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Partnerships and Business Corporations

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PARTNERSHIPS AND BUSINESS CORPORATIONS

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The South Carolina Supreme Court has not been overly burdened with cases involving Partnership and Business Corporation Law during this survey period. Indeed, there has been no case dealing directly with the law of Partnerships. The case of *Industrial Equipment Co. v. Montague*[1] is the only case handed down during the survey period falling strictly within the field of business corporate law.[2]

The Industrial Equipment Co. operated as a partnership for some years prior to 1946, the partners being A, who was President, and owned a forty-five (45%) percent interest in the business; B, who was Secretary, and had a ten (10%) percent interest; and F, who was Treasurer and General Manager, and owned the remaining forty-five (45%) percent interest in the business. In 1946 this partnership was incorporated and A, B, and F became the sole stockholders and officers of the corporation in the same proportion as they had formerly owned the partnership. The stock ownership in the corporation remained the same until the latter part of 1950 when A and B sold their stock to F and his associates, after which they retired from the corporation. This action was brought in January 1952 by the corporation against A, a former officer and stockholder. The complaint sets forth several causes of action, but the only one involved in the appeal is the first cause of action, which alleges that from July 1946 to December 1950, A converted to his own use certain "bonus volume checks" issued to the corporation which aggregated over $18,000.00.

The answer of A, in so far as here applicable, admitted that the checks in question had been cashed by him upon the suggestion of F and that the proceeds were then divided among the stockholders of the corporation in the proportion of their stock holdings, which had been the practice of the partnership for the four years prior to its incorporation.

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1. 224 S.C. 510, 80 S.E. 2d 114 (1954).

2. Henry P. Moses Co. v. South Carolina Tax Commission, 224 S.C. 193, 78 S.E. 2d 187 (1953), might be said to indirectly involve corporate law, but the real question was one of taxation. See also, United States v. Scovil, 224 S.C. 233, 78 S.E. 2d 277 (1953), involving priority between landlord's lien for rent and Federal tax lien due by insolvent corporation.

At the trial F denied the foregoing allegations of the answer, claiming that he not only did not know of the cashing and distributing of the proceeds of such checks, but that he received no part thereof. The Jury, however, found for A in this respect.

On appeal the Court held: (1) That in the absence of claims of creditors or other third persons, a distribution of corporate earnings to the three corporate officers, who were the sole stockholders and owners of the corporation, did not make the corporation president, who made the distribution, responsible to the corporation for conversion of corporate funds, and that the absence of formal directors' meetings and minutes are not indispensable to corporate action in this regard; and (2) that where directors are the sole stockholders of a private business corporation they are the corporation itself and the usual fiduciary relationship between the directors and their dealings with corporate property disappears.

In holding that under the facts of the particular case dividends could be paid without formal corporate action, the Court follows and probably extends the doctrine as set forth in *Alderman v. Alderman*[3] which states that from a purely practical standpoint, where the only two legal stockholders of a corporation were devoting their full time to its operation and conferring constantly with each other, there would be little occasion for having formal meetings. While this holding seems to be in accord with the better view,[4] it will be interesting to observe whether such doctrine is further extended. There might be some merit for the position that if a so-called "close corporation"[5] can legally operate and declare dividends without the holding of stockholders' and directors' meetings, that it is in effect being allowed to use the veil of the corporate entity as a screen to avoid personal liability on the part of its owners.

The Court goes on to hold, in the case under survey, that while, generally, corporate directors are at least quasi-trustees in their dealings with the property of their corporation and the relationship is fiduciary in nature,[6] where the directors were also all of the stockholders in the business corporation

3. 178 S.C. 9, 181 S.E. 897, 105 A.L.R. 102 (1934).
4. 13 AM. JUR. 909, § 948; 19 C.J.S. 96, § 751.
5. The Court said Industrial Equipment Co. was a "close corporation."
6. Gilbert v. McLeod Infirmary, 219 S.C. 174, 64 S.E. 2d 524, 24 A.L.R. 2d 60 (1951).

they may be said to have been the corporation itself and such fiduciary relationship disappears because one cannot be a trustee of property for himself. As authority for this conclusion the Court cites *Lynch v. Lynch*[7] holding that where one is named trustee of property for himself, the trust relation disappears.

7. 161 S.C. 170, 159 S.E. 26, 80 A.L.R. 997 (1930).