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SURVEY OF ILLINOIS LAW FOR THE YEAR 1955-56*

I. BUSINESS ORGANIZATIONS

CORPORATIONS

Although the past judicial year has seen no outstanding developments in this field, the subject of corporations has received more consideration during this period than has been true of like periods in the recent past. In particular, attention has been directed toward statutes relating to the subject. Section 38 of the Business Corporation Act\(^1\) received its first judicial interpretation in the case of *Steigerwald v. A. M. Steigerwald Company*,\(^2\) where it was held by the Appellate Court for the First District that, under this provision, only directors of a corporation might become members of the executive committee of the board of directors, and that said members must be designated by the board of directors. Thus, the appointment by the president of the corporation of non-directors to the executive committee was held invalid on both counts. In the case of *Levin v. Hunter*,\(^3\) the same court determined that a "holdover" director under Section

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\* 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 to cases and developments believed significant and interesting. The period covered is that of the judicial year, embracing from 6 Ill. (2d) 235 to 8 Ill. (2d) 630; from 6 Ill. App. (2d) 326 to 10 Ill. App. (2d) 567.


\(3\) 6 Ill. App. (2d) 461, 128 N. E. (2d) 630 (1955).
34 of the Business Corporation Act had no "term" of office which could be filled for the "unexpired term" under the authority of Section 36 of the same Act. The court, therefore, agreed with the plaintiffs' contention that an election called for that purpose was improper, but held that they had waived their right to object by participating in said election.

In a suit against an Iowa corporation under the style Schaefer v. H. B. Green Transportation Line, Inc., a federal court was asked to enforce the damage provisions of Section 45 of the Business Corporation Act. The United States Court of Appeals for the Seventh Circuit, while expressing doubt that Illinois law was applicable at all, held that the provision was penal in nature and could not be enforced in the federal courts. The right of a corporation to grant stock options to its employees—or to a single employee—was upheld in the case of Elward v. Peabody Coal Company, wherein the Appellate Court for the First District concluded that such power was conferred by Section 5(h) and Section 24 of the Business Corporation Act. But the corporation in question was not permitted to grant an option to purchase the stock at less than the par value thereof notwithstanding a possible change in circumstances which would make it lawful to issue stock for the option price at the time that performance was due.

The so-called "blue-sky" laws continued to be a prolific

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5 Ibid., § 157.36.
6 232 F. (2d) 415 (1956).
7 Ill. Rev. Stat. 1955, Vol. 1, Ch. 32, § 157.45. This section gives a shareholder a right of action for damages in the amount of ten per cent of the value of the shares held where he has been denied access to corporate records.
8 The court relied on Ill. Rev. Stat. 1955, Vol. 2, Ch. 131, § 1.03, which directs that the plural shall be interpreted as including the singular.
10 Ill. Rev. Stat. 1955, Vol. 1, Ch. 32, §§ 157.5(h) and 157.24. The former gives the corporation the power to make contracts and the latter permits the corporation to issue shares to its employees without first offering them to shareholders.
11 For example, an amendment to the articles of incorporation reducing the par value of the stock to less than the option price.
12 Presently Ill. Rev. Stat. 1955, Vol. 2, Ch. 121½, § 137.1 et seq. Although the cases mentioned herein are governed by the Securities Act of 1919 as amended, Ill. Rev. Stat. 1953, Vol. 2, Ch. 121½, § 97 et seq., it is believed that they will provide illumination in interpreting the current law.
source of litigation. Perhaps the most significant decision in the history of securities regulation on the state level is to be found in the case of Foreman v. Holsman.\textsuperscript{13} Therein, the Appellate Court for the First District held that a prior release from any liability arising under the requirements of the Illinois Securities Law\textsuperscript{14} was not contrary to public policy and therefore reversed a judgment for the plaintiffs. Inasmuch as leave to appeal has been allowed, it is highly questionable whether this will long remain the law, for if this decision is sustained, securities regulation in Illinois, as a practical matter, will have come to an inglorious end.

In the case of Hammer v. Sanders,\textsuperscript{15} an action for recission brought under the prior Illinois Securities Act,\textsuperscript{16} the Supreme Court held that an agreement to share the cost of exploiting property believed to contain oil was not a security interest within the meaning of the aforementioned Act, even though the assignment of a "working interest" was to follow successful exploration. Similarly, the nature of a security, as defined by the present Act,\textsuperscript{17} was involved in the case of Sire Plan Portfolios, Inc. v. Carpentier.\textsuperscript{18} The Appellate Court for the First District there decided that a contract to purchase an interest in rental real estate as a tenant in common with others, said property to be managed and operated by others, was an "investment contract" and, therefore, a security required to be registered.

Two other cases appear to be worthy of brief mention. The Supreme Court, in the case of Janove v. Bacon,\textsuperscript{19} held that where a corporation had changed its name six years earlier, a summons

\textsuperscript{13} 8 Ill. App. (2d) 317, 132 N. E. (2d) 688 (1956). Leave to appeal has been allowed.
\textsuperscript{14} The reference is to Ill. Rev. Stat. 1953, Vol. 2, Ch. 121\textsuperscript{1/2}, § 97 et seq., which has since been repealed.
\textsuperscript{15} 8 Ill. (2d) 414, 134 N. E. (2d) 509 (1956), affirming, on this point, 6 Ill. App. (2d) 346, 127 N. E. (2d) 492 (1955). Davis, J. filed a dissenting opinion in which Schaefer and Klingbiel, JJ. concurred.
\textsuperscript{16} Ill. Rev. Stat. 1953, Vol. 2, Ch. 121\textsuperscript{1/2}, § 132.
\textsuperscript{17} Ill. Rev. Stat. 1955, Vol. 2, Ch. 121\textsuperscript{1/2}, § 137.1 et seq.
\textsuperscript{18} 8 Ill. App. (2d) 354, 132 N. E. (2d) 78 (1956). Leave to appeal has been denied.
\textsuperscript{19} 6 Ill. (2d) 245, 128 N. E. (2d) 706 (1955).
issued in the old name was sufficient to confer jurisdiction if served on the right corporation. Another interesting facet of this case is the dicta contained therein to the effect that a corporation might, more than two years after dissolution, have de facto existence for purposes of a suit against it. And in the case of *People v. Hess*, the Supreme Court concluded that the sole owner of the stock of a dissolved corporation had a sufficient interest in corporate real estate to redeem the same from a tax foreclosure. The court was unimpressed by the fact that the stock was held in the name of nominees.

**UNINCORPORATED BUSINESS ASSOCIATIONS**

Within this area, the only cases of interest during the period covered by the survey involved the law of partnerships. Perhaps the most remarkable of these is the case of *Jones v. Schellenberger*, wherein the United States Court of Appeals for the Seventh Circuit was concerned with the effect to be given a partnership agreement which provided for rights of survivorship in partnership property on the death of a partner. Despite the contention that the agreement violated the Uniform Partnership Act, the court concluded that the agreement was valid and was determinative of the rights of the deceased partner's estate. It appears that the only prior determination of the law of Illinois on this point was made in an abstract opinion handed down by the Appellate Court for the First District. Another case of

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20 The two year period is significant because the Business Corporation Act, Ill. Rev. Stat. 1955, Vol. 1, Ch. 32, § 157.94, expressly authorizes suits against a corporation if brought within two years after dissolution.


22 Ill. Const. 1870, Art. IX, § 5 establishes a right of redemption from tax foreclosures "in favor of owners and persons interested in such real estate." (Italics supplied.)


24 Section 25(1) of said act provides that "a partner . . . [holds] as a tenant in partnership," Ill. Rev. Stat. 1955, Vol. 2, Ch. 106 1/2, § 25(1). It is then argued that, since the right of survivorship is not incident to a tenancy in partnership, the agreement is invalid.

some significance is that of *Bonde v. Weber*, in which the contention was made that a change in the members of a partnership violated a provision in a lease which prohibited assignments without the consent of the lessor. The Supreme Court, however, thought otherwise because of statutes providing that a partner's right in specific partnership property is not assignable and that real estate acquired in the firm name can be conveyed only in that name.

An interesting factual situation was involved in the case of *Kurtz v. Kurtz*, wherein a novel means for the creation of a partnership has come to light. A decree of divorce granted the plaintiff wife some twenty years earlier recited, pursuant to a property settlement, that the wife was to receive an undivided one-half interest in a business operated by the husband and he was to give her a bill of sale for such one-half interest. The Appellate Court for the First District held that a partnership relation had been created by this decree and that the husband must account to the wife for all profits earned since that time. The case of *In re Sternberg's Estate* is noteworthy for the reason that it portrays in bold relief the advantages of the present Civil Practice Act. Since the case was governed by prior practice, the Appellate Court for the Third District held that it was improper to bring a suit against the estate of a deceased partner on a joint obligation of all partners.

**Principal and Agent**

Although the activities of real estate brokers provided the courts with considerable work during the past year, only the case of *First National Bank of Millstadt v. Freant*, decided by

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28 Ibid., § 8(3).
29 10 Ill. App. (2d) 310, 134 N. E. (2d) 609 (1956). Leave to appeal has been denied.
30 Sub. nom., Sternberg Dredging Co. v. Estate of Sternberg, 10 Ill. App. (2d) 298, 134 N. E. (2d) 663 (1956). Leave to appeal has been allowed.
31 Ill. Rev. Stat. 1955, Vol. 2, Ch. 110, § 27 authorizes separate actions against partners even though the obligation be joint.
the Appellate Court for the Fourth District, is worthy of mention. Therein, a broker engaged in business in another community, successfully negotiated a deal concerning some property located within a certain city. When suing for his commission, he was met with the defense that his failure to have the license required by the city in which the property was located invalidated the contract between seller and broker. The reviewing court, however, was of the opinion that the broker was not affected by the license requirement since, in general, ordinances for brokerage licenses are not designed to tax real estate transfers but rather have as their purpose the imposition of a fee upon the brokerage occupation as such. Thus, a broker, though perhaps amenable to a license fee imposed by the municipality where he carries on his business, is not subject to a like requirement simply because of the location of the property with which he deals.

Rather startling reasoning is contained in the case of *Koehler v. Ellison*, in which liability was asserted against a principal for misrepresentations made by his alleged agent. The United States Court of Appeals for the Seventh Circuit took great pains in pointing out that the person who made the averments was not controlled in his physical movements by the principal and, therefore, was an independent contractor; since he was an independent contractor—so the court reasoned—the principal was not liable for his misrepresentations. It is, of course, hornbook law that a principal may be liable in tort for the misrepresentations of his agent whether the agent be servant or independent contractor. Thus, the finding by the court that the person who made the misrepresentations was an independent contractor should not have excluded the possibility that the principal might be liable therefor.

The point decided in the case of *Muenzer v. W. F. & John Barnes Co.* apparently is new in this state, though the result is

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33 226 F. (2d) 682 (1955).
35 9 Ill. App. (2d) 391, 133 N. E. (2d) 312 (1955). Leave to appeal has been denied.
hardly surprising. Therein, the Appellate Court for the Second District fell in line with other jurisdictions when it concluded that if a person is employed for the purpose of using his creative ability to develop a specific product or process, there is an implied agreement that any such development belongs to the employer, absent an express agreement to the contrary.

**LABOR LAW**

The frequently litigated question of whether employees who become unemployed due to a work stoppage caused by a labor dispute are eligible for unemployment compensation appeared in somewhat novel form in two decisions of the Supreme Court. In the first of these, that of *Buchholz v. Cummins*, negotiations between a union representing all restaurant employees in a certain town and an association representing the restaurant owners for the renewal of a collective bargaining agreement became deadlocked. A few days later the union employees, on some pretense, went on strike against one association member. Pursuant to a previous understanding between the association members, a general shutdown of all member restaurants followed which continued until a new collective bargaining agreement was finally reached. The union employees, who were locked out, claimed compensation contending that their unemployment was not caused by a labor dispute at the establishments at which they were employed. The court, in denying compensation, declared that a lockout was one form of a labor dispute and that there was no difference in legal result as to whether a work stoppage was caused by employer or employee as long as such stoppage was due to a labor dispute.

A different result was reached in the case of *Shell Oil Com-

37 6 Ill. (2d) 382, 128 N. E. (2d) 900 (1955).
38 Ill. Rev. Stat. 1955, Vol. 1, Ch. 48, § 434 provides that “An individual shall be ineligible for benefits for any week with respect to which it is found that his total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed...”
pany v. Cummins, although a labor dispute was also the cause of unemployment. In that case, separate unions represented the various groups of employees working for the same employer. A sizable group of these unions had formed a committee which represented the employees of all the member unions in bargaining negotiations, although no member union was bound by any agreement so reached until it had accepted the terms thereof. One of the member unions refused to accept an agreement negotiated by the committee and ultimately went out on strike. The non-striking employees refused to cross the picket lines set up by the striking union because of a fear of violence. Inasmuch as the non-striking employees belonged to a different class of workers and they were not directly interested in the labor dispute, the Supreme Court held that they fell within the exception to the ineligibility provisions and were entitled to compensation.

In the case of Ross v. Cummins, the contention was offered that so-called estimators who worked for a firm which sold and installed combination storm doors and windows within a certain designated area were not employees within the meaning of the Act. The Supreme Court, however, thought otherwise after it had reviewed the amount of control exercised by the employer over the claimants and noted that all work had been carried on within the employer's franchise area, that is, his place of business as that term has previously been construed. Though it seems unnecessary, it may be well to remind the bar, as someone was reminded in the case of United Mail Order, Warehouse & Retail Employees Union, Local 20 v. Montgomery Ward & Co.,

39 7 Ill. (2d) 329, 131 N. E. (2d) 64 (1956).
40 Ill. Rev. Stat. 1955, Vol. 1, Ch. 48, § 434 provides that the exclusion "shall not apply if it is shown that (A) he is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work and (B) he does not belong to a grade or class of workers of which immediately before the commencement of the stoppage there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute: . . . ."
41 7 Ill. (2d) 595, 131 N. E. (2d) 521 (1956).
44 6 Ill. App. (2d) 477, 128 N. E. (2d) 645 (1955). The decision was affirmed in 9 Ill. (2d) 101, 137 N. E. (2d) 47 (1956), though this point apparently was not raised. See also, Section II, Contracts, note 20.
that a trade union is an unincorporated association and cannot be sued in its own name. Therein, the Appellate Court for the First District adhered to the position that a suit at law can be maintained only in the names of all the members, however numerous.

WORKMEN'S COMPENSATION

One of the more significant developments within the period covered by this survey was the far-reaching extension of workmen's compensation coverage as exemplified in the case of Jewel Tea Company v. Industrial Commission. In that case, an employee, who had suffered injuries while playing baseball with a team of fellow employees in an intra-company league, was held to be entitled to workmen's compensation despite the fact that the game took place after working hours in a public park and the employee did not receive any monetary consideration for participating in the game. In determining that the injury arose out of and in the course of employment, stress was laid by the court upon the active encouragement which the employer had given to the intra-company league, and the subtle pressures for employee participation exerted by the supervisory managers with the apparent aim that good fellowship might be fostered among the employees.

The Supreme Court took a reasonable view with respect to demands to extend workmen's compensation coverage in Zelkovich v. Industrial Commission. It there held that a combination restaurant, tavern and liquor store could not be considered an extra-hazardous enterprise within the meaning of the Act.

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45 Although the cases of Bethlehem Steel Co. v. Industrial Commission, 6 Ill. (2d) 278, 128 N. E. (2d) 714 (1955) and Laclede Steel Co. v. Industrial Commission, 6 Ill. (2d) 296, 128 N. E. (2d) 718 (1955) are technically within this survey period, they were discussed in the Survey of Illinois Law for the Year 1954-55, 34 CHICAGO-KENT LAW REVIEW 1 at 11.


47 8 Ill. (2d) 146, 133 N. E. (2d) 300 (1956).

48 Ill. Rev. Stat. 1955, Vol. 1, Ch. 48, § 138.3 lists as extra hazardous, for this purpose, enterprises in which sharp edged cutting tools are used.
simply because some sharp edged cutting tools, such as butcher knives, were used in the kitchen.

While the law is clear that an employer who has paid workmen's compensation to his employee is entitled to a statutory lien upon any judgment which the employee might recover on account of the injury, the action which the employer may take to protect his lien is not so clear. This uncertainty was alleviated to some extent when the Appellate Court for the First District, in the case of *Sjoberg v. Ryerson & Son, Inc.*, determined that an employer had the right to intervene in a proceeding instituted by his employee against a third party tortfeasor but that such intervention did not include the right to participate in the conduct or trial of the suit. Another interesting procedural question was involved in the case of *A. C. F. Industries, Inc. v. Industrial Commission*, where the first order of the commission had been reversed by the Circuit Court of Cook County and the case sent back to the commission. Review of the second order of the commission was then sought in the Superior Court of Cook County. The Supreme Court there concluded that orderly judicial procedure demanded that a second review of the same proceeding should be obtained in the same court in which the first review was had.

II. CONTRACTS

Although no new precedents appear to have been established in the field of contracts during the preceding year, the case of *Pure Milk Association v. Kraft Foods Company* embodies an unusual application of the law relating to assignments. The plaintiff therein, a marketing association, had agreements with various dairy farmers to market their milk through the association which agreements provided that the association might author-

51 8 Ill. (2d) 552, 134 N. E. (2d) 764 (1956).
1 8 Ill. App. (2d) 102, 130 N. E. (2d) 765 (1955).