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Business and Commerical Law: Business Associations

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Since the leading case of *Knispel v. Gulf States Utilities Company*[39] the supreme court has adhered faithfully to the position that a skilled workman is to be regarded as being totally disabled when he is rendered unable to do work of a character reasonably similar to that performed prior to the accident, even though he may demonstrate his ability to earn a substantial amount at some other calling. This position is not only eminently fair in view of the compromise character of workmen's compensation, but offers the additional advantage of being simpler to administer than any competing interpretation. This position was reaffirmed recently in *Ranatza v. Higgins Industries.*[40] Prior to the accident plaintiff's wage as a skilled carpenter averaged $62.50 per week. Thereafter he was able to earn an average of $30.00 per week as part time bus driver. The court refused to regard the disability as partial only. It is perhaps noteworthy that the net effect of a contrary ruling would have been only to reduce the maximum period of compensation from four hundred weeks to three hundred weeks, since the amount of compensation to be awarded under either view would exceed the permissible twenty dollar maximum.

V. BUSINESS AND COMMERCIAL LAW

BUSINESS ASSOCIATIONS

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Ostensible Authority of President of Corporation

The general rule is frequently stated that the president-director of a corporation is merely presiding officer of the board of directors. He has no more authority than any other director in the management of corporate affairs—a matter which is under the control and responsibility of the entire board.[1] However, there is a tendency in modern business to put the president in general charge of business, with the result that courts have frequently held that he has, at least prima facie, authority of a general manager to conduct the ordinary, everyday business of the corporation.[2] Even where the strict rule prevails, the presi-

39. 174 La. 401, 141 So. 9 (1932).
40. 208 La. 198, 23 So.(2d) 45 (1945).
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1. Knopf v. Alma Park, Inc., 105 N. J. Eq. 299, 147 Atl. 590 (1929).
2. Schwartz v. United Merchants & Manufacturers, Inc., 72 F. (2d) 256 (C. C. A. 2d, 1934).

dent's acts may bind the corporation by reason of acquiescence of the directors in a known exercise or assumption of power.[3]

In *Ideal Savings & Homestead Association v. Kerner*[4] the Louisiana Supreme Court relied largely on the doctrine of ostensible authority in upholding an unauthorized sale of land by the president, and ostensible general manager, of a homestead association. The purchaser had reasonably relied upon the president's apparent authority to sell. The board of directors had actually authorized the advertisement of the property for sale, and the members of the board were cognizant of the fact that its real estate agent submitted the offers received to the president for acceptance, rejection or counter-offer. The association's notary public who passed the document, and its attorney who cleared the title, were both members of the board of directors. The association secretary testified that the president conducted the homestead's affairs. A board resolution had given its executive officer general authority to receive funds. In view of all of these circumstances, the association was estopped to deny the president's authority in the premises, even though he had failed to turn the proceeds over to the association. Justice Higgins very appropriately applied the general equitable maxim that "where one of two innocent parties must suffer loss through the fraud of another, the burden of loss should be imposed on him who most contributed to it."[5]

Corporate Shareholders' Rights

The decision in *State v. Boylan's Private Police*[6] was dependent upon a rather complex factual question as to whether the relator, Boylan, Jr., had paid for the 253 shares of common stock in defendant corporation which had originally been issued in his name and later cancelled. If the stock had been paid for, Boylan, Jr., would have been entitled to have the stock re-issued to him, and would then have had much more than the "two per cent of all outstanding stock" which was a legal prerequisite to his asserted right to inspect the corporate books.[7] However, the facts of the case did not sustain Boylan, Jr.'s, alleged right to the stock, and the court denied his petition that the corporation should be required to re-issue the stock and to permit him, as

3. Grant v. Duluth, M & N Ry. Co., 66 Minn. 349, 67 N. W. 23 (1896).
4. 208 La. 513, 23 So. (2d) 200 (1945).
5. 208 La. 513, 520, 23 So. (2d) 200, 203.
6. 208 La. 499, 23 So. (2d) 196 (1945).
7. La. Bus. Corp. Act of 1928, § 38, III, as amended by La. Act 34 of 1935 (4 E.S.) [Dart's Stats. (1939) § 1118].

such shareholder, to inspect the corporate books and records. The corporation had been formed to continue the business of Boylan's Protective Police, a failing partnership which had always been operated by the Boylan family. A majority of the common stock in the newly formed corporation was placed in the names of the two sons of Boylan, Sr., but solely for convenience. It was the general understanding that if the new corporation became sound financially, the stock should be re-issued in equal proportions to Boylan, Sr., his wife, Boylan, Jr., and the other son. All the shares were pledged to Muller to secure an advance of money that put the business on a secure financial basis. When the loan was repaid, the returned pledged stock (including Boylan, Jr.'s) was cancelled. Looking to the real arrangement of the parties, the court held that Boylan, Jr., could not insist upon his ostensible right to a return of the pledged stock. The court was not impressed with Boylan, Jr.'s, contention that he had paid for the shares by monetary advances made to the corporation. The so-called advances appeared to have originated in family property and funds; and, even if they could be considered as from Boylan, Jr., individually, it was clear that they were made to get the family business in running order, and not in payment for the original issuance of stock to him. The affairs of the Boylan family corporation had been very loosely handled, but Justice Hawthorne did a remarkable job of appraising Boylan, Jr.'s, inherent equities arising out of the astonishingly complex affairs of so small a corporation. In essence, the court concluded that it was never intended between the parties that Boylan, Jr., should become the real owner of the 253 shares, and that if such had been the intent, the shares were properly cancelled for nonpayment.[8] Fortunately, no rights of third parties had intervened to further complicate the situation.

Indicia of a Partnership

The articles of the Civil Code do not provide a very exact definition of a partnership. This is due in part to the nature of the concept involved, and also to the somewhat conflicting phraseology of the pertinent codal articles. Article 2801 defines partnership as "a synallagmatic and commutative contract made between two or more persons for the mutual participation in the profits which may accrue from property, credit, skill or industry, furnished in determined proportions by the parties." This definition is qualified by the statement in Article 2805 that "partner-

8. La. Bus. Corp. Act of 1928, § 6, II and IV.

ships must be created by the consent of the parties." While mutual participation in profits is a very important consideration, this circumstance does not necessarily and invariably establish a partnership. In a last analysis "the real meaning and intention of the parties, as expressed in their contract" is controlling.[9] The partnership is a contractual relation, and other elements or circumstances are important only insofar as they serve to indicate the real intention of the parties. In *Glover v. Mayer*[10] an arrangement between two parties whereby one undertook the management and operation of a plantation, the other financed the project, and both were to share equally in the net profits and apparently in the losses, was not, without more, sufficient to establish a partnership agreement. In so holding the Louisiana Supreme Court stressed the fact that a partnership is a contractual arrangement dependent upon the intent of the parties. A sharing of both profits and losses will ordinarily indicate that the parties intended to enter into a partnership arrangement. Apparently the *Glover* case holds that the sharing of profits and losses, unaccompanied by any additional circumstances pointing either way, does not establish an intent to create a partnership. Again, the holding in that case might easily be limited to an agreement to share profits. The report does not specifically indicate that the right of the person operating the plantation to share in the profits, included a correlative obligation to share in any losses which might occur. If such is the case, the opinion is only authority for the generally recognized proposition that sharing of profits, without more, does not establish a partnership. The effect of an agreement to share both profits and losses is one which has given Louisiana courts considerable trouble. The instant case and the authorities cited would tend to show that the intention of the parties to create a partnership must be clearly established, and that it is not safe to generalize that the sharing of profits and losses establishes a prima facie case that the parties intended a partnership. Other indicia of a partnership are mutual agency powers and mutual capital contribution. Where neither of these latter indicia, nor other significant circumstances are present, the intention to form a partnership is not sufficiently established.

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9. Chaffraix & Agar v. Lafitte & Co., 30 La. Ann. 631 (1878), where a sharing of both profits and losses did not result in the creation of a partnership.

10. 209 La. 599, 25 So. (2d) 249 (1946) ... following Chaffraix &