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Business Organizations - Survey of Illinois Law for the Year 1949-1950

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SURVEY OF ILLINOIS LAW FOR THE YEAR 1949-1950*

I. BUSINESS ORGANIZATIONS

CORPORATIONS

FOR SEVERAL YEARS this annual survey of Illinois law has opened on a note to the effect that one of these days it would be possible to record that the Illinois Supreme Court had re-examined the doctrine which grants an immunity to an eleemosynary or charitable corporation against tort liability for the acts of its agents and had either reinforced or rejected the doctrine; thereby laying to rest the conflict which has, over the years, developed between two of the Appellate Courts of the state¹ and even between divisions of the court sitting in the same district.² There was occasion to believe, when the Supreme Court took jurisdiction over the case of *Moore v. Moyle*³ on certificate of impor-

* 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 403 Ill. 395 to 406 Ill. 253; from 338 Ill. App. 20 to 341 Ill. App. 382.

¹ Compare the decision of the Appellate Court for the First District in *Wendt v. Servite Fathers*, 332 Ill. App. 618, 76 N. E. (2d) 342 (1947), with that of the Second District in *Moore v. Moyle*, 335 Ill. App. 342, 82 N. E. (2d) 61 (1948).

² The views of the First Division of the Appellate Court for the First District were presented in the decision in *Piper v. Epstein*, 326 Ill. App. 400, 62 N. E. (2d) 139 (1945). Those of the Second Division of the same court were expressed in *Wendt v. Servite Fathers*, 332 Ill. App. 618, 76 N. E. (2d) 342 (1947).

³ 405 Ill. 555, 92 N. E. (2d) 81 (1950), noted in 28 CHICAGO-KENT LAW REVIEW 268, 38 Ill. B. J. 581. Wilson, J., dissented. Crampton, J., wrote a dissenting opinion. The holding therein reversed the decision in 335 Ill. App. 342, 82 N. E. (2d) 61 (1948).

tance, that the day for decision had arrived. Early reports that the court was inclined to favor reinforcement of the doctrine,⁴ first laid down in *Parks v. Northwestern University*,⁵ were upset when the opinion was finally released.⁶ But proponents for the view that the entire doctrine of immunity should be swept aside also suffered a disappointment in the ultimate outcome of the case, for the majority of the court limited recovery, against the eleemosynary corporation there concerned, to the "non-trust" assets. While the decision does not nullify the immunity doctrine, it does serve to restrict its prior sweep and now leads to the belief that insurance carriers for charitable corporations have not been handling a "sure" thing. It is a matter for conjecture, however, as to whether the court was displaying a perception for contemporary events⁷ as well as for predominantly adverse criticisms which have been addressed to certain of the recent decisions,⁸ or whether the decision is truly, as the majority opinion would indicate, merely a clarification of an already established position. If the latter, there will be need for further clarification insofar as it will be necessary to spell out those things which constitute "non-trust" assets. Whatever the truth of the matter, the rationale of the holding in the Moore case leaves much to be desired from the standpoint of satisfactory juristic logic, desirable as it may be to some in terms of the result attained. It must again be reiterated, therefore, that it is to be hoped that the not too distant future will bring about a complete abrogation of this phase of tort immunity.⁹

An interesting opinion in the case of *Sawers v. American*

⁴ See 38 Ill. B. J. 68, noting action in case No. 30957. Publication of the opinion was withheld pending application for a rehearing.

⁵ 218 Ill. 381, 75 N. E. 991, 2 L. R. A. (N. S.) 556 (1905).

⁶ 405 Ill. 555, 92 N. E. (2d) 81 (1950), reversing 335 Ill. App. 342, 82 N. E. (2d) 61 (1948).

⁷ Consider, for example, the recent Effingham Hospital fire.

⁸ See CHICAGO-KENT LAW REVIEW, Vol. 21, p. 256; Vol. 24, p. 266; Vol. 26, p. 279; Vol. 28, p. 1. In addition, see 36 Ill. B. J. 488; 43 Ill. L. Rev. 248, 16 U. of Chi. L. Rev. 173.

⁹ Crampton, J., in his dissenting opinion to *Moore v. Moyle*, stated: ". . . the crucial policy of exempting charitable institutions from tort liability is of sufficient gravity to require a further appraisal by this court of the reasons which sustain it." 405 Ill. 555 at 568, 92 N. E. (2d) 81 at 88. Others will be inclined to echo his views.

*Phenolic Corporation*¹⁰ provides further discussion of the oft-litigated problem concerning the limitations which a corporation, through its agents, may impose on the right of a shareholder to inspect and make extracts from the books and records of the business.¹¹ The lower court had issued a writ of mandamus to force the corporate defendant to allow the plaintiff an opportunity to make a list of the shareholders. It had also imposed a statutory penalty on the individual defendants calculated according to the formula laid down in Section 45 of the Business Corporation Act.¹² On appeal therefrom, the individual defendants asserted that the statute was unconstitutional insofar as it provided for the imposition of the penalty because the statutory language was too vague and indefinite to inform a reasonable person concerning the nature of the act upon which he could be exposed to liability. The allegation arose from the fact that, in permitting the agent to deny access to a shareholder who did not evince a "proper purpose" for his desire to examine the books, the statute had failed to spell out any test for the determination of either a "proper" or an "improper" purpose. By way of answer, the court pointed out that the section had been construed, in *Doggett v. North American Life Insurance Company*,¹³ to be no more than a codification of the common law and that numerous prior cases had defined "proper purpose" in respect to the problem at hand, hence the statutory term had achieved sufficient definitiveness to meet constitutional requirements.¹⁴

The holding in *Stiles v. Aluminum Products Company*¹⁵ pro-

¹⁰ 404 Ill. 440, 89 N. E. (2d) 374 (1950), noted in 38 Ill. B. J. 334. Crampton, J., dissented.

¹¹ Ill. Rev. Stat. 1949, Vol. 1, Ch. 32, § 157.45.

¹² The section provides, in part, that any officer or agent who shall "refuse to allow any such shareholder . . . to examine and make extracts . . . for any proper purpose, shall be liable to such shareholder . . . in a penalty of ten per cent of the value of the shares owned by such shareholder."

¹³ 396 Ill. 354, 71 N. E. (2d) 686 (1947).

¹⁴ Much of the language of the decision may well be classed as dicta for the trial court decision was reversed because the court found that plaintiff had not shown that his demand for inspection was based on a proper purpose. But it is apparent, at first reading, that the same view would have been followed, on the specific point, if the case had come up on appeal from a judgment favoring a shareholder who had displayed proper purpose in support of his request.

¹⁵ 338 Ill. App. 48, 86 N. E. (2d) 887, 9 A. L. R. (2d) 1311 (1949).

vides an object lesson in perspective. The defendant corporation there involved had sought to sell certain of its assets, and the issue was whether the sale was one outside of the ordinary course of business. The corporation had been formed many years before to manufacture cooking utensils but had later obtained an amendment to its articles allowing it to deal in securities. Thereafter, it set up a subsidiary corporation to manage a housing development for its employees. It then announced its purpose to sell all of the assets which had been used in connection with its manufacturing activities. Plaintiff, having taken all necessary steps required by Section 73 of the Business Corporation Act for the protection of dissenting minority shareholders,¹⁶ sought to force the corporation to buy up his shares. To that action, the corporation interposed the defense that it was not going out of business was only selling a few of its assets, and that the sale did not amount to one "otherwise than in the usual and regular course of its business." The lower court dismissed the shareholder's suit but the Appellate Court, pointing to the fact that the corporation was planning to sell assets worth over one million dollars,¹⁷ while keeping other assets valued at less than a million,¹⁸ came to the conclusion that the practical effect of the sale would be to turn the defendant into nothing more than a holding company. It justifiably pointed out that to hold that the proposed plan was not a sale of assets of the type contemplated by the terms of Section 73 would be to do violence to the rights of the dissenting shareholder. It is difficult to comprehend how any other decision could have been reached.

Reminder is offered, by the case of *Firebaugh v. McGovern*,¹⁹ that while most corporation law rests upon a statutory foundation other areas of this field are regulated by the common law. The

¹⁶ Ill. Rev. Stat. 1949, Vol. 1, Ch. 32, § 157.73.

¹⁷ The assets which were offered for sale included the plants, inventories, machines, patents, etc. Sale thereof would, for all practical purposes, bring about an end to corporate ability to manufacture those products authorized by the original articles.

¹⁸ Assets to be retained included cash in bank, choses in action, capital stock in the subsidiary, and a used automobile.

¹⁹ 404 Ill. 143, 88 N. E. (2d) 473 (1949), reversing 336 Ill. App. 61, 82 N. E. (2d) 832 (1948). An order conforming to the opinion therein may be noted in 340 Ill. App. 414, 92 N. E. (2d) 671 (1950).

facts therein would indicate that the litigation developed because warring factions on a board of directors, unable to agree regarding management policy, sought a court determination as to the right of exclusive control over the corporation's affairs. When it appeared that the corporate depository refused to honor checks issued by either group of directors, thereby exposing the business to the potentiality of irreparable loss barring a quick resolution of differences, the trial court, on its own motion, appointed a receiver to preserve the assets and to operate the business. Following a resolution of the differences between the two factions, the receiver turned back the corporate assets and filed his account. Objection was made to the deduction of receivership expenses on the ground of a lack of jurisdiction to make the appointment.²⁰ The Appellate Court sustained the objection but, on leave to appeal, the Supreme Court reversed, reaffirming decisions antedating the present Business Corporation Act which hold that, under proper circumstances, an equity court may exercise its extraordinary power to appoint a receiver, even in corporation cases, independently of any statutory authorization, whenever the facts require it.²¹

The basis for the survival of a remedy against a dissolved corporation has been litigated before, so the decision in *O'Neill v. Continental Illinois Company*²² is not particularly surprising, but the case does afford an excellent illustration of the need for providing some form of limitation on the survival of such causes of action. The plaintiff charged that, in 1929, the defendant corporation had acted as agent for her late husband in the purchase of a large block of government bonds for his account, the same to mature in 1930. The corporation, in 1939, was dissolved pursuant to Illinois law. Eight years later the plaintiff made a demand on the directors of the defunct corporation for delivery of the bonds and followed that demand with a suit initiated in 1948,

²⁰ Statutory authority for the appointment of a receiver in case of deadlock, to be found in Ill. Rev. Stat. 1949, Vol. 1, Ch. 32, § 157.86, is limited to cases wherein dissolution of the corporation is sought.

²¹ See, for example, *Chicago Title & Trust Co. v. Mack*, 347 Ill. 480, 180 N. E. 412 (1912); *Baker v. Administrator of Backus*, 32 Ill. 79 (1863).

²² 341 Ill. App. 119, 93 N. E. (2d) 160 (1950). Appeal dismissed.

nineteen years after the alleged purchase was supposed to have occurred. Reliance by way of defense was placed on Section 94 of the Business Corporation Act and the two-year limitation fixed thereby.²³ In view of the fact that no charge of fraud was made and no claim was asserted that the defendant corporation had not been properly dissolved, the court considered the defense to be good.

PRINCIPAL AND AGENT.

An employee, driving his employer's car, may deviate from the route he is supposed or expected to travel, but whether he thereby steps outside the scope of his employment or not is usually answered on the basis of the extent and nature of the deviation. The case of *Anderson v. Meyer*²⁴ becomes significant in that connection. The employee there concerned, driving a truck for his employer and having made the final delivery for the day, drove the empty truck toward the employer's garage. On the way, he suddenly decided to deviate from the route in order to pick up his personal mail. While making a left turn, made necessary by the deviation, he collided with another truck. Upon that set of facts, the Appellate Court held the employee could not be deemed to be acting within the course of his employment at the time of the collision, hence exempted the employer from liability. The decision would appear to be at least a doubtful one, for no attention was given by the court to the circumstance as to whether or not the intended deviation was slight in character or amounted to a complete departure from the employment course. A determination on that point would seem to be a matter of importance, for it has been held many times that slight deviations by employees should be expected by employers, with the consequent effect that such employees must still be considered to have acted within the scope of the employment.

It became necessary, in *City of Chicago v. Barnett*,²⁵ for the Supreme Court to consider whether there is a distinction between

²³ Ill. Rev. Stat. 1949, Vol. 1, Ch. 32, § 157.94.

²⁴ 338 Ill. App. 414, 87 N. E. (2d) 787 (1949). Leave to appeal has been denied.

²⁵ 404 Ill. 136, 88 N. E. (2d) 477 (1949).

a "broker," on the one hand, and an "agent," on the other. The question developed from a challenge to the validity of a Chicago ordinance designed to regulate brokers, particularly insurance brokers.²⁶ An insurance broker was defined, in the ordinance, as "any person who for money, commission, brokerage, or anything of value acts or aids in any manner in the solicitation or negotiation on behalf of the assured of contracts of insurance." The defendant admitted that the Cities and Villages Act furnished power to municipalities to license, tax and regulate brokers in general,²⁷ but claimed that an "insurance broker," as defined in the ordinance, was not a person within the generic term used in the statute. The contention was based, in particular, upon the argument that the occupation described in the ordinance was an agency relationship, one beyond municipal power to license.

The Supreme Court, however, did not agree. It pointed to the fact that the word "broker," unless used with other words of restriction or limitation, includes within its scope brokers of every class and description. It noted that, in general, a broker is an agent who bargains or carries on negotiations on behalf of the principal, acting as an intermediary between the principal and third persons in the transaction of business relating to the acquisition of contractual rights, or the sale or purchase of any form of property, the custody of which has not been entrusted to him for the purpose of discharging his agency. For some purposes, the broker may be treated as agent for both parties, but he is primarily deemed the agent of the person by whom he is originally employed. The word "agent," or course, is a more comprehensive term than "broker," for while every broker is, in a sense, an agent, every agent is not a broker. Unlike the agent, the broker sustains no fixed and permanent relationship to any principal, but holds himself open for employment by the public generally, the employment in each instance being that of a special agent for a single object. Keeping these principles in mind, it then becomes obvious that the city ordinance in question was a valid one.

An issue frequently litigated concerns the ownership of in-

²⁶ Mun. Code Chicago, Ch. 113, § 10.

²⁷ Ill. Rev. Stat. 1949, Vol. 1, Ch. 24, § 23—91.

ventions or discoveries made by an employee while working for his employer. In *Velsicol Corporation v. Hyman*,²⁸ a chemist had been employed to work in development and research concerning polymers, discoveries having to do with drying oils used in the manufacture of paint and varnish. Although originally employed at a small salary, he became director of the entire research program of the firm and a large stockholder in the company. During the course of his connection with the company, he assigned some thirty-nine patents to it in order to increase his stock holdings. He refused, however, to assign four patent applications having to do with discoveries as to insecticides. The company sued to compel specific performance and the Appellate Court, by a split decision, directed dismissal of the suit. The majority of the judges of that court agreed that if an employee is specially employed to discover and develop a specific invention, using the facilities and materials of his employer, so that the invention is ultimately perfected at the employer's expense, the invention or discovery becomes, in equity and good conscience, the property of the employer. There is said to be, in such a case, at least an implied contract on the part of the employee to assign the patent to the employer. Dismissal was ordered, however, on the basis that the defendant had been hired to work in the field of polymers and his subsequent discoveries as to insecticides bore no relation to that subject.

For support, the majority pointed to the decision in *Joliet Manufacturing Company v. Dice*,²⁹ where the Supreme Court had said "the law inclines so strongly to the rule that the invention shall be the property of its inventor, that nothing short of a clear and specific contract to that effect will vest the property of the invention in the employer, to the exclusion of the inventor."³⁰ It was willing to recognize the applicability of the so-called "shop rights" doctrine under which an employer acquires an irrevocable

²⁸ 405 Ill. 352, 90 N. E. (2d) 717 (1950), cert. den. 339 U. S. 966, 70 S. Ct. 1002, 94 L. Ed. 914 (1950), reversing 338 Ill. App. 52, 87 N. E. (2d) 35 (1949). Niemeyer, J., wrote a dissenting opinion. The Appellate Court decision is noted in 25 Notre Dame Law. 158 and 28 Tex. L. Rev. 728.

²⁹ 105 Ill. 649 (1883).

³⁰ 105 Ill. 649 at 651-2.

license to use an invention of an employee, if developed by the use of the employer's property, labor, and time, without the payment of any royalty. But, judging the case from the angle of strict property rights, it was unwilling to divest the employee of the fruits of his brain and labor. The dissenting judge, in contrast, viewed the case from the aspect of the fiduciary relation which exists between employer and employee. He came to the conclusion that protection of that relationship, recognized by earlier assignments of other patents, required enforcement of fiduciary obligations in respect to subsequent inventions made during the course of the employment, regardless of the nature thereof.

When the case reached the Supreme Court on leave to appeal, that court reversed and ordered specific performance on the ground the evidence disclosed the existence of an express agreement to assign all patents based on discoveries made during the period of employment, without limitation. With that fact established, the case tends to lack interest, but the opinion of the Appellate Court is much more interesting than that of the Supreme Court and worthy of closer study for its discussion of the law on the point in the absence of an express agreement between employer and employee.³¹

An interesting and novel problem for Illinois, one involving the relationship of the Statute of Frauds to the purchase of real estate by a fiduciary, was brought to the Supreme Court through the medium of the case of *Black v. Gray*.³² The question presented was whether an agent, employed by a principal under an oral agreement to purchase a parcel of land, but who later purchased the same with his own funds and in his own name, could be deemed to be a constructive trustee when he refused to convey to the principal. The court answered the question in the affirmative. It noted the existence of authority for the view that an agent who has accepted a verbal employment to negotiate for the purchase of land on behalf of another, but who purchases for himself

³¹ See also Knoth, "Assignment of Future Inventions," 27 CHICAGO-KENT LAW REVIEW 295-307 (1949).

³² 403 Ill. 503, 87 N. E. (2d) 635 (1949).

with his own funds, cannot be compelled to convey the land to the principal because of the failure to comply with the Statute of Frauds. The Illinois court, however, believed such reasoning was contrary to fundamental principles of equity for the essence of the agent's obligation was to act on behalf of the principal. It was the breach of that primary duty which gave rise to the constructive trust rather than the failure to convey the title acquired. For that reason, it said the fact that the subject matter of the agency was land was not enough to "alter the legal effect of a violation of his fiduciary duty."³³

LABOR LAW

The bulk of the new issues in the field of labor law grew out of claims for unemployment compensation. Eligibility therefor is lacking if the employee is out of work "because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed,"³⁴ and the lack of eligibility continues as long as the labor dispute lasts. It became necessary in *American Steel Foundries v. Gordon*,³⁵ to determine whether an employee is entitled to the benefits of unemployment compensation after the strike has been terminated but while he is unemployed because of time lost in preparing the plant for the resumption of work. The workers there involved contended that a labor dispute and a stoppage of work must co-exist before benefits are to be denied and that, after settlement of a labor dispute, one of the prerequisites to ineligibility would be missing. The agencies entrusted with the administration of the unemployment compensation act as well as the circuit court agreed, but the Supreme Court did not. It declared that, while the stoppage of work, for ineligibility, must exist because of a labor dispute, the statute does not require that the labor dispute should continue to exist or be in active progress. It was enough that the stoppage arose because of a labor dispute.

³³ 403 Ill. 503 at 506, 87 N. E. (2d) 635 at 636.

³⁴ Ill. Rev. Stat. 1949, Vol. 1, Ch. 48, § 223.

³⁵ 404 Ill. 174, 88 N. E. (2d) 465 (1949), noted in 28 CHICAGO-KENT LAW REVIEW 172, 1950 Ill. L. Forum 155.

Another aspect of Section 7(d) of the statute came to the fore in three recent cases. In particular, the problem was one of determining whether the applicants for compensation were "participating in or financing or directly interested in the labor dispute which caused the stoppage of work," or belonged to a grade or class of workers who were so participating or financing the dispute. In two of those cases, being the cases of *Local No. 658, Boot and Shoe Workers Union v. Brown Shoe Company*³⁶ and of *Brown Shoe Company v. Gordon*,³⁷ the specific issue was whether production workers who became idle because of a work stoppage produced by other workers on the production line were entitled to compensation. Only a few key workers expressed dissatisfaction with certain changes which had been made by the company in its production plans, but all production and maintenance employees, including those expressing dissatisfaction, were represented by the same union as collective bargaining agent and only one contract existed between the company and the union. As all were concerned in one continuous production line, the court held all production workers belonged to the same grade, hence were directly interested in the dispute. It might be noted that the union had represented all production workers in prior negotiations affecting rates of pay and the particular stoppage of work was traceable to the initial controversy.

Payment of compensation was, however, ordered in *Outboard, Marine & Manufacturing Company v. Gordon*,³⁸ where the claimants were office workers in a plant and had been made idle because of a strike on the part of the production workers. The office workers were represented by a different union than the one acting for the production workers, although an affiliation existed between the two. The office employees did not share in the labor dispute, did not seek or expect any benefit from the strike, and made no direct financial contribution to its support. Furthermore, as office workers, they were clearly in a different

³⁶ 403 Ill. 484, 87 N. E. (2d) 625 (1949).

³⁷ 405 Ill. 384, 91 N. E. (2d) 381 (1950).

³⁸ 403 Ill. 523, 87 N. E. (2d) 610 (1949), noted in 28 CHICAGO-KENT LAW REVIEW 156, 45 Ill. L. Rev. 128.

grade or class from the strikers. An argument that failure on the part of the office employees to cross a picket line set up by the striking production workers should be considered as evidence of participation in the work stoppage collapsed in the face of evidence that the gates of the plant were locked to all except a few maintenance employees.

Refusal to cross a picket line, however, did affect eligibility to receive unemployment compensation in the case of *American Brake Shoe Company v. Annunzio*.³⁹ The employer there concerned operated a number of establishments in the Chicago industrial area. A labor dispute having arisen in one of the plants, the workers there employed, represented by one union, walked out and dispatched pickets to another plant of the same employer where the workers belonged to another union. The latter became unemployed when they failed to cross the picket line so established. The Supreme Court affirmed denial of compensation to the second group of employees because the testimony of a union steward disclosed that the real reason for the failure to cross the picket line was the desire not to be branded a "scab." The record showed that police officers were stationed at the plant gate, that employees were informed during the course of the picketing that all who cared to cross the picket line might do so, and that no overt act was committed by the employer by which to preclude its employees from entering the premises. The refusal to cross being deemed voluntary, the second group of employees were considered as having participated in the labor dispute.

The only other labor case of significance, that of *American Zinc Company of Illinois v. Vecera*,⁴⁰ gave the Appellate Court an opportunity to reiterate its position that a union may be subjected to contempt proceedings, and is not excused from liability for its acts, even though it is nothing more than a voluntary unincorporated association. The court there adverted, with approval, to the rather doubtful view which had, inferentially, been expressed by the United States Supreme Court in the Mead-

³⁹ 405 Ill. 44, 90 N. E. (2d) 83 (1950).

⁴⁰ 338 Ill. App. 523, 88 N. E. (2d) 116 (1949).

owmoor case,⁴¹ to the effect that a union might be held responsible for the acts of its officers and its agents despite the fact such acts might not be attributable to it under a strict application of rules concerning *respondeat superior*.

WORKMEN'S COMPENSATION

Instances exist under which the common-law right to bring an action for personal injuries is denied to those benefited by the provisions of the Workmen's Compensation Act. The denial of such right of action, however, will often depend upon adequate pleading and proof. In *Victor v. Dehmlow*,⁴² for example, the defendants alleged, by way of defense to a suit for wrongful death, that the plaintiff's intestate was in the course of his employer's business at the time he was killed by a car driven by defendant's employee. If that were true, plaintiff could not maintain a common-law action.⁴³ An argument developed over whether the burden of proof rested on the defendants to show that both they and the plaintiff's intestate came under the statutory provision. To do this, the defendant would have been obliged to prove (a) that plaintiff's intestate, at the time he was killed, was in the course of his employment and that the accident arose therefrom, and (b) that the employer and the driver who caused the accident were also within the statute. The Supreme Court resolved the argument against the defendant.

The claimant in *Harrison Sheet Steel Company v. Industrial Commission*⁴⁴ suffered an accidental injury to his elbow, having previously sustained an injury to the same elbow two years before. The claimant had filed an application for adjustment of claim concerning the prior injury, had received an award from an arbitrator, but had entered into a settlement agreement with the employer while a petition for review was pending before the Industrial Commission. The settlement agreement received the ap-

⁴¹ *Milk Wagon Drivers Union v. Meadowmoor Dairies, Inc.*, 312 U. S. 287, 61 S. Ct. 552, 85 L. Ed. 836, 132 A. L. R. 1200 (1941).

⁴² 405 Ill. 249, 90 N. E. (2d) 724 (1950). Action taken by the Appellate Court, 336 Ill. App. 432, 84 N. E. (2d) 342 (1949), was noted in 27 CHICAGO-KENT LAW REVIEW 257.

⁴³ Ill. Rev. Stat. 1949, Vol. 1, Ch. 48, §§ 139 and 166.

⁴⁴ 404 Ill. 557, 90 N. E. (2d) 220 (1950).

proval of the Commission and the proceeding was dismissed. When making an award for the later injury, the Industrial Commission took into consideration the amount of compensation which the claimant had received under the settlement for the prior injury. This action was objected to by the employee who claimed that the law authorizes such a procedure only where a prior injury has led to a final award.⁴⁵ According to the employee, there had been no final award for the previous injury. The Supreme Court, however, upheld the action of the Commission, stating that a settlement agreement which has received the approval of the Commission is, in legal effect, a final award and constitutes a proper method for computing the deduction to be taken, based on a prior injury, when making a subsequent award for a later injury to the same member of a claimant's body.

The question arose, in *Olney Seed Company v. Industrial Commission*,⁴⁶ as to whether a claimant is entitled to compensation for an injury received if the employer, with knowledge of the accidental injury, has paid the regular and full wages of the claimant during the period of incapacity and has not denied liability under the act. The question was answered in the negative by the Supreme Court when it reversed both the holding of the Industrial Commission and the circuit court. The high court pointed out that prior cases had held that the payment of wages by an employer who did not deny liability for the employee's accidental injury could be considered for the purpose of fixing the time within which an employee must file his claim. Simple justice and consistency demanded that the same principle should apply for the purpose of arriving at a total or partial discharge of the employer's monetary liability.

PARTNERSHIPS

If it were not for the fact that the Appellate Court for the First District included an interesting bit of dicta at the conclusion of its opinion in *Kurtzon v. Kurtzon*,⁴⁷ the field of partner-

⁴⁵ Ill. Rev. Stat. 1949, Vol. 1, Ch. 48, § 145(e).

⁴⁶ 403 Ill. 587, 88 N. E. (2d) 24 (1949), noted in 28 CHICAGO-KENT LAW REVIEW 178.

⁴⁷ 339 Ill. App. 431, 90 N. E. (2d) 245 (1950). Leave to appeal has been denied.

ship law would have been completely barren of any significant developments. The plaintiff and defendants in that particular case were partners. The former, wishing to withdraw and dissolve the association, instituted proper proceedings and requested the appointment of a receiver. By way of defense, it was alleged that the partnership had been created for a term of ten years; that the plaintiff had no right to withdraw and dissolve; that his action in so doing constituted a breach of the partnership contract; and that the defendants were, accordingly, entitled to a decree of dissolution together with an assessment of damages. The trial court, finding that the plaintiff had not alleged or proven any of the causes for dissolution recognized by the Uniform Partnership Act in instances where such relationships have been entered into for a definite period,⁴⁸ allowed the relief requested by the defendants. Upon appeal, the decree was affirmed.

Up to the last two paragraphs of the opinion, the court's reasoning is in conformity with well-recognized rules of partnership law. However, in arriving at the conclusion that the plaintiff possessed no right to withdraw and dissolve the association, the court stated: "The agreement gave no unqualified right to withdraw and dissolve the firm. It could not do so. The Partnership Act enumerates the causes of rightful dissolution where the agreement is for a definite term . . . No provision is made for dissolution by withdrawal."⁴⁹ According to this dicta, it would be impossible for a group contemplating the formation of a partnership for a definite period to provide in the agreement that one of their number might withdraw and dissolve whenever he desired. The inclusion of such a condition may be the only practical way to obtain the association of an individual having a desirable credit rating but who would only consider entering the venture if he was assured of an unqualified right to dissolve the firm. In such a situation, an interpretation of the Partnership Act such as that adhered to by the court might conceivably frustrate the creation of a profitable enterprise. It could, of course,

⁴⁸ Ill. Rev. Stat. 1949, Vol. 2, Ch. 106½, § 31.

⁴⁹ 339 Ill. App. 431 at 436, 90 N. E. (2d) 245 at 248.

be argued that, by eliminating the definite time period, the partnership would become one at will and, as this type could be dissolved by any member at any time, the obstacle presented by the foregoing construction of the statute could be overcome. This, however, overlooks situations wherein it might be advantageous to bind the majority of the group for the definite period.

The mere fact that a group of individuals may have acquired funds due to their combination does not conclusively prove the existence of a joint venture. This is amply illustrated by the decision in *Sappenfield v. Mead*,⁵⁰ a case involving a rather novel factual situation. The Board of Supervisors of Kane County had raised the ire of certain property owners by rezoning their residential district to allow the entrance of manufacturing enterprises. The property owners combined and proceeded to file a petition for a writ of certiorari to review the order. In the meantime, a manufacturing concern which had commenced the building of a plant in the area learned of the petition and offered the group a substantial sum to withdraw their objections. The parties agreed, and a settlement was made. The defendant, a member of the owner's group, who had acted as their representative, collected the money, liquidated the expenses, and distributed the remainder on the basis of the damage suffered by the various property owners. Upon receipt of his allotment, plaintiff instituted a suit for an accounting, claiming that the funds should have been divided equally among the several members.

Meetings of the group had led to considerable discussion over the mode of distribution but apparently no particular scheme had been definitely arrived at, although a majority favored distribution on the basis of damage suffered. The plaintiff argued, in the trial court, that in the absence of a specific agreement all parties were entitled to an equal share for the association amounted to a joint venture. The lower court dismissed the complaint and the Appellate Court for the Second District affirmed, finding that a joint venture did not exist. That court, utilizing the standard definition of such a relationship, to-wit:

⁵⁰ 338 Ill. App. 236, 87 N. E. (2d) 220 (1949).

“an association of two or more persons to carry out a single business enterprise for profit,” demonstrated that the profit motive was lacking in the particular case. As the association was not a joint venture, the law pertaining to such would not apply. The court did not discuss the propriety of dividing the sum according to the degree of damage suffered but apparently accepted that plan as being the only equitable method for distribution.

While appropriate for discussion as much elsewhere as here, point might be made of the fact that it is not uncommon for partnerships, associations, and individual proprietors to do business under an assumed or trade name. The conduct of business in that form in Illinois may produce unfortunate repercussions, a fact which was noted last year in connection with the decision in *Michelson v. Kolb*.⁵¹ The views expressed in that case were followed in the later case of *Franks v. Coronet Novelty Co., Inc.*⁵² The Appellate Court there reversed a judgment which had been granted in favor of an individual proprietor who had done business under an assumed name but who had failed to register the fact in the fashion required by law.⁵³ The case is worthy of mention for the trial court had refused to apply the statute on the ground the same was unconstitutional.⁵⁴ There is occasion to believe that the harsh results being produced are not in conformity with either the intention of the legislature or the tenor of decisions in other jurisdictions, hence some clarification on the point is expected from the Supreme Court at an early date.⁵⁵

⁵¹ 337 Ill. App. 493, 86 N. E. (2d) 152 (1949), noted in CHICAGO-KENT LAW REVIEW, Vol. 27, pp. 327-36, and Vol. 28, p. 11.

⁵² 341 Ill. App. 137, 93 N. E. (2d) 157 (1950).

⁵³ Ill. Rev. Stat. 1949, Vol. 2, Ch. 96, § 4 et seq. The statute contains certain exceptions in favor of corporations and trusts, as well as one for partnerships where the partnership name includes the “true, real name of such person or persons transacting said business.” *Ibid.*, § 7.

⁵⁴ The Appellate Court refused to pass on the constitutional question on the ground the same was not properly before it: Ill. Rev. Stat. 1949, Vol. 2, Ch. 110, § 199.

⁵⁵ A note appears, in 39 Ill. B. J. 230, outside the period of this survey, of the action purported to have been taken by the Supreme Court at the November, 1950, term in the case of *Grody v. Scalone*, No. 31631. The note would indicate that the court held the legislative intent was not to make an otherwise valid contract into an invalid one for failure to comply with the Assumed Name Statute. The opinion in that case has not yet been released for publication.