BUSINESS ASSOCIATIONS

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Georgia's 1938 Corporation Act applies to private corporations; special statutory rules are provided in this state for the governance of banking, insurance, railroad, trusts, canal, navigation, express, and telegraph companies.[1] That fact should be kept in mind considering the three statutes relating to corporations enacted by the General Assembly during its 1955 session. Act 122,[2] the only one of the three acts that applies to private corporations, modifies the class vote required by the 1938 Corporation Act for the amendment of charters of corporations with more than one class of stock. Under the new law, the vote or consent of a two-thirds majority of each class of stock whose rights will be adversely affected is required to effectuate the amendment. Act 122 added the word "adversely" to the existing law, and thus made clear that a two-thirds vote of a class of stock is not required for an amendment which is advantageous to the class.[3]

The special statute on the incorporation of banks requires the filing of an application in the office of the Secretary of State. A copy of the application is then sent to the Superintendent of Banks, who thereupon calls upon the incorporators to furnish him a statement containing certain information that will facilitate his investigation of the financial stability of the proposed organization and its chances of successful operation.[4] Act 103 of the 1955 session[5] provides that this statement that the bank incorporators furnish the Superintendent must be accompanied by an examination and investigation fee of $250.

Until the passage of act 153,[6] the special statute dealing with the incorporation of insurance companies[7] provided that the capital stock of an insurance company had to be divided into shares of $10.00

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1. See NADLER, GEORGIA CORPORATION LAW, §§ 220-221 (1950).
2. Ga. Laws Jan.-Feb. Sess. 1955, p. 259.
3. Although Act 122 does not specifically so state, the part of the Georgia Annotated Code which is affected by this change is § 22-1816 (Supp. 1951).
4. See GA. CODE §§ 13-901 through 13-905 (1933) as amended by GA. CODE ANN. §§ 13-901, 13-905 (Supp. 1951).
5. Ga. Laws Jan.-Feb. Sess. 1955, p. 201.
6. Ga. Laws Jan.-Feb. Sess. 1955, p. 338.
7. GA. CODE ANN., Ch. 56-2 (1953 Rev.).

each.[8] Act 153 gives considerably more flexibility by stating that the capital stock "shall be divided into shares of not less than $5.00 each."

The appellate courts of Georgia decided a number of rather interesting corporation cases during the survey period. In *Cargill v. William Armstrong Smith Company*,[9] plaintiff sued Smith Company for its failure to perform under a contract which the plaintiff had entered into with the ink company. After the date of the contract but before suit was brought, the ink company had been merged into Smith Company. The trial court sustained Smith Company's demurrer on the ground that the plaintiff was not a party to the agreement by which that corporation assumed the ink company's indebtedness and that the agreement therefore did not confer any rights on the plaintiff. The court of appeals reversed, holding that the case was controlled by the 1938 Corporation Act which provides that all debts, liabilities, and duties of merged corporations "shall henceforth attach to the consolidated corporation and may be enforced against it to the same extent as if said debts, liabilities, and duties had been incurred by it."[10]

In *Southeastern Shippers Association v. Georgia Public Service Commission*[11] the Public Service Commission sought to enjoin the defendant, a non-profit corporation without capital stock, from transporting goods because it had not obtained a certificate of public convenience and necessity. The defendant was engaged in hauling commodities belonging to its members from Columbus to Atlanta and on return trips hauling commodities sent from Atlanta to its members. When a shipper became a member of defendant association he paid a membership fee and thereafter whenever he shipped goods he paid "assessments." The supreme court held that defendant was a "motor carrier" within the meaning of the Motor Carrier Act of 1931[12] and that it therefore could not operate its trucks without a certificate of public convenience and necessity as required in that act. The relation between defendant and its members was that of carrier and shipper, and the relationship was not changed by the fact that defendant had no capital stock and was not engaged in making a profit. The primary test of whether the Association was subject to the Motor Carrier Act was whether the transportation in which it engaged was for compensation, and the court concluded that the membership fees and assessments paid the Association constituted compensation. In reply to the defendant's contention that it was a cooperative association carrying goods

8. GA. CODE § 56-207 (1933).
9. 92 Ga. App. 87 S.E.2d 650 (1955).
10. Ga. Laws Ex. Sess. 1937-38, pp. 214, 232, GA. CODE ANN. § 22-1844 (Supp. 1951).
11. 211 Ga. 550, 87 S.E.2d 75 (1955).
12. GA. CODE § 68-501 (1933).

as agent for its members, the court pointed out that the Non-Profit Cooperative Associations Act of 1921[13] is confined to the transportation of agricultural products, and noted that the defendant had in fact been incorporated under the Corporation Act of 1938. The court then quoted with approval from Professor Charles E. Nadler's book on corporations,[14] to the effect that the same fundamental rules and principles are to be applied to non-profit corporations as to business and profit corporations.

Williams v. Appliances, Inc. [15] was an action on open account against "J. D. Robinson, Inc.," and two named individuals. An itemized statement consisting of copies of invoices showing the materials purchased and their prices was incorporated into the petition by reference. The invoices were in the account of "J. D. Robinson, Inc." The court of appeals held that the designation "J. D. Robinson, Inc." connotated a corporate entity and that therefore the petition failed to state a cause of action against the individual defendants as there was nothing to show they were liable on the account.

Georgia Power Company v. Georgia Public Service Commission[16] was a proceeding by the power company to enjoin the Commission from compelling it to attend a hearing on rule nisi by which the Commission sought to force the power company to show cause why the Commission should not prescribe a rate schedule for the sale of electric energy by the power company to the light company or why the power company should not purchase the plant and equipment of the light company. The light company, a subsidiary of the Florida Power Corporation, was engaged in the transmission and sale of electric energy in an area of south Georgia. The trial court sustained the defendant's demurrer. The supreme court reversed, holding that the Commission does not have authority to require a public utility to buy or merge with another, to sell power to another, or to serve a territory it has never undertaken to serve. The court quoted with approval language from one of its prior decisions[17] to the effect that the function of the commission is to regulate and disapprove any dishonest or clearly inefficient conduct and practice by utilities, not to

13. GA. CODE § 65-201 (1933).
14. NADLER, GEORGIA CORPORATION LAW § 468 (1950).
15. 91 Ga. App. 608, 86 S.E.2d 632 (1955).
16. 211 Ga. 223, 85 S.E.2d 14 (1954).
17. Southern Bell Telephone & Telegraph Company v. Georgia Public Service Commission, 203 Ga. 832, 878, 49 S.E.2d 38, 66 (1948).

supplant private management. The court went on to hold that injunction was the proper remedy.[18]

A partnership case worthy of note is *Giordano v. Kleinmaier*.[19] In that case, plaintiff entered into a contract employing defendant to operate her business known as Piedmont Reweaving Company. He agreed to operate the business, to pay all its expenses, to accept in payment for his services one-half of the net profits, and to pay the balance of the profits to plaintiff. Alleging that defendant had failed to pay her share of the profits and that she was entitled to $3,000.00 or more from the business, plaintiff sued for an accounting and for an injunction to restrain the defendant from enforcing against her a judgment he had previously obtained on a lease contract. The defendant claimed that the petition did not state a cause of action because it did not allege facts indicating that something was due the plaintiff. The supreme court, assuming that the contract between the plaintiff and defendant was one of partnership, held that the plaintiff was entitled to an accounting. The court, although acknowledging the existence of a rule that a petition for an accounting must aver facts sufficient to show that something will be due on the accounting, held that the rule does not apply if the defendant is subject to a contractual duty to account. The court felt that this case was governed by the rule laid down in *Luther P. Stephens Investment Co. v. Berry Schools*,[20] namely, that if a defendant is under a contractual duty to furnish an accounting of the affairs of a partnership and has the books and records in his office and refuses to produce them, plaintiff is entitled to an accounting to determine what profits were made or losses sustained. Further, the court held that plaintiff was entitled to an injunction restraining the defendant from prosecuting the levy obtained in the civil court, because plaintiff could not have asserted as a set-off to

18. Three cases decided during the survey period involved points of corporation law but extended discussion of them does not seem necessary. They are City of McCaysville v. Tri-State Electric Cooperative, 211 Ga. 5, 83 S.E.2d 598 (1954) (a foreign cooperative, non-profit membership rural electrification corporation which has become domesticated in Georgia has the same powers, privileges and immunities and is subject to the same obligations, liabilities and disabilities as if originally incorporated in Georgia); George Washington Life Insurance Company v. Peacock, 90 Ga. App. 296, 82 S.E.2d 875 (1954) (GA. CODE § 56-601, prescribing venue of suits against insurance companies having more than one place of business and Ga. Code § 22-1509, prescribing venue for suits against foreign corporations which do not maintain a place of business or an agent in Georgia upon whom service may be perfected, are permissive, not inclusive, as to venue); Dixie Ornamental Iron Company v. Parrish, 91 Ga. App. 44, 84 S.E.2d 595 (1954) (evidence supported judgment for plaintiff in action against corporation for breach of contract to assume liability of a partnership).

19. 210 Ga. 766, 82 S.E. 2d 824.

20. 188 Ga. 132, 3 S.E.2d 68 (1939).

defendant's suit in the civil court (the jurisdiction of that court being limited to $1,000) the claim for an accounting in which he asked for $3,000 or more.[21]

21. The only other partnership case decided during the survey period was Scott v. Smalling, 90 Ga. App. 292, 82 S.E.2d 712 (1954) (in accounting between partners, question of whether failure of one partner to enter on partnership books cash payment received by him was negligent error or fraud was for jury).