1800.
162 Arts. 1803 and 1818, first par.
163 Art. 1818; TOLENTINO, *op. cit., supra,* note 152, at 290.
164 Art. 1803(2).

is not opposed notwithstanding knowledge on the part of the other partners.[165]

ACCESS TO PARTNERSHIP BOOKS

Subject to contrary agreement, express or implied, the partnership books belong to all partners and each one of them has equal rights thereto.[166] Every partner has the right, at any reasonable hour, to have access to and inspect and copy any of said books.[167] By "reasonable hour" means any reasonable hour on business days throughout the year, and not merely during some arbitrary period of a few days chosen by some or one of the partners.[168] According to one decision, equity will always intervene to prevent one partner from keeping or concealing the partnership books so that they cannot be inspected by his copartner; and this is true even in a suit for having an account taken even after a partnership has been dissolved.[169]

It has been held, however, that where a partner has transferred his right in the partnership books, he may not thereafter, as a matter of right, inspect, copy, photograph or photostat books, records or papers.[170]

RIGHT TO TRUE AND FULL INFORMATION

This right is provided for in Article 1806 of the Code which requires the partners to "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 of any partner under legal disability." It is, however, amplified by Article 1807 which obligates every partner to "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."

The consent required by Article 1807, before any partner may retain the benefit or profit mentioned therein, must, it has been held, be an *informed consent,* i.e., with knowledge of the facts necessary to the giving of an intelligent consent.[171] This imposes upon him the affirmative duty to disclose to his partners, not only the fact that he is dealing on his own account, but all material facts within his knowledge regarding the transaction.[172] Thus, despite the wording of Article 1806, he is bound to perform

165 11 MANRESA 392-393 (1920).
166 People v. Phillips, 137 N.Y.S. 2d 697 (1955).
167 Art. 1805; Geist v. Burnstine, 20 N.Y.S.2d 417 (1940).
168 Pardo v. Hercules Lumber Co., 47 Phil. 964 (1934).
169 Seeley v. Dunlop, 146 A. 271 (1929).
170 Sanderson v. Cooke, 175 N.E. 518 (1931).
171 Starr v. International Realty, Ltd., 533 P.2d 165 (1975).
172 *Id.*, at 168-169.

this duty, not only when a demand therefor is made by his copartner or copartners, but under all circumstances where good faith requires him to do so.[173] For, not only should he not make any false representation, but should abstain from all concealment.[174]

RIGHT TO FORMAL ACCOUNT

As a general rule, no partner has a right to demand a formal accounting except as a consequence of dissolution or unless he at the same time seeks dissolution of the partnership.[175] This is so because he "has equal access with his partners to the partnership books, and there is no reason why they should constantly render to him accounts in the formal sense of that word, which is the sense in which it is" used in Article 1809 of the Code.[176]

Article 1809 provides the instances when this general rule is not to be observed: (1) if a partner is wrongfully excluded from the partnership business or possession of its property by his co-partners, i.e., there is no express agreement authorizing such exclusion; (2) if the right exists under the terms of any agreement; (3) if the provisions of Article 1807 are applicable; or (4) whenever other circumstances render it just and reasonable. The last of these instances covers circumstances, frequently arising, "which impose on one or more partners the duty of rendering a formal account to the co-partner, as where one partner is traveling for a long period of time on partnership business, and other partners are in possession of the partnership books."[177]

With respect to the right to an account under Article 1807, the following Philippine decision provides an interesting application:

> Lim Tanhu vs. Ramoletc, 66 SCRA 425, 475-477 (1975): Anent the allegation of plaintiff that the properties shown by her exhibits to be in the names of defendants Lim Tanhu and Ng Sua were bought by them with partnership funds, His Honor confirmed the same by finding and holding that "it is likewise clear that real properties together with the improvements in the names of defendants Lim Tanhu and Ng Sua were acquired with partnership funds as these defendants only partners-employees of deceased Po Chuan in the Glory Commercial Co. until the time of his death on March 11, 1966." (p. 30, ed.) It is Our considered view, however, that this conclusion of His Honor is based on nothing but pure unwarranted conjecture. Nowhere is it shown in the decision how said defendants could have extracted money from the partnership in the fraudulent and illegal manner pretended by plaintiff. Neither in the testimony of Nuñez nor in that of plaintiff, as these are summarized in the decision, can there be found any

[173] Penner v. De Nike, 285 N.W. 33 (1939).
[174] Poss v. Gottlieb, 193 N.Y.S. 418 (1922); Alexander v. Sims, 294 S.W.2d 832 (1952).
[175] Friedland v. Friedland, 75 N.Y.S.2d 264 (1958); Einsweiller v. Einsweiller, 61 N.E.2d 377 (1945); Fisher v. Fisher, 118 N.Y.S.2d 343 (1953).
[176] *Commissioners' Note*, 7 U.L.A. 125 (1949).
[177] *Id.*, at 125-126. See also Few v. Few, 122 S.E. 2d 829 (1961).

single act of extraction of partnership funds committed by any of said defendants. That the partnership might have grown into a multi-million enterprise and that the properties described in the exhibits enumerated in the decision are not in the name of Po Chuan, who was Chinese, but of the defendants who are Filipinos, do not necessarily prove that Po Chuan had not gotten his share of the profits of the business or that the properties in the names of the defendants were bought with money of the partnership. In this connection, it is decisively important to consider that on the basis of the concordant and mutually cumulative testimonies of plaintiff and Nuñez, respondent court found very explicitly that, and We reiterate:

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That the late Po Chuan was the one who actively managed the business of the partnership Glory Commercial Co.; that he was the one who made the final decisions and approved the appointments of new personnel who were taken in by the partnership; that the late Po Chuan and defendants Lim Tanhu and Ng Sua are brothers, the latter two (2) being the elder brothers of the former; that defendants Lim Tanhu and Ng Sua are both naturalized Filipino citizens whereas the late Po Chuan until the time of his death was a Chinese citizen; that the three (3) brothers were partners in the Glory Commercial Co. but Po Chuan was practically the owner of the partnership having the controlling interest; that defendants Lim Tanhu and Ng Sua were partners in name but they were mere employees of Po Chuan; xxx. (Pp. 90-91, Record.) HELD: If Po Chuan was in control of the affairs and the running of the partnership, how could the defendants have defrauded him of such huge amounts as plaintiff had made his Honor believe? Upon the other hand, since Po Chuan was in control of the affairs of the partnership, the more logical inference is that if defendants had obtained any portion of the funds of the partnership for themselves it must have been with the knowledge and content of Po Chuan, for which reason no accounting could be demanded from them therefor, considering that Article 1807 of the Civil Code refers only to what is taken by a partner without the consent of the other partner or partners. Incidentally again, this theory about Po Chuan having been actively managing the partnership up to his death is a substantial deviation from the allegation in the amended complaint to the effect that "defendants Antonio Lim Tanhu, Alfonso Leonardo Ng Sua, Lim Teck Chuan and Eng Chong Leonardo, through fraud and machination, took actual and active management of the partnership and although Tee Hoon Lim Po Chuan was the manager of Glory Commercial Co., defendants managed to use the funds of the partnership to purchase lands and buildings etc. (Par. 4, p. 2 of amended complaint, Annex B of petition) and should not have been permitted to be proven by the hearing officer, who naturaaly did not known any better.

Moreover, it is very significant that according to the very tax declarations and land titles listed in the decision, most if not all of the properties supposed to have been acquired by the defendants Lim Tanhu and Ng Sua with funds of the partnership appear to have been transferred to their names only in 1969 or later, that is, long after the partnership had been automatically dissolved as a result of the death of Po Chuan. Accordingly, defendants have no obligation to account to anyone for such acquisitions in the absence of clear proof that they had violated the trust of Po Chuan during the existence of the partnership. (See Hanlon vs. Hausserman and Beam, 40 Phil. 796).

A provision in a partnership agreement denying a general partner the right to accounting and forfeiting her investment upon the termination of the agreement has been held to be unenforceable.[178]

But it has likewise been held that a partner who had sold and delivered all of her interest in the partnership to a third person was not entitled to accounting or any interest in the partnership assets.[179]

REIMBURSEMENT OF ADVANCES AND INDEMNIFICATION FOR RISKS

A partner has no obligation to loan or advance money to his firm.[180] He may, however, do so;[181] in which case, if there be no contrary agreement, he becomes a creditor of his firm and as such entitled to reimbursement for such loan or advance before there can be any distribution of profits.[182] Any voluntary contribution of money or property for the use of the partnership beyond the amount required to be contributed by the partnership agreement is considered an advance or a loan.[183] This includes money advanced to discharge partnership obligations,[184] such as taxes paid by one partner on firm property,[185] rent of buildings occupied by the firm,[186] or the expense of repairs made on a partnership vessel during a voyage;[187] for office expense;[188] or for personal expenses of a partner while away from home on firm business.[189] It is in this concept that the Code expressly makes the partnership "responsible to every partner for the amounts he may have disbursed on behalf of the partnership and for the corresponding interest, from the time the expenses are made."[190]

The Code also makes the partnership answerable to each partner for the obligations he may have contracted in good faith in the interest of the partnership business.[191] These include personal obligations incurred by him in the ordinary and proper course of partnership's affairs and in the preservation of its business or property.[192] In accordance with this rule, reimbursement or indemnity from the partnership has been allowed for the

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178 Moldovan v. Fisher, 308 P.2d 844 (1957).
179 Kelly v. elly, 411 S.W.2d 953 (1967).
180 Dalury v. Rezinas, 170 N.Y.S. 1045 (1918).
181 Rodgers v. Clement, 56 N.E. 901, 76 Am. St. Re. 342 (1900).
182 Valley Springs Holding Corporation v. Carlson, 227 N.W. 841 (1929).
183 M. & C. Creditors Corporation v. Pratt, 17 N.Y.S.2d 240 (1938); Bradford v. Bradford, 172 S.W.2d 365 (1943).
184 Kirkpatrick v. Christensen, 206 P.2d 577 (1949).
185 Pabalan v. Velez, 22 Phil. 29 (1912).
186 Talbert v. Hamlin, 68 S.E. 764 (1910).
187 Mumford v. Nicoll, 20 Johns. 611.
188 Gonzalez v. Smith, 62 So. 913 (1913).
189 Vandivier v. Davies, 54 S.W.2d 32 (1932).
190 Art. 1796. See Martinez v. Ong Pong Co., 14 Phil. 726, 729 (1910), holding this article to be inapplicable where no money other than that contributed as capital is involved.
191 Art. 1796.
192 Goldring v. Chudacoff, 60 P.2d 135 (1936); Miles v. Miles, 282 P. 37 (1929); Cratien v. Kincaid, 84 S.W.2d 1094 (1935).

cost of articles used in the business,[193] for office expense,[194] or for the expense of defending a lawsuit against the firm.[195]

Each partner is further entitled to be indemnified by the partnership for risks in consequence of its management.[196] This contemplates risks and losses which a partner necessarily incurs on behalf of the partnership.[197] Thus, losses from a loan to a third person who deals with the partnership has been held to be reimbursable to the partner incurring them only if he is able to show that the loan was made on behalf of the partnership for its purposes, not on his own account.[198] He must further prove that, in making the loan, he observed the conditions and safeguards, if any, agreed on.[199]

[193] Nichols v. Mumford, 181 N.W. 1022 (1921).
[194] Gonzalez v. Smith, 62 So. 913 (1913).
[195] Pitts v. Walker, 103 So. 850 (1925).
[196] Art. 1796.
[197] Maddox v. Peacock, 151 So. 831 (1933); Miles v. Miles, 282 P. 37 (1929).
[198] Fuller v. Laws, 271 S.W. 836 (1925).
[199] Caldwell v. Richards, 267 P. 127 (1928).