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The Work of the Louisiana Supreme Court for the 1953-1954 Term
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Civil Code and Related Subjects: Mandate

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munity property standing in her name was held invalid under the court's previous interpretations of Article 2334, as amended by Act 186 of 1920. A strong dissent in the creditor's interest under the facts of the case is registered on equitable ground apart from the rule stated above.

PARTNERSHIP

*Harold J. Brouillette**

Only two cases in the 1954-1955 term involved the law of partnership. In *Parker v. Davis*[1] the court recognized the jurisprudential rule that one partner cannot bring suit against another on matters pertaining to the partnership until after its dissolution, and then for the limited purpose of getting a final settlement. But the facts rendered that rule inapplicable, the court finding that the transaction giving rise to the suit was independent of the partnership.

Succession of Jurisich[2] was decided by a determination of the meaning of "book value." The partnership agreement provided that upon the death of one of the partners, the surviving partner could buy the interest of the deceased "at its then book value." The surviving partner tendered one-half the value of the business according to the figures on its books. The books did not include a good will account and the heirs of the deceased partner contended that good will should nevertheless be taken into consideration in evaluating the business. The court rejected this claim and cited much authority in holding that book value means what its name says—value as shown on the books, and that the clear words of the agreement could not be avoided.

MANDATE

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Bourg v. Hebert[1] was the only case of the term involving the law of mandate. The validity of a mineral lease depended upon the authority of certain substituted agents who had granted it.

* Member, Louisiana Bar.
1. 225 La. 359, 72 So.2d 877 (1954).
2. 224 La. 325, 69 So.2d 361 (1953).
* Member, Louisiana Bar.
1. 224 La. 535, 70 So.2d 116 (1953).

The existence or absence of this authority depended upon the provisions of a long and detailed agreement. The court found the authority lacking and citing Article 3007 as a basis, said "it is well settled that an agent has no power to substitute another to perform duties of his mandate unless expressly or impliedly authorized to do so by the principal."[2]

SECURITY DEVICES

*Joseph Dainow**

SURETYSHIP

"The surety who has paid the debt, has his remedy against the principal debtor . . . ."[1] In connection with his general relationships and responsibilities the surety may also incur other expenses (apart from principal and interest, and formal legal costs), and the extent of permissible recovery is the question which was the issue in *Standard Accident Insurance Co. v. St. Romain.*[2] As a result of complaint about performance of work under a plumbing contract and suit filed against the plumbing contractor and his surety, the latter incurred certain expenses for telephone, telegram, attorney and adjuster, in the amount of $167.03. After due examination of the trouble (seepage within the building), the necessary corrections were made, and the building owner had its suit dismissed as having been filed in error because it agreed that the plumbing contractor's work had been properly performed and that the trouble had been due to other people's mistakes. In the present case the trial court and the court of appeal gave judgment for the surety against the principal, and it is surprising that it was necessary for the Supreme Court to grant certiorari in this case in order to correct an oversight of the lower court.

It goes without saying that, as long as there is nothing contrary to public order or a prohibitory law, the surety and principal can stipulate in their contract what will be the extent of the surety's indemnification against the principal. Sometimes this is for "any and all liability, damages, loss, costs,

2. *Id.* at 554, 70 So.2d at 122.

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1. Art. 3052, LA. CIVIL CODE of 1870.

2. 224 La. 382, 69 So.2d 508 (1953).