BUSINESS ASSOCIATIONS

By JOE R. YOUNG, JR.*

The appellate courts were not unduly burdened with cases involving this field during this survey period. An attempt has been made in the following article to cover the cases and the statutes of general interest even though few, if any, of the cases announced startling principles of law, most dealing with subjects that have been established as firm principles of law.

In the case of *Bregman v. Orkin Exterminating Company*,[1] the supreme court held that mandamus is not an available remedy to enforce the right of a stockholder in a private corporation to inspect the books and records of the corporation unless the right is in some way affected with the public interest. The court held that in Georgia the subject of mandamus is controlled by statute[2] and not governed by common law, hence to be entitled to mandamus the plaintiff must find the right in one of the governing statutes. Mandamus is not available in such a case against a private corporation unless a "public duty" or a franchise is involved. The court indicated that an equitable proceeding would lie for such relief.

The supreme court in the case of *East Point Amusement Company v. Storey*[3] held in a headnote decision somewhat bare of facts that a cause of action was stated under sections 22-710 and 22-711, Georgia Code Annotated, in a minority stockholders action. The court cited the case of *Collier v. Mayflower Apartments*[4] as controlling. The petition as amended alleged that two of the directors, representing fifty per cent of the corporate stock, gave the assets of the corporation to the president in exchange for his stock, the value of the assets exceeding the value of his stock in the approximate amount of $75,000, for the purpose of thereby acquiring control of the corporation, thus showing a large loss to the corporation in order that they might gain control.

The court of appeals held that a cause of action was stated against a partnership for "mistreatment of an invitee" in the case of *Mansour v. Mobley*.[5] Plaintiff alleged that she was in the department store of the defendant partnership, that she was embarrassed and humiliated

*Associate in the firm of Hitch, Miller and Beckmann, Savannah; B.A. 1951, Vanderbilt University; LL.B. 1956, Walter F. George School of Law, Mercer University; Member of Georgia and Savannah Bar Associations.

1. 213 Ga. 561; 100 S.E.2d 267 (1957).
2. GA. CODE ANN. §§ 64-101, 64-103 and 22-705, (1933).
3. 213 Ga. 636; 100 S.E.2d 453 (1957).
4. 196 Ga. 419; 26 S.E.2d 731 (1943).
5. 96 Ga. App. 812; 101 S.E.2d 786 (1957).

in front of others by one of the partners insinuating that she was guilty of shoplifting, and that she was led to a storeroom where she was detained against her will. The court held that the action was not based on slander and false imprisonment, but rather on the "tortious misconduct or mistreatment of the plaintiff," an invitee, by one of the defendants acting on behalf of himself and as agent of the other two defendants. The fact that such misconduct or mistreatment by the employee contains elements of slander does not relieve the corporation (partnership) of its duty to protect the invitee, although no recovery can prevail against it for slander, which may be simultaneously involved.[6] In answer to two of the partners' contentions that they were not liable for the acts of their partners the court quoted from *Zakas Bakery v. Lipes*[7] as follows:

> A partnership in the conduct of its business is a legal entity both as to its rights and in the performance of its duties to the public and to its employees, and is a legal entity as to its obligations. Partners are, in respect to the business in which they are engaged, agents of each other, and therefore one partner might be liable for the tortious acts of another done in the usual course of business of the firm.

The court quoted further from the case of *Rogers v. Carmichael*[8] as follows: "We think that proper construction of section 75-308 is that partners are not responsible for the torts of each other merely by reason of their relation as partners, and that in order for such liability to exist, the wrong must have been committed within the legitimate scope of the partnership business." The court continued that even had the trial court striken on special demurrer the allegations relating to unlawful detention, the petition would still have stated a good cause of action based on the action of slanderous accusations.

The court's opinion is not clear on this point as to whether or not they are holding that the partnership might be liable for the slander of one of the partners in the usual course of business of the firm, or whether they are holding that such "slanderous accusations" would in and of themselves constitute such tortious misconduct or mistreatment of an invitee as to state a cause of action.

When a corporation was sued on a contract alleged to have been approved, ratified and adopted by the corporation because all officers, directors, stockholders and agents of the corporation had signed

6. Southern Grocery Stores v. Keys, 70 Ga. App. 473; 28 S.E.2d 581 (1944).
7. 27 Ga. App. 712, 715; 109 S.E. 537 (1921).
8. 184 Ga. 496, 504; 192 S.E. 39 (1937).

the contract and further because the corporation had accepted and retained the benefits of the contract, the court held that the contract was the undertaking of two individuals and not that of the corporation.[9] The contract in question was between Walton, first party, and Johnson, second party, and recited that the parties owned certain real estate on which they were building an apartment, and that they were the sole stockholders of the corporation, then set forth their agreements, and was signed by Walton and Johnson. The court held that the corporation could not ratify the contract, since a contract which did not on its face purport to be made on behalf of the corporation is not subject to ratification for the reason a principal can not ratify a contract which is not in the first instance made on its behalf.

In the case of *Hardin v. Rosenthal*[10] the supreme court affirmed the trial court's sustaining of a general demurrer in an action for specific performance of a restrictive stock sale agreement. The restrictive agreement in question provided in part as follows: "In the event the holder of this stock certificate shall desire to sell same, he shall offer this certificate for sale at market value or true value to the other stockholders of record in said corporation and shall give an option to said stockholders of not less than six months in which to exercise such option to purchase this certificate . . ." The court held the agreement too indefinite to be specifically performed. The court considered the terms "market value" and "true value" to be ambiguous and without any provision for definitely ascertaining their meaning; further, the agreement was too indefinite regarding what portion of the stock should be offered by one of the stockholders for sale to the remaining stockholders. In addition it further failed to provide for the terms of payment as to cash or credit. This case would seem to point out with particularity the danger of improper and careless draftsmanship in such a document. The wise attorney would take heed from this case and would attempt to draft such an agreement so that no term could prove ambiguous or doubtful, perhaps an impossible but a desirable achievement.

In a proceeding to foreclose a conditional sales contract the defendant contended that the plaintiff corporation did not have title to the property in question and therefore was unable to maintain the action.[11] In reaching the conclusion that the corporation had suffi-

9. Broyles v. Kirkwood Court Apartments, 97 Ga. App. 384; 103 S.E.2d 97 (1958).
10. 213 Ga. 319; 98 S.E.2d 901 (1957).
11. Jack Fred Company v. Lago, 96 Ga. App. 675; 101 S.E.2d 165 (1957).

cient title to maintain the suit, the court of appeals stated that the president is presumed to be the alter ego of the corporation and the presumption is even stronger where the president is also the sole stockholder. Even though the president merely by virtue of his office has no authority to bind the corporation by contract, such authority may be shown by ratification. The action by the corporation in asserting title to the property in the foreclosure suit constituted sufficient ratification.

A corporation can claim a mechanic's lien for work done by its employees, and since the corporation can not swear or execute an affidavit, such must be done by an agent who can swear as to the truth of the facts alleged.[12] Where an attachment bond was executed by an individual as principal when it should have been executed by the plaintiff corporation, and where there was no indication as to the connection between the corporation plaintiff and the individual, the bond is void and can not be amended or a new bond of the corporation substituted.[13]

The following cases are mentioned briefly for a single point in this field. In the case of *Heath v. Butler*[14] the court held that a religious society which is not incorporated can not sue or be sued as such. An unincorporated voluntary association is not such a legal entity as to be subject to suit under the laws of this State.[15] And since in this case the individual defendants were not members of the unincorporated labor organization no class action could be maintained by suing and serving persons who were not members of the class. An individual can not carry on a business in the name of a corporation unless the names happen to be identical.[16] In the case of *Ledger-Enquirer Company v. Brown*[17] the supreme court struck down Georgia Laws 1956, p. 4, establishing venue in libel actions against newspapers as being unconstitutional as an arbitrary classification.

The following statutes were passed concerning this field of law. Act No. 462[18] amended the Corporation Act of 1938 by changing section 22-1860, Georgia Code Annotated. This act authorizes the holding of stockholders meetings within or without the State as may be provided by the by-laws, provided such provision is not contrary

12. Tallman v. Southern Motor Exchange, 97 Ga. App. 565; 103 S.E.2d 640 (1958).
13. Powell v. Stinson's Garage, 97 Ga. App. 613, 103 S.E.2d 580 (1958).
14. 213 Ga. 411; 99 S.E.2d 131 (1957).
15. Spence v. The Woodman Co., 213 Ga. 573; 100 S.E.2d 435 (1957).
16. Nix v. Luke, 96 Ga. App. 123; 99 S.E.2d 446 (1957).
17. 213 Ga. 538; 100 S.E.2d 166 (1957).
18. Ga. Laws 1958, p. 653.

to the charter, and further the act provides that in the absence of any such provision in the by-laws, all meetings of stockholders must be held in the principal office of the corporation in this State. The act makes no change as to meetings of incorporators or meetings of directors.

Act No. 69[19] provides that every corporation having corporate powers and privileges granted by the Secretary of State as required by article 3, section 7, paragraph 17 of the Constitution (Georgia Code Annotated § 2-1917) shall have such number of directors, not less than three, as may be provided by its charter or charter amendment or by-law, and further that the action of any such board of directors is valid and binding as if the act had been enacted prior to such action.

Act. No. 130[20] amends section 13-2023, Georgia Code Annotated, by adding Public Housing Administration, Federal National Mortgage Association, and Central Bank for Co-operatives as organizations whose obligations may be owned by banks and not be subject to the limitations imposed by that section.

19. Ga. Laws 1958, p. 92.
20. Ga. Laws 1958, p. 133.