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Commercial Law: Corporations

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a relatively easy disposition of a case which would otherwise have required consideration under Civil Code article 2529. The plaintiff sued for rescission of an automobile sale, or in the alternative a reduction in price, on the ground that it was held out to him as new when in fact it was used. As another alternative he sued for treble the amount of the excess over a ceiling price regulation as was his right under the price control provisions of the Defense Production Act of 1950.[8] The trial court gave judgment for twice, rather than treble, the amount of the excess of the selling price over the federal ceiling price, which under the act it had discretion to do.[9] The Supreme Court affirmed, finding no error in the trial court's determination that there had been a willful violation of the federal regulation.[10]

Throughout the case, incidentally, it was assumed that the federal cause of action stemmed from the Emergency Price Control Act of 1942,[11] which was repealed effective June 30, 1947.[12] Actually during 1952, when this sale took place, the statutes in effect were the price and wage stabilization provisions of the Defense Production Act of 1950,[13] which provided the same cause of action for overcharges as contained in the 1942 legislation.

CORPORATIONS

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RELIEF FOR MINORITY SHAREHOLDERS

Darmana v. New Orleans Stock Yard[1] provides a valuable guide to proper procedures for relief by minority shareholders who are seeking to prevent the draining off of corporate assets by way of unjustified executive salaries to the group in control. The first issue in the case related to the nature of the remedy. It was held that an injunction to prevent the further diversion and misappropriation of corporate funds would be a more appropriate remedy than a receivership. The Supreme Court had previously recognized the advantage of injunctive relief over the

8. *Ibid.*
9. 226 La. 881, 886, 77 So.2d 522, 523 (1955).
10. 64 STAT. 811 (1950), 50 U.S.C. § 2109(c) (1952).
11. 56 STAT. 34 (1942), 50 U.S.C. § 925(e) (Supp. 1944).
12. 60 STAT. 664 (1947), 50 U.S.C. App. § 966 (Supp. 1951).
13. 64 STAT. 811 (1950), 50 U.S.C. § 2109(c) (1952).

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1. 226 La. 897, 77 So.2d 528 (1954).

much more complex and expensive receivership device.[2]

A second issue related to burden of proof. It was held that where the directors vote themselves salaries as officers, the burden of proof is upon them to show that such salaries are reasonable. In the case at bar the director-officers, with the exception of the president, failed to sustain their burden of proof.

INSURANCE

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An important and interesting problem was presented to the court in *McMahon v. Manufacturers Casualty Insurance Co.*[1] An insured automobile had been destroyed in a collision. The policy contained a so-called "open" mortgage clause reading, "Loss or damage, if any, under the policy shall be payable as interest may appear to Assured and Rapides Bank & Trust Company."[2] The value of the car at the time of the loss was $2,697.46. The interest of the mortgagee was in the sum of $1,751.00. The insured alone sued to recover, claiming a total loss. The defendant insurer levelled an exception of no right or cause of action at the failure to join the mortgagee as plaintiff. The Supreme Court sustained the district court's action in overruling the exception. Its position seemed to be that the open mortgage clause creates no contractual relationship between the insurance company and the mortgagee. It is the writer's opinion that this position does not truly reflect the legal relations of the parties under such a clause. The chief reliance of the court in the instant case seemed to be on the earlier case of *Officer v. American Eagle Fire Insurance Co.*[3] In that case the question was whether a mortgagee, whose interest was protected by an open mortgage clause, was bound by an adjustment of the loss between the insured and the insurer in accordance with the terms of the policy. The court held that he was and pointed out that this was the only question before it, saying, "the case is now before us on the sole questions [sic] whether Dr. Officer, mortgagee, and the succession representative of the assured are bound by the award made by the appraisers."[4] This holding no doubt reflected, and still reflects,

2. Cary v. Dalgarn Const. Co., 171 La. 246, 130 So. 344 (1930).

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1. 227 La. 777, 80 So.2d 405 (1955).
2. *Id.* at 781, 80 So.2d at 406.
3. 175 La. 581, 143 So. 500 (1932).
4. *Id.* at 586, 143 So. at 501.