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The Formation of Partnerships With the Motive of Evading the Workmen's Compensation Law

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opinion of the writer, place the rescinding vendee in a position where he could obtain complete relief.[64]

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THE FORMATION OF PARTNERSHIPS WITH THE MOTIVE OF EVADING THE WORKMEN'S COMPENSATION LAW.

> "One of the methods used by this unscrupulous group has been the creation of fictitious partnerships designed to mask the relationship of employer and employee."
>
> Governor Herbert H. Lehman.[1]

A great number of entrepreneurs have recently adopted the partnership form of business organization avowedly for the purpose of evading their obligations under the Workmen's Compensation Law. Some of these partnerships have been upheld by the courts, while certain others have not. It will be the scope of this article to analyze the cases on the subject and provide a touchstone to which the lawyer may bring his problem.

Associations formed to conduct a business contrary to law or to public policy are clearly illegal.[2] Associations formed for the pursuance of an illegal method of conducting an otherwise legal business

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[64] "Rescission will bar a recovery of damage when the only damage sustained is not getting what was bargained for, and no special damage has been sustained. According to the weight of authority, if special damage has been sustained, so that the * * * [rescinding] party is damaged, notwithstanding the rescission, his rescission of the contract will not bar a recovery of such special damage." American Pure Food Co. v. G. W. Elliott & Co., 151 N. C. 393, 396, 66 S. E. 451, 452 (1909).

[1] Address of Governor Herbert H. Lehman to the New York Legislature Jan. 4, 1939. New York Herald Tribune, Jan. 5, 1939, p. 15, col. 8.

[2] "An indispensable element of every partnership is a contract between the parties for the sharing as common owners of the profits of a lawful business." 47 C. J. (1929) p. 643, § 1, n.5(B). A partnership may be illegal on the ground that it was formed for a purpose forbidden by the current notions of morality, religion or public policy. 1 LINDLEY, PARTNERSHIPS (5th ed. 1888) 111. There are jurisdictions which go so far as to hold that: "In contemplation of law an association of persons formed for an illegal purpose, or one against public policy, is not a partnership." Jackson v. Akron Brick Ass'n, 53 Ohio St. 303, 41 N. E. 257 (1895). And a "partnership cannot be legally formed to carry on any illegal or fraudulent scheme". Sampson v. Shaw, 101 Mass. 145 (1869); Dunhan v. Presby, 120 Mass. 285 (1876). The court, in such cases, reasons that since an illegal contract is void, and a partnership must result from a contract, the partnership contract is in effect a contract to form an illegal contract and therefore void and the partnership never begins to exist. This does not seem to be the law in New York; see note of Commissioners of Uniform State Laws to corresponding provision (Section 6) of the Uniform Partnership Act. PRASHKER, CASES AND MATERIALS ON THE LAW OF PARTNERSHIP (1st ed. 1933) 7n.

are illegal.[3] More difficulty arises, however, when we consider the status of associations of which both the purpose and method are legal, but which are formed with the motive of escaping legal obligations.[4]

Workmen's Compensation and similar social legislation have been enacted in the pursuance of a belief in their value as a means of protecting working men and their dependents from want in case of injury in the course of certain specified employments.[5] It was the intent of the legislature, by making the compensation for injury, or death, a part of the expense of those businesses included in the Act,[6] to secure injured workmen and their dependents from becoming objects of charity.[7]

The construction of the Workmen's Compensation Act, the courts have held, must be liberal, and doubts must be resolved in favor of the employee or his dependents.[8] Above all, the construction must be one which will effect the purposes for which the Act was passed and prevent evasion by employers.[9] The courts have also held that a waiver of the provisions of the Act would be null and void as against public policy.[10] Thus any agreement to waive the provisions of the Act even though it pretends to take the form of a partnership agreement, is illegal as against public policy.[11]

But a contract which places a person in one of the classes excluded from the benefits of the Act is legal.[12] To come under the Act the relationship of employer and employee must be established.[13] The courts of this state have constantly held that a member of a partnership can not be an employee thereof within the contemplation of the Workmen's Compensation Law.[14] This is true even though he

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[3] See Note (1928) 41 HARV. L. REV. 650; 47 C. J. (1929) p. 651, § 44, n.68.

[4] "'Motive' is that which prompts the choice or moves the will, thereby inciting or inducing action, while 'purpose' is that which one sets before himself as the result to be kept in view or object to be attained." Kessler v. Indianapolis, 199 Ind. 420, 157 N. E. 547, 549 (1927). "'Method', properly speaking, is only placing and performing several operations in the most convenient order." Hornblower v. Boulton, 8 Durn. & E. 95, 106, 101 Eng. Rep. 1285, 1292 (1799).

[5] N. Y. WORKMEN'S COMPENSATION LAW § 3.

[6] Post v. Burger & Gohlke, 216 N. Y. 544, 111 N. E. 351 (1916).

[7] Matter of Petrie, 215 N. Y. 335, 109 N. E. 549 (1915).

[8] Winfield v. New York Cent. & H. R. R., 216 N. Y. 284, 110 N. E. 614 (1915); Moore v. Lehigh Valley R. R., 217 N. Y. 627, 111 N. E. 1092 (1916).

[9] Delinousha v. National Biscuit Co., 248 N. Y. 93, 161 N. E. 431 (1928).

[10] By statute in N. Y., N. Y. WORKMEN'S COMPENSATION LAW § 32: "No agreement by an employee to waive his right to compensation under this chapter shall be valid".

[11] Nelson v. American Cement and Plaster Co., 84 Kan. 797, 115 Pac. 578 (1911); Angell v. White Eagle Oil and Refining Co., 169 Minn. 183, 210 N. W. 1004 (1926); People v. Levine, 160 Misc. 181, 288 N. Y. Supp. 476 (1936).

[12] People v. Kaplan, 160 Misc. 179, 288 N. Y. Supp. 474 (1936).

[13] See Note (1935) 10 IND. L. J. 268.

[14] Lyle v. R. H. Lyle Cider and Vinegar Co., 243 N. Y. 257, 153 N. E. 67 (1926); Duprea v. Duprea Bros., 224 App. Div. 673, 229 N. Y. Supp. 852 (3d Dept. 1928); Munter v. Ideal Peerless Laundry, 229 App. Div. 56, 241 N. Y. Supp. 411 (3d Dept. 1930); Schweitzer v. The Thompson and Norris

draws a salary in payment for the general work of the partnership in addition to his share of the profits.[15] The immunity granted by our Act to working members of a partnership has resulted in an epidemic of partnerships in the hazardous trades and occupations in order to save the cost of insurance.[16] In certain cases the courts have upheld the partnerships, and in certain other cases the courts have refused to uphold them. A comparison of *People* v. *Kaplan*[17] with *People* v. *Levine*[18] will serve to illustrate.

In the *Kaplan* case, the defendant, a contractor engaged in the demolition of buildings, admitted the formation of a partnership with his laborers for the purpose of saving the heavy expenses of compensation insurance. Under the agreement the parties agreed to share equally in the "obligations and profits" in connection with the demolition of the building for which the partners contracted. The court, in its decision upholding the partnership, said: "While this plan of forming partnerships has become a habit of this particular defendant, there is not sufficient legal evidence to justify a holding that no partnership was in fact or in law created," and "It, therefore, follows that even though the partnership was created to evade the requirements of the Workmen's Compensation Law, no liability may be imposed if in truth and in fact a partnership was created. * * * I do not desire to condone the actions of the defendant. His plan of saving the cost of compensation insurance not only furnishes no protection to the laborers but enables him to compete unfairly with contractors who comply strictly with our laws and statutes and who do not seek refuge in such subterfuges. Unfortunately, however, the record in this case furnishes no basis for a contrary holding. In another case, other elements not established in this case might be present which would justify the courts in disregarding the written partnership agreement. The question is one of degree."[19]

The necessary basis was found in the *Levine* case decided by the same judge about a month later.[20] In the *Levine* case, the defendant, a contractor, admitted the reason for the formation of the partnership

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Co., 229 N. Y. 97, 127 N. E. 904 (1920) (There is nothing in the Workmen's Compensation Law nor in the decisions construing the law which justifies the application of any definition of the relation between employee and employer other than that which has always obtained at common law).

[15] Nevills v. Moore Mining Co., 135 Cal. 561, 67 Pac. 1054 (1902); Cooper v. Industrial Accident Commission of California, 177 Cal. 685, 171 Pac. 684 (1918); Le Clear v. Smith, 207 App. Div. 71, 202 N. Y. Supp. 514 (3d Dept. 1923); McMillan v. Industrial Commission, 13 Ohio App. 310 (1920); Rockefeller v. Industrial Commission, 58 Utah 124, 197 Pac. 1038 (1921); Miller's Indemnity Underwriters v. Patten, 238 S. W. 240 (Tex. Civ. App. 1922); Ellis v. Ellis and Co. (1905) 1 K. B. 324. *Contra:* Knox & Shouse v. Knox, 120 Okla. 45, 250 Pac. 783 (1926).

[16] People v. Levine, 160 Misc. 181, 288 N. Y. Supp. 476 (1936).

[17] 160 Misc. 179, 288 N. Y. Supp. 474 (1936).

[18] 160 Misc. 181, 288 N. Y. Supp. 476 (1936).

[19] People v. Kaplan, 160 Misc. 179, 180, 288 N. Y. Supp. 474, 475 (1936).

[20] Magistrate Perlman. The *Kaplan* case was decided on April 22, 1936; the *Levine* case was decided on May 26, 1936.

was to save the cost of insurance and put in evidence the partnership agreement. The court held that: "Written articles of copartnership certainly do not foreclose an inquiry into the question whether the parties intended to, and actually did, create a real partnership." Here the alleged partnership maintained no books of account or other records and filed no income tax reports. All materials used by the partnership were purchased and paid for by the defendant from his own personal bank account, and although the members of the partnership under the name of the "Star Sand Blasting Co." were changed several times no new certificate of doing business under an assumed name was filed. These circumstances were such as to permit the court to find that no partnership actually existed and it awarded compensation to the plaintiff.

A closer case is *York* v. *Industrial Commission* [21] which came before the Wisconsin courts. In that case Schlinger Memorials Inc., a monument company, finding business unprofitable because of the high cost of compensation insurance, discharged its employees and then rehired them as a partnership. The contract between the partnership of former employees and the monument company provided for the leasing of the buildings of the company by the partnership, and an agreement under which the partnership purchased all its materials from the company, sold all its products to the company, and gave the company control of the amount of work to be done. The net profits accruing to the partnership approximated the wages previously paid to the workmen. During the time that this agreement was in force, the company insisted upon, and succeeded in, procuring the dismissal of one of the partners. In an action brought by a partner against the company for injuries suffered in the course of his employment, the high court, reversing the circuit court, held that there was a partnership and that the position of the plaintiff was that of independent contractor, rather than that of employee, and consequently he was not entitled to compensation under the Act.

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[21] 223 Wis. 140, 269 N. W. 726 (1936). Dissenting Judge Fairchild wrote: "In Honnold, Workmen's Compensation, Sec. 66, it is said, 'When the doing of the specific work is entrusted to one who exercises an independent employment, and selects his own help, and has immediate control of them, and the right to control the method of conducting the work, the contractor is an independent contractor.' The control of the work, the duration, and the membership of the partnership is literally, impliedly, and actually given to an outside individual, the appellant company."

A different conclusion was reached by the Oklahoma court in a case involving similar facts. Five casers who bound themselves into a casing crew and offered themselves for employment were held not a partnership but were all considered employees of the one hiring the crew. Dixon Casing Crew v. State Industrial Commission, 108 Okla. 211, 235 Pac. 605 (1925). This decision was under an amendment to the Oklahoma statute, which reads: "Employee * * * shall include workmen associating themselves together under an agreement for the performance of a particular piece of work, in which event such persons so associating themselves together shall be deemed employees of the person having the work executed."

The attitude of the courts when confronted by a case involving a corporation serves as an interesting comparison.[22] The majority of the cases in this group concerns actions for insurance by injured officers of the corporation.

In the early case of *Browne* v. *Browne Co.*[23] the plaintiff, the majority stockholder of a corporation, was employed as its president. His duties consisted of those usually performed by one in his position and some manual work. The industrial commission found that his injuries arose out of and in the course of his employment. The Court of Appeals, reversing the award of the industrial commission, held that "the higher executive officers of a corporation are not, as such, its employees in the ordinary sense of the word" and that "Theoretically he was subject to the orders of his corporation and was liable to be discharged for disobedience. Practically he was the corporation and only by a legal fiction its servant in any sense." [24]

The court discussed this case with approval a few years later in *Matter of Skouitchi* v. *Chick Cloak and Suit Co.*[25] adding "But all this would not preclude a person who was really an employee from securing compensation as such for injuries received in the course of his employment, even though he might hold a title as officer in a corporation * * *. A corporation is a complete entity separate and distinguishable from its stockholders and officers and if it sees fit to have one of the latter serve it in the capacity of an ordinary employee we see nothing to prevent it from so doing." [26] and in accordance with this rule, the court awarded compensation to an employee engaged in packing, shipping, selling and delivering goods at an average weekly wage of $33.70, even though he bore the titles of president and treasurer. But where the president of a firm did not receive a special salary as worker, he was not awarded compensation.[27]

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[22] See Note (1932) 81 A. L. R. 644.

[23] 221 N. Y. 28, 116 N. E. 364 (1917); Howard v. Howard, 221 N. Y. 605, 117 N. E. 1072 (1917).

[24] Browne v. Browne Co., 221 N. Y. 28, 116 N. E. 364 (1917). N. Y. WORKMEN'S COMPENSATION LAW § 2(4) defines an employee as "a person who is engaged in a hazardous employment in the service of an employer, carrying on or conducting the same upon the premises of the plant, or in the course of his employment away from the plant of his employer; and shall not include farm laborers or domestic servants"; *cf.* FED. SOCIAL SECURITY ACT, 49 STAT. 630 (1935), 42 U. S. C. A. § 1011 (Supp. 1938) which defines the term employee to include an officer of a corporation

[25] 230 N. Y. 296, 130 N. E. 299 (1921).

[26] *Id.* at 299.

[27] Kolpein v. O'Donnell Lumber Co., 230 N. Y. 301, 130 N. E. 301 (1921): The trend of the law may be readily seen by a comparison between the 1926 and the 1939 amendments to N. Y. WORKMEN'S COMPENSATION ACT § 54(6). The 1926 amendment (N. Y. Laws 1926, c. 258) reads: "Employers or executive officers of corporations shall not be included in the compensation insurance contract unless they elect to be brought within the coverage of this chapter, in which case such policies shall insure to such employers or officers the same compensation provided for their employees, and at the same rates; provided, however, that the estimation of their wage values, respectively, shall be reason-

It is apparent then, that if the firm of A, B and C Inc. were to hire A, its president and stockholder, to do manual work at a salary, and A were injured, he would be entitled to workmen's compensation;[28] but if the firm of A, B and C were a partnership and the partnership hired A to do certain manual work at a salary, and A were injured, he would not be entitled to compensation.[29] It is the unfair advantage, taken by unscrupulous employers, of this situation that must be remedied.[30]

When deciding these cases the sole question considered by the courts of this state is whether or not a partnership exists.[31] If the court finds that the organization is a partnership within the meaning of Section 10 of the Partnership Law,[32] no compensation is awarded; if, on the other hand, the evidence is found insufficient to support a partnership, compensation is awarded.[33] But the determination of whether or not a certain association is a partnership is not always without difficulty.

The partnership relation is a contractual relation and like all contracts depends upon the intention of the parties,[34] but the mere fact that the parties intended to form a partnership and act in pursuance of this intention is not enough. Their acts must conform to Section 10 of the Partnership Act.[35] The contract creating a partnership is the best evidence of its existence;[36] yet if there is no con-

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able and separately stated in and added to the valuation of their payrolls upon which their premium is computed, the employer or officer so insured shall have the same rights and remedies given an employee by this chapter." The 1939 amendment (N. Y. Laws 1939, c. 241, effective July 1, 1939) reads: "Insurance of officers of corporations. Every executive officer of a corporation shall be deemed to be included in the compensation insurance contract or covered under a certificate of self-insurance unless he elects to be excluded from the coverage of this chapter. Such election shall be made in writing * * *. The estimate of their wage values, respectively, shall be reasonable and separately stated and added to the valuation of the payrolls upon which the premium is computed. The officers so insured shall have the same rights and remedies as any employee, but any executive officer who files an election not to be included under this chapter shall be deemed not to be an employee within the intent of this chapter."

[28] Skouitchi v. Chick Cloak & Suit Co., 230 N. Y. 296, 130 N. E. 299 (1921).

[29] See note 15, *supra.* In New York, if *A, B* and *C* intended to form a corporation and the attempt failed so that not even a *de facto* corporation (but a partnership) resulted, *A* would not be entitled to Workmen's Compensation even though he took out and paid for a compensation policy. Munter v. Ideal Peerless Laundry, 229 App. Div. 56, 241 N. Y. Supp. 411 (3d Dept. 1930); PRASHKER, LAW OF PRIVATE CORPORATIONS (1st ed. 1937) 231.

[30] See note 1, *supra.*

[31] People v. Kaplan, 160 Misc. 179, 288 N. Y. Supp. 474 (1936).

[32] "A partnership is an association of two or more persons to carry on as co-owners a business for profit."

[33] People v. Levine, 160 Misc. 181, 288 N. Y. Supp. 476 (1936).

[34] Hartford Accident and Indemnity Co. v. Olds, 152 Misc. 876, 274 N. Y. Supp. 349 (1934).

[35] People v. Levine, 160 Misc. 181, 288 N. Y. Supp. 476 (1936).

[36] *In re* Gibb's Estate, Appeal of Halstead, 157 Pa. 59, 27 Atl. 383 (1893).

tract the courts may imply one.[37] If there is a contract which complies with Section 10 of the Partnership Act, a partnership is created, notwithstanding the fact that no partnership was intended.[38]

From this it will be seen that the true test of a partnership is not the intention of the parties, but the conduct of the parties. What, then, must there be to create a partnership?

The test most popular with the courts, today, is the test of control. In *Cohan* v. *Commissioner of Internal Revenue,*[39] the court said: "At any rate it is clear that neither Cohan nor his mother intended to carry on a joint business, for it does not appear that she had the least direction of his affairs, or any part in the conduct of the business. What he apparently meant was to give her half his earnings in consideration of his filial affection for her, and for her assistance in his early unprosperous years. However this unusual gratitude may affect our estimate of his character, we have only to consider whether he changed his legal rights. There can be no doubt that he remained always free to stop his payments, and that her share depended on the endurance of his feeling toward her." [40] Yet the court upheld the partnership in *Commissioner of Internal Revenue* v. *Olds.*[41] In that case the father agreed with his daughters to sell them each a one-fourth interest in his property in exchange for their demand notes for $400,000 each. The father was to have absolute control of the business and each daughter was to have such profits as their father "sees fit to pay them, and as they might need for their living comforts." [42] If any of the daughters were dissatisfied with the management of the business, she could withdraw and her note was to be returned. A divided court [43] held this to be a partnership within the meaning of the Revenue Act.[44]

Whether a partnership existed in that case depended upon the enforceability of the promissory notes. A strong dissenting opinion held that this was but an illusory promise and, hence, there was no promise sufficient to support a contract.[45] The dissenting judge also held that there was no co-ownership, as the daughters did not contribute anything to the firm property and the agreement to sell was

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[37] Hartford Accident & Indemnity Co. v. Olds, 152 Misc. 876, 274 N. Y. Supp. 349 (1934).

[38] Martin v. Peyton, 246 N. Y. 213, 158 N. E. 77 (1927).

[39] 39 F. (2d) 540 (C. C. A. 2d, 1930).

[40] *Id.* at 542.

[41] 60 F. (2d) 252 (C. C. A. 6th, 1932).

[42] *Id.* at 253.

[43] Moorman and Simons, JJ., Hicks, J., dissenting.

[44] REVENUE ACT OF 1936, § 901(a) (3), 49 STAT. 1756 (1936), 26 U. S. C. A. § 1696(2) (Supp. 1938). "The term 'partnership' includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this Act, a trust or estate or a corporation; and the term 'partner' includes a member of such syndicate, group, pool, joint venture, or organization."

[45] WHITNEY, LAW OF CONTRACTS (3d ed. 1937) § 9.

insufficient in form to carry the legal title of the property to them. Here the father merely placed the property in the partnership and took the notes in consideration for the contract of sale.

In a consideration of this case it has been suggested that although this is a partnership for tax liability under Section 901(a) (3) of the Revenue Act,[46] it might not be a partnership for tort liability under Section 10 of the Partnership Law.[47] "For tax liability and tort liability involve different legal and economic factors, and a case might be made for the proposition that the emphasis upon co-control as a condition precedent to imposition of tort liability is not relevant to the problem of interpreting the partnership section of the Revenue Acts." [48]

While the sharing of profits and losses is essential to a partnership,[49] and while the absence of an agreement to share the losses is a strong circumstance against the existence of a partnership,[50] sharing in the profits does not necessarily establish a partnership,[51] and a share of the partnership profits given as compensation for services rendered,[52] or as interest on a loan,[53] to the partnership, raises no presumption that the recipient is a partner. To constitute a partnership it is not necessary that the parties agree upon a sharing of the losses.[54] Where a partnership exists, sharing of the losses can be inferred by the court and the court can determine the manner of distributing the profits where the contract fails to so provide.[55] Even where a contract exonerates a partner from losses, and provides that one person shall assume all the risks of loss, and guarantee a profit to the other, there is a valid partnership.[56]

Whether or not a partnership exists depends, therefore, upon the facts of each case. As the definition and tests of a partnership are not sufficient to exclude these undesirable associations another solution must be sought. Three possible remedies are submitted:

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[46] See note 44, *supra.*

[47] See note 32, *supra.*

[48] See Note (1938) 4 OHIO ST. L. J. 228, 232.

[49] Net profit sharing is now generally regarded as strong, sometimes conclusive, evidence that the business is a partnership. Cox v. Hickman, 8 H. L. 268, 11 Eng. Rep. 431 (1860); Runo v. Rothschild, 219 Mich. 560, 189 N. W. 183 (1922).

[50] Columbian Laundry v. Hencken, 203 App. Div. 140, 196 N. Y. Supp. 523 (1st Dept. 1922).

[51] Winters v. Miller, 227 Mich. 602, 199 N. W. 642 (1924); *In re* Rosenberg, 213 App. Div. 167, 209 N. Y. Supp. 315 (2d Dept. 1925).

[52] Klein v. Kirchbaum, 240 Mich. 368, 215 N. W. 289 (1927); Barker v. Kraft, 259 Mich. 70, 242 N. W. 841 (1932); Smith v. Bodine, 74 N. Y. 30 (1878); Schuster v. Largman, 308 Pa. 520, 162 Atl. 305 (1932).

[53] *In re* Mission Farms Dairy, 56 F. (2d) 346 (C. C. A. 9th, 1932); Black v. Brundage, 125 Cal. App. 641, 13 P. (2d) 999 (1932). *Contra:* Drinkelspeil v. Lewis, 50 Wyo. 380, 62 P. (2d) 294 (1937); PRASHKER, *op. cit. supra* note 2, at 48.

[54] Carter v. Wright, 275 Ill. App. 224 (1934).

[55] *In re* Owl Drug Co., 12 F. Supp. 439 (D. C. Nev. 1935).

[56] Stafford v. First Nat. Bank, 178 Ark. 997, 13 S. W. (2d) 21 (1929).

1—The courts may hold that a partner engaged in manual labor is an employee and, therefore, entitled to compensation. The courts of Oklahoma in the case of *Ohio Drilling Co.* v. *State Industrial Commission* [57] adopted this method. In that case, all work was done by the members of the partnership, who, because it was a hazardous enterprise, insured themselves. The suit was brought by an injured partner when the carrier refused compensation on the ground that he was not an employee, but one of the employers. The court held that a partner could be an employee, and compensation was awarded.

2—A statute may be passed making a workman who receives wages an employee. Such a statute has been passed in California in 1937. It provides "A working member of a partnership receiving wages irrespective of profits from such partnership is an employee under this division." [58] The next section reads—"Workmen associating themselves under a partnership agreement, the principal purpose of which is the performance of the labor on a particular piece of work are employees of the person having the work executed. In respect to injuries which occur while such workmen maintain in force insurance in an insurer, insuring to themselves and all persons employed by them benefits identical with those conferred by this division the person for whom such work is to be done is not liable as an employer under this division." [59]

3—A statute may extend the benefits of the Workmen's Compensation Act to the working members of a partnership without calling them employees.

But under the law as it stands in New York today if the partnership is such as to comply with Section 10 of the Partnership Law it will be upheld even though the avowed motive for its formation is to evade the Workmen's Compensation Act.[60]

HUGH PETER MULLEN.

PEREMPTORY CHALLENGES.

One of the most cherished attributes of our democratic society is the right of trial by jury. No less important are the incidents thereto, as for example, the selection and qualifications of the jurymen. Long regulated by constitutional and statutory provisions, these rights have become a bulwark of our system of government.

The following discussion is concerned with one of the elements of trial practice which has assumed increasing importance, namely, the

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[57] 86 Okla. 139, 207 Pac. 314 (1922).
[58] CAL. LABOR CODE § 3359.
[59] *Id.* § 3360.
[60] People v. Kaplan, 160 Misc. 179, 288 N. Y. Supp. 474 (1936).