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the scope and life-span of the *Atherton* case, during the *Haddock* regime. There has never been any formulation of general principles concerning matrimonial domicile; nor has there been any legal concept of a continuing matrimonial domicile until replaced by a "new" matrimonial domicile. The idea in the principal case has no historical foundation; whether it will have any future significance remains to be seen.

In the case of *Interdiction of Toca*⁴ another unexpected idea is the distinction drawn between the "actual domicile, the *domicilium habitationis*" and the "merely legal or constructive domicile." The question of the jurisdiction of a Louisiana court to interdict a person whose last legal domicile was in Louisiana but who has been an inmate of a mental institution for nineteen years in another state, is discussed elsewhere in this symposium.⁵ However, the distinction between these domiciles is doubly unexpected: in the first place, because the significance of domicile, especially in conflict of laws, has always been as a legal concept (distinguished from the physical fact of residence); and secondly, because the distinction here made is not borne out by the case cited as its source.⁶ However, the idea in the principal case may have a different explanation or unexplored possibilities.

CORPORATIONS

Dale E. Bennett*

RECEIVERSHIP FOR MISMANAGEMENT

The protection of minority shareholders includes a special statutory right to apply for a receivership where minority rights are jeopardized by gross mismanagement or misapplication of funds by the officers, directors and majority stockholders.¹ The appointment of a receiver, however, is a harsh and expensive remedy which will not be decreed unless the need for such relief

4. 217 La. 465, 46 So. 2d 737 (1950).

5. See comments on this case in section on Persons (Interdiction), *infra* p. 177.

6. In the earlier case of *Interdiction of Dumas*, 32 La. Ann. 679 (1880), the court was examining the text of Article 392 of the Civil Code, providing that "Every interdiction shall be pronounced by the competent judge of the *domicile* or *residence* of the person to be interdicted," and the court there concluded that this provision "contemplates that such *domicile* or *residence* should be, *as a rule*, the place of abode of such person, the *locus habitationis*, the place where the *body* can be found and reached, within the territorial limits of the court itself, and, *as an exception*, the place of the *bona fide* abode, intentional or accidental, of such person within the national boundaries of the sovereignty which the court represents." (32 La. Ann. 679, 682.)

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1. La. Act 159 of 1898 (La. R.S. [1950] 12:751-761).

is clearly established. In *Kinnebrew v. Louisiana Ice Company*² the petitioning minority shareholders fell far short of establishing a right to this exceptional relief. The facts, elaborately set out in the trial judge's written opinion, which was adopted by the supreme court, indicated that the defendant majority group had taken a hopelessly insolvent corporation, had breathed new life into the business by the furnishing of funds necessary to stave off clamoring creditors and to rehabilitate the physical plant, and had even transformed the corporate venture to the status of a moderately profitable business. While there were certain informalities in the present management, the net result was clearly superior to the financial disaster which the plaintiff's prior management had almost brought about. In refusing to grant a receivership, the court stressed the fact that there had been no claim or showing that the plaintiff's rights were being destroyed or diminished, and further declared that the statutory grounds for the appointment of a receiver were "not mandatory, but are subject to judicial discretion, and a receiver should not be appointed, except in cases where it is evident that such appointment will serve some useful purpose."³

Various grounds of alleged mismanagement were considered by the court. Some were found to be unsupported by proof and others to constitute a proper exercise of business judgment. The borrowing of money from the majority shareholder's family was proper, since the funds were not obtainable elsewhere and the loans had clearly saved the corporation from immediate liquidation. The informal management of the corporate affairs by the husband of the majority stockholder who had lent the corporation \$175,000, appeared to be a logical method of protecting the creditor's rights without the necessity of an expensive receivership. The corporate books, as alleged by the plaintiff, had not been kept in orthodox manner. However, there was no evidence that the loose system of bookkeeping had resulted in any misuse or co-mingling of corporate funds. In fact, very creditable testimony indicated a completely honest method of accounting. In this connection the court declared that "the fact that a corporation fails to keep a complete set of books and records was not ipso facto such gross mismanagement as to require the appointment of a receiver."⁴

2. 216 La. 472, 43 So. 2d 798 (1949).

3. 216 La. 472, 486, 43 So. 2d 798, 803, quoting from *Duval v. T.P. Ranch Co.*, 151 La. 142, 151, 91 So. 656, 659 (1922).

4. 216 La. 472, 494, 43 So. 2d 798, 805.