Volume 34 | Issue 2 Article 13

February 1928

Mines and Minerals--Mining Partnerships--Power of One Partner to Bind Other Partners in Dealing with Third Persons

Lester C. Hess
West Virginia University College of Law

countered the motor bus, which excels both in certain particulars and under certain conditions.[5] In the former competitions between the old and new means of transport, claims of protection and vested rights were made by the existing carrier[6]—but with no avail—for that service which gives most to the public wants wins. In the development of American transportation it remains as "an historical fact that such claims to protection have never been found consistent with the advancement of transportation, nor with the ultimate public good."[7] "Can it, in the light of history," or on principle, "be said that once an authorized public utility begins to serve a community with transportation service it is invested with a priority, if not indeed a monopoly into a perpetuity, to furnish transportation in whatever form science, with the passage of years discovers most effective, or the public test finds most to its liking?"[8] To answer this question in the affirmative would be to say that the railroad represents "the ultimate in transportation, so that unusual governmental obstacles should be placed in the path of a potential competitor."[9] And in this age of evolution in the transportation business, we cannot say this, because we can look to the skies and forsee, in the near future, a transportation system in the air, extending the radius of human activity far beyond the scope of any vehicle that moves upon the surface of the earth.

—HOWARD CAPLAN.

MINES AND MINERALS—MINING PARTNERSHIPS—POWER OF ONE PARTNER TO BIND OTHER PARTNERS IN DEALINGS WITH THIRD PERSONS.—In a recent West Virginia case, Simmons and Miller, under the firm name of A. J. Simmons Company, who owned an oil and gas lease on which was one produc-

[5] Budd, "West Virginia Motor Bus Guide," May 1926.
[6] Charles River Bridge *v.* Warren Bridge, 11 Peters 423, 9 L. Ed. 773, 5 CHANNING, HISTORY OF UNITED STATES 20 (1921).
[7] *Supra*, n. 3.
[8] *Supra*, n. 3.
[9] *Supra*, n. 3.

ing well, assigned to each of the other defendants certain interests in the leasehold, by separate contracts reciting that the A. J. Simmons Company, owner of said lease, and of necessary equipment for drilling, agreed to drill another well thereon, and if it was a producer, to equip it at their own expense. Simmons contracted with the plaintiff for certain casing for which he failed to pay, and plaintiff brought his suit against all the defendants for such payment. Plaintiff knew of the A. J. Simmons Company, and that at least two of the defendants had interests in the well. *Held,* this was a mining partnership, and as members of such partnership all the defendants were liable for the casing for which Simmons had contracted. *Manufacturers' Light and Heat Company* v. *Tennant,* 139 S. E. 706 (W. Va. 1927).

The law of mining partnership offers an example of a business association on the borderline between tenancies in common and the ordinary trading partnership. WRIGHTINGTON, UNINCORPORATED ASSOCIATIONS AND BUSINESS TRUSTS, 2d ed. 86. For example, where tenants in common work the land for agricultural purposes, no partnership arises; whereas if they work it for minerals, as in the principal case, a mining partnership arises. *Sturm* v. *Ulrich,* 10 F. (2d) 9; *Childers* v. *Neely,* 47 W. Va. 70, 34 S. E. 828, 49 L. R. A. 468; *Blackmarr* v. *Williamson,* 57 W. Va. 249, 50 S. E. 254. Consequently we can say that no express contract is requisite either to a tenancy in common or to a mining partnership, *Skillman* v. *Lachman,* 23 Cal. 198, 83 Am. Dec. 96, as is the case in the ordinary trading partnership. GILMORE ON PARTNERSHIP, 69, and cases cited. Again, the mining partnership resembles the tenancy in common, in that one associate may transfer his interest in the common property, placing the transferee in the same position, in relation to the others, as he himself was before the transfer. *Blackmarr* v. *Williamson, supra,* 18 R. C. L. 1200, 27 CYC. 755; *Childers* v. *Neely, supra.* But a share in the trading partnership cannot be thus transferred unless such privilege is expressly provided by contract. LINDLEY, LAW OF PARTNERSHIP (7th ed.) 26. On the other hand, the mining partnership resembles the trading partnership, in that each partner has implied authority to bind the others as to contracts within the scope of the partnership business, although in the mining partnership this agency is said to be

more restricted than in the trading partnership. *Skillman* v. *Lachman, supra*; ARCHER, OIL AND GAS, 642; *Hartney* v. *Gosling*, 10 Wyo. 346, 68 Pac. 1118, 98 Am. St. Rep. 1005. There is no such implied authority to bind the others in a tenancy in common, since that relation is not regarded as one of trust and confidence. LINDLEY, LAW OF PARTNERSHIP (7th ed.) 26. The member of the mining partnership, like the member of the trading partnership has a lien on firm assets for debts he has incurred in carrying on the business. *Childers* v. *Neely, supra*; 18 R. C. L. 1205; *Greenlee* v. *Steelsmith*, 64 W. Va. 353, 62 S. E. 459, LINDLEY ON PARTNERSHIP (7th ed.) 26. The death, bankruptcy, or retirement of a mining partner does not dissolve the mining partnership as is the case with a trading partnership. SUMMERS, OIL AND GAS, 711; *Sturm* v. *Ulrich, supra; Kahn* v. *Smelting Works*, 102 U. S. 641, 26 L. ed. 266; GILMORE ON PARTNERSHIP, 107. In a mining partnership, unlike the case of a trading partnership, a majority of the partners may control the business usual to such associations. *Bartlett* v. *Boyles*, 66 W. Va. 327, 66 S. E. 474; *Childers* v. *Neely, supra*; 18 R. C. L. 1203; ROWLEY, MODERN LAW OF PARTNERSHIPS, 493-496. And the mere abandonment of the mining business terminates the relation of mining partners, and leaves them tenants in common. SUMMERS, OIL AND GAS, 711; *Page* v. *Summers*, 70 Cal. 121, 12 Pac. 120. These differences between the ordinary trading partnership and the mining partnership seem to be due to the absence of *a delectus personae*—the right to choose a partner—in the mining partnership. *Kahn* v. *Smelting Works. supra*; 18 R. C. L. 1201.

In the principal case, it would seem that the court's decision that since the defendants all had interests in the mining lease, and were engaged in the development of the same, that they thereby became mining partners, is in accord with the general law. *Childers* v. *Neely, supra;* LINDLEY ON PARTNERSHIPS, (7th ed.) 55. If it was a mining partnership, it follows that the managing partners had power to make the contract for casing with the plaintiff, in behalf of the partnership. SUMMERS, OIL AND GAS, 703; ARCHER, OIL AND GAS, 642; *Skillman* v. *Lachman, supra.* The agreement of the managing partners to bear the cost of drilling the well, would be analogous to a secret agreement limiting the authority of

the managing partners, and under a well established rule of mining partnership, the plaintiff would not be affected thereby. *Manville* v. *Parks,* 7 Colo. 128, 2 Pac. 212, 30 Cyc. 481; PAGE ON CONTRACTS, 1479; *Irwin* v. *Williar,* 110 U. S. 499, 28 L. ed. 225, 4 Sup. Ct. 160.

—LESTER C. HESS.

THE LAKE CARGO COAL RATE CONTROVERSY.—The most valuable natural resource of the state of West Virginia is its bituminous coal. A very large proportion of the population of the state is directly or indirectly dependent upon the mining of this coal and its profitable sale. It has long been recognized that large year around production of coal is necessary to a healthy economic condition in the industry. A very considerable part of the total summer production of coal is marketed at the Lake Erie ports for transshipment over the lakes to other points. This coal is known as "lake-cargo coal" as distinguished from coal shipped to the same points for local consumption.

Since lake cargo coal is marketable only during the period of open navigation on the lakes it aids greatly in keeping up summer production in the mines, serving to prevent a seasonal slump in production. It is over this market that a controversy exists. It is thought that a short discussion on this controversy, based principally on the recent decision of the Interstate Commerce Commission in *Lake Cargo Coal Rates,*[1] may be acceptable to the profession, especially since the original reports are not readily available, and since there is widespread interest in the subject now. That the question is of vital importance is apparent when the firmly established Pittsburgh and Ohio producers, who have large local markets while we have none, find it necessary to make such a determined effort to capture this additional market.

In *Lake Cargo Coal Rates, supra,* associations of coal operators in the Pittsburgh district of Pennsylvania and the

[1] 126 I. C. C. 309 (1927).