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SURVEY OF ILLINOIS LAW FOR THE YEAR 1945-1946*

I. BUSINESS ORGANIZATIONS

CORPORATIONS

Earlier holdings in this state had indicated that while a director occupies a fiduciary relation to his corporation when purchasing the shares thereof, he occupies no such relation in respect to an individual shareholder and might deal with him at arm’s length, provided no positive fraud is perpetrated. An interesting exception to that rule has been created by the decision in the case of Agatucci v. Corradi where it was held that a director who possessed knowledge of an imminent sale of the corporate assets at an enhanced price was under an obligation to reveal such fact to the shareholder at the time of negotiating for the purchase of his shares. The failure so to disclose was treated as a species of fraud and deceit entitling the shareholder to recover his proportionate share of the profit so made. The court there adopted a

*The present survey is not intended in any sense to be a complete commentary upon, or annotation of, the cases decided by the Illinois courts during the past year, but is published rather for the purpose of calling attention merely to cases and developments believed significant and interesting. The period covered is that of the judicial year, embracing from 390 Ill. 436 to 393 Ill. 628; from 326 Ill. App. 15 to 329 Ill. App. 243. No new legislation was enacted in this period.

1 Wood v. MacLean Drug Co., 266 Ill. App. 5 (1932), cert. den. 266 Ill. App. xii.
concept, lying between the majority and minority views on the subject and originating in the decision of the United States Supreme Court in the case of Strong v. Repide, to the effect that the director is to be regarded as a fiduciary when he possesses knowledge of "special circumstances" not otherwise available to the shareholder. In all other cases, arm's length dealing between the two is still possible.

The statutory right of the shareholder to inspect the books and records of his corporation has been hedged by limitations until it now takes an exceptionally strong set of circumstances to procure compulsory inspection. While the statute does not require any written demand as a condition precedent to suit for that purpose, it has now been held, in People ex rel. Miles v. Bowen Industries, Inc., that whatever demand is made should show that the inspection is desired for a proper purpose. In the absence of such accompanying explanation, the shareholder would be denied the right to prove that the inspection was sought for legitimate ends. It was also held, in Doggett v. North American Life Insurance Company of Chicago, that the provisions of the Business Corporation Act respecting the right of inspection applied to stockholders of insurance companies even though the latter are incorporated under, and regulated by, a separate statute.

Attention was called last year to the decision of the Appellate Court for the First District in the case of Electrical Contractors' Association v. A. S. Schulman Electric Company concerning the validity of a corporate by-law fixing membership dues on a percentage basis of the amount of business done by a particular member. It was then noted that leave to appeal had been granted. The Illinois Supreme Court has now affirmed the decision of the

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7 327 Ill. App. 362, 64 N. E. (2d) 213 (1945).
8 328 Ill. App. 613, 66 N. E. (2d) 747 (1946). Leave to appeal has been allowed.
9 324 Ill. App. 28, 57 N. E. (2d) 220 (1944), noted in 24 CHICAGO-KENT LAW REVIEW 1.
Appellate Court and has declared such a by-law to be valid in the absence of clear evidence that the operation of the by-law tended to restrain trade and stifle competition or increased the cost of the member’s services to the general public.\(^{10}\) The wide-spread use of by-laws of the character in question makes the decision especially significant, particularly since similar by-laws had been repudiated elsewhere at least as applied to persons engaged in public construction.\(^{11}\)

Dissatisfaction on the part of certain litigants and their attorneys with the rule that a charitable corporation may not be held liable for the torts of its servants and agents is evidenced by the wide variety of attempts that have been made to unseat the doctrine, or avoid its consequences, ever since it was promulgated for this state by the decision in *Parks v. Northwestern University*.\(^{12}\) Another attempt, made during the past year, predicated on the ground that the fact that the charitable corporation carried public liability insurance to protect itself from such losses should operate as a waiver of the immunity, was rejected in *Piper v. Epstein*.\(^{13}\) The rigid adherence by the Illinois courts to a doctrine which is losing ground elsewhere in this country\(^{14}\) invites legislative attention to the problem.

The implications behind the decision in *Walden Home Builders, Inc. v. Schmit*\(^{15}\) may be of far-reaching effect. Although the court there merely held that the 1941 amendment to the Business Corporation Act\(^{16}\) permitted an action by a dissolved corporation, after its dissolution, upon a cause of action which had accrued

\(^{10}\) 391 Ill. 333, 63 N. E. (2d) 392, 161 A. L. R. 787 (1945), noted in 24 Chicago-Kent Law Review 347.


\(^{12}\) 218 Ill. 381, 75 N. E. 991, 2 L. R. A. (N.S.) 556, 4 Ann. Cas. 103 (1905).

\(^{13}\) 326 Ill. App. 400, 62 N. E. (2d) 139 (1945), noted in 24 Chicago-Kent Law Review 266.

\(^{14}\) See the exhaustive treatment of the subject by Rutledge, J., in President and Dir. of Georgetown College v. Hughes, 130 F. (2d) 810 (1942), particularly pp. 817-22.


while it possessed full existence,\textsuperscript{17} the reasoning behind such decision may be sufficient to undermine the holding of the United States Supreme Court in \textit{Chicago Title and Trust Company v. 4136 Wilcox Building Corporation}.\textsuperscript{18} It had there been decided, in the light of the then existing statutory provisions, that an Illinois corporation, subsequent to decree of dissolution, could not avail itself of the beneficial provisions for reorganization to be found in the national Bankruptcy Act. It would now seem, by reason of the statutory amendment and the holding in the noted case, that application to the federal courts to secure reorganization should be possible despite the termination of corporate existence, provided the application is made within two years from the date of dissolution.

Two cases affecting the specialized business of banking might also be noted. The Banking Act purports to give the State Auditor exclusive jurisdiction over the affairs of insolvent state banks,\textsuperscript{19} and that provision has heretofore been regarded as sufficient to prevent a stockholder thereof from maintaining a representative suit upon claims arising prior to insolvency.\textsuperscript{20} The decision in one of these cases, that of \textit{Rinn v. Broadway Trust \& Savings Bank of Chicago},\textsuperscript{21} however, would seem to suggest that such rule is not applicable where the claims of the creditors of the insolvent bank have been discharged, even though the Auditor's receivership and dissolution proceeding has not been terminated, on the questionable ground that there is no longer any public interest in the proceeding. It would seem to be more nearly the law that the shareholder, instead of pursuing an independent course, ought to use mandamus proceedings against the State Auditor to compel

\begin{itemize}
\item \textsuperscript{17}Prior to that amendment, the statute merely provided for the survival of actions against the corporation: Ill. Rev. Stat. 1939, Ch. 32, § 157.94.
\item \textsuperscript{18}302 U. S. 120, 58 S. Ct. 125, 82 L. Ed. 147 (1937).
\item \textsuperscript{19}Ill. Rev. Stat. 1945, Ch. 16½, § 11.
\item \textsuperscript{20}McIlvaine v. City Nat. Bank \& Trust Co. of Chicago, 314 Ill. App. 496, 42 N. E. (2d) 93 (1942); Lorimer v. Rosehill Cemetery Co., 325 Ill. App. 258, 59 N. E. (2d) 893 (1945), abst. opin.
\item \textsuperscript{21}326 Ill. App. 376, 62 N. E. (2d) 8 (1945), noted in 24 \textit{Chicago-Kent Law Review} 188.
\end{itemize}
him to take action. The other case has bearing on the legislative action, taken in 1941, to alleviate the distress arising from the banking collapse of 1933. That collapse produced many suits against former stockholders in closed banks, based upon their constitutional liability, even though they had ceased to be shareholders years prior to the time of closing. By a special statute of limitations, the legislature required all such suits to be maintained within one year next after the cause of action accrued. Content has been given to that statute by the decision in the case of Geisler v. Benken where it was held that the limitation period there fixed does not begin to run on a tort claim against the bank until the same has been reduced to judgment, but when so reduced, the time is running in favor of the shareholder even though an appeal may have been taken therefrom. A suit filed within one year from the time of the affirmance of such judgment on appeal but more than one year after its rendition was, consequently, held barred by lapse of time.

Principles of law regarding partnerships, unincorporated associations and other forms of business organization have gone unquestioned during the period of this survey.

PRINCIPAL AND AGENT

Despite the findings of a jury of reasonable men that the servant was acting within the scope of his employment at the time of the injuries to the plaintiff, the Appellate Court, in Boehmer v. Norton, held as a matter of law that the servant had deviated from his employer's business and was engaged upon a

22 The analogy between banking and insurance company liquidations is close. Control over the latter is exclusively vested in the Director of Insurance: People ex rel. Palmer v. Niehaus, 356 Ill. 104, 100 N. E. 349 (1934). The only remedy of the private person to compel performance of duty in such cases has been limited therein to mandamus: People ex rel. Gosling v. Potts, 264 Ill. 522, 106 N. E. 524 (1914); American Surety Co. v. Jones, 384 Ill. 222, 51 N. E. (2d) 122 (1943).

23 Laws 1941, Vol 1, p. 272; Ill. Rev. Stat. 1945, Ch. 16½, §§ 6a-6h.


25 The mere pendency of an appeal has been held to be insufficient to postpone the commencement of the running of the statute period: Peoria County v. Gordon, 82 Ill. 435 (1876).

26 328 Ill. App. 17, 65 N. E. (2d) 212 (1946). Leave to appeal has been denied.
frolic of his own. The plaintiff therein, a boy of sixteen, another boy friend, and the defendant's servant, a boy eighteen years old, were sitting in the front seat of the defendant's car, which the servant was driving to the defendant's garage from the defendant's place of business. Instead of taking the usual and direct course to the garage the driver proceeded in an opposite direction several blocks and then turned around to go back to the garage, driving at a fast speed. He passed the point where he should have turned to go to the garage and was continuing to the end of a dead-end street, a distance of several hundred feet, when the car skidded because of the speed and an icy condition, injuring the plaintiff. Plaintiff's counsel contended that the driver-servant, after passing the point where he should have turned to go to the defendant's garage, re-entered the master's employment the moment he decided to proceed to the dead-end and to make a U-turn. In rejecting this contention, the court held that "a re-entry is not effected merely by the mental attitude of the servant, but there must be that attitude coupled with a reasonable connection in time and space with the work in which he should be engaged."27 The force of the plaintiff's argument was impaired by the testimony of the driver that "Your guess is as good as mine why I was going down to that dead-end," and that "I passed a lot of driveways so that I could have turned around."

In another case, that of Dean v. Ketter,28 it was held that cab drivers of the North Shore Cab Company, operating in the vicinity of Highland Park, were independent contractors so that the negligence of the cab driver could not be imputed to the defendant cab company. The automobile was owned by the cab company but the testimony showed that while the name "North Shore Cab" appeared thereon the defendant company rented the car to the driver on a mileage basis, that the driver was free to accept calls or not as he pleased, and that the defendant had no control over the operation of the car nor of the receipts from such operation. Whether one is a servant or independent contractor depends, of course, upon the facts of each case. If there was a presumption

27 328 Ill. App. 17 at 24, 65 N. E. (2d) 212 at 215.
of agency arising from the name on the taxicab, that presumption, the court said, "entirely vanished by the testimony of the driver." It also noted that the general rule as to the vanishing of a presumption upon the introduction of testimony to the contrary is particularly applicable in cases involving automobile accidents, in which cases the appearance of the name of the owner on the vehicle cannot be considered "as inducing a third party to act or rely upon any presumption therefrom to his peril or injury." In considering the scope of this decision, it should be borne in mind, for whatever it might be worth, that the plaintiff was a third person who could claim no privity with the cab company such as might obtain had the injured person been a passenger in the cab.

The apparent authority of a sales clerk to make a representation binding on the principal was under consideration in *Lindroth v. Walgreen Company* where an eighteen-month old infant was severely burned allegedly because the mother of the infant, when purchasing a vaporizer, relied upon the statements of the sales girl in a local drug store that although the vaporizer had no automatic shut-off it would be "safe for at least two hours" to leave without watching. The defendant's claim that the statement was purely one of opinion, not a warranty, and was made without authority was rejected as being within the scope of an apparent authority unaffected by any secret arrangement between the defendant and its clerk. A directed verdict was, accordingly, set aside.

Two cases involving real estate brokers are worthy of mention. In *Kraus v. Campe*, it was held that a real estate broker cannot claim commissions when the contract negotiated by him on behalf of his principal cannot be specifically enforced against the purchaser because defectively prepared. In *Reid v. Chicago Title &..."
Trust Company, a suit for commissions, the court held that, in the absence of a contractual or an agency relation between them, a prospective purchaser is under no duty to submit his offer to purchase to a broker merely because the real estate which the purchaser ultimately bought was first submitted to him by such broker. A real estate broker representing the owner and a prospective buyer deal at arm’s length with each other. Just as the broker is free to negotiate for the purchase by other buyers so is the prospective purchaser free to deal with and submit his offers to purchase through other brokers. Accepting the facts as true, the most that could be said of them, the court stated, was that the prospective purchaser “failed to observe the proprieties that should prevail in the real estate field between real estate brokers and prospective purchasers.”

The court, in People v. Parker, considering the duty of fidelity owed by a lawyer to his client and the duty of good faith and honorable dealing owed by him to the judicial tribunals before whom he practices his profession, unsparingly condemned, as “far more reprehensible” than the acts of the client, the conduct of the attorney for asserting as true, in a brief filed for his client, the many wild, malignant and scandalous charges made against individuals, prominent public officials, and all of the courts of the state contained in affidavits and documents filed by the client with the clerk of the court. Such attorney was false to his obligations, the court said, when he filed the brief in question and “has proven, out of his own mouth, that he is not fit to serve as a ‘minister in the temple of justice.’”

While the federal courts have been busy giving interpretation and content to a variety of federal statutes affecting labor law, nothing of importance has been decided on that subject in the state courts.

34 328 Ill. App. 46, 65 N. E. (2d) 457 (1946).
35 328 Ill. App. 46 at 60, 65 N. E. (2d) 457 at 463.
36 Such cases are outside of the scope of this survey for only developments in the local law are here considered.
37 Cases dealing with the Illinois Unemployment Compensation Act are treated under the subject of Taxation. C.f., post.
WORKMEN'S COMPENSATION

A few notable decisions in the field of workmen's compensation have appeared. In one of them, that of *Christian County v. Industrial Commission*, the majority of the Supreme Court held that the automatic coverage provisions of the act did not apply to benefit a public health nurse whose work was not extra-hazardous in fact. Section 3 of the statute does provide that the act shall apply automatically and without election to various political subdivisions of the state, but the wording the balance of the section makes its possible to interpret the automatic provision as applying only to enterprises therein declared to be extra-hazardous. Such, in fact, was the interpretation given. The dissenting opinion, on the other hand, expressed the view that the nurse was a covered employee since it was well-known that some departments of the public employer were engaged in hazardous activities and earlier precedents had established the rule that if some employees were automatically included then all, even those working a considerable distance from the hazardous operations, were under the Workmen's Compensation Act. The majority not only ignored such precedents but seemed to regard each separate activity of the county as a distinct enterprise. When a body politic is the employer, therefore, it will be necessary, in each case, to ascertain as a matter of fact whether or not the applicant for compensation has been engaged in an extra-hazardous activity.

In another case, that of *City of Chicago v. Industrial Commission*, the applicant was a city license investigator who, as a part of his employment, customarily walked about the city streets canvassing places of business. He stubbed his toe when stepping upon a sidewalk, aggravated a diabetic condition, and eventually

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38 391 Ill. 475, 63 N. E. (2d) 515 (1945), noted in 34 Ill. B. J. 538. Gunn, J., wrote a dissenting opinion concurred in by Wilson and Smith, JJ.
39 Ill. Rev. Stat. 1945, Ch. 48, § 139.
40 See, for example, Illinois Publishing & Printing Co. v. Industrial Comm., 299 Ill. 189, 132 N. E. 511 (1921).
41 389 Ill. 592, 60 N. E. (2d) 212 (1945), noted in 34 Ill. B. J. 180.
had to have his leg amputated. An award in his favor was affirmed upon finding that the injury suffered on the street was in the course of his employment, had a causal relation to it, and consequently the ultimate injury arose out of his employment. An exception to the doctrine that the risk must be one peculiar to the work, and not one to which everyone is subject, created in favor of employees whose duties require them to use the streets, seems to be expanding.

The third case, that of *F. K. Ketler Company v. Industrial Commission*, called for interpretation of Section 29 of the Workmen's Compensation Act. The deceased employee therein was killed while driving piles for the employing company on a bridge project for a railroad. The widow sued the railroad, which was not under the Illinois act, in a common-law action for negligence. Although the railroad correctly disclaimed liability under the common law or otherwise, it paid the widow $4000 in settlement and the action was dismissed. On proceedings under the act against the employer, an award in the amount of $4895 was granted to the widow. The employer then asked, pursuant to Section 29, that it be given credit to the extent of the amount paid by the railroad. The Supreme Court held, very properly, that credit should be denied as there had been no negligence whatever on the part of the railroad and credit is possible only where the circumstances create a "legal liability for damages on the part of some person other than the employer."

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42 See note in 39 Ill. L. Rev. 187.
43 Olson Drilling Co. v. Industrial Commission, 386 Ill. 402, 54 N. E. (2d) 452 (1944).
44 392 Ill. 564, 65 N. E. (2d) 359 (1946), noted in 13 U. of Chi. L. Rev. 522.