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Partnerships

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the instant case. The history of the use of the stream between 1941 and 1952 is not in the record, so no generalization is possible.

Assuming that proper application of the law vested both the use right and the consumptive right in plaintiffs, subject to the beneficial use limitation previously noted,[35] plaintiffs still may not be able to use the stream for livestock watering without a permit, since the statute,[36] in referring to "any person," does not exclude riparian owners from its requirements.[37] The consumption of water from a stream by a herd of livestock is usually deemed an appropriation.[38]

The injunction granted plaintiffs was therefore consonant with the general rule that a riparian can enjoin a non-riparian from diverting water, even when the diversion does not injure the riparian.[39] However, since the land was arid and practically useless without water, some provision could have been made to allow use of the surplus by defendants. Drafting the decree to conform with the law would have appropriately provided for the parties. Control over the stream should have remained in plaintiffs, the riparian owners, with the surplus then allocated to defendants. Both would need permits for their respective uses.

From the state of the evidence gathered, only partial answers can be suggested to the four questions posed earlier. It is submitted that whatever authority there is in *Wallace v. Weitman* must be restricted to congruent factual situations.[40]

STANLEY B. ALLPER

PARTNERSHIPS

Partnership—Contribution to Loss in Absence of Agreement. The recent case of *Richert v. Handly*, 153 Wash. Dec. 104, 330 P.2d 1079 (1958), was an action for an accounting and dissolution of a logging partnership in which one of the partners contributed the capital, while the other agreed to manage the concern. The receipts of the partnership were not sufficient to cover the capital contribution. Upon finding that the parties had not agreed upon a basis for sharing losses or whether the claims of one partner were to take priority over the claims of the other, the trial court concluded

[35] Brown v. Chase, 125 Wash. 542, 217 Pac. 23 (1923).

[36] RCW 90.20.010. However, if plaintiffs' riparian right dates prior to 1917, a permit may not be needed.

[37] After 1917 even a riparian owner could not appropriate without a permit. Proctor v. Sim, 134 Wash. 606, 236 Pac. 114 (1925).

[38] Steptoe Livestock Co. v. Gulely, 53 Nev. 163, 295 Pac. 772 (1931); Empire Water Co. v. Cascade, 205 F. 123 (8th Cir. 1913).

[39] See, *e.g.*, Mally v. Wiedensteiner, 88 Wash. 398, 153 Pac. 342 (1915).

[40] For an authoritative treatment of the general subject of water rights in Washington, see Horowitz, *Riparian and Appropriative Rights to the Use of Water in Washington*, 1 WASH. L. REV. 197 (1932); Morris, *Washington Water Rights—A Sketch*, 31 WASH. L. REV. 243 (1956).

that neither partner was entitled to judgment against the other, since the amount due each could not be determined.

The supreme court reversed, holding that in the absence of agreement the rights and duties of the partners in relation to the partnership are governed by the provisions of the Uniform Partnership Act, RCW 25.04.180, which provides (1) that each partner must contribute toward the losses, whether of capital or otherwise, sustained by the partnership according to his share in the profits and (2) that no partner is entitled to remuneration for acting in the partnership business. Applying this to the instant case, the managing partner was required to recompense his co-partner for one half the losses sustained on his capital contribution.

The Uniform Partnership Act thus operates to require a partner who contributes only services, in the absence of agreement, to risk not only receiving nothing for his services but also being required to indemnify his partner against capital losses. See CRANE, PARTNERSHIP § 65, p. 345 (2d ed. 1952); Note, 24 COLUM. L. REV. 508 (1924). A party should guard against the result in the *Richert* case by taking care to fix his respective liability in advance by express agreement.

PRACTICE AND PROCEDURE

Summary Judgment. In *Capital Hill Methodist Church v. Seattle*,[1] the Washington court reviewed for the first time a case involving an application of Rule 19(1) of the Washington Rules of Pleading, Practice and Procedure,[2] dealing with motions for summary judgments.[3]

The case involved a petition by non-abutting property owners seeking to enjoin enforcement of a Seattle city ordinance providing for the vacation of a public street in response to a petition by the defendant Group Health Cooperative. The plaintiffs' complaint alleged

[1] 152 Wash. Dec. 305, 324 P.2d 1113 (1958). For a discussion of the substantive points involved in the case, see casenote, page 212, this issue.

[2] 34A Wn.2d, Cumulative Supplement July 1957, page 29, which reads, in part:

> 1. Summary Judgment: (a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim, or to obtain a declaratory judgment may, at any time after the expiration of the period within which the defendant is required to appear, or after a service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof. (b) For Defendant Party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof. (c) Motion and Proceedings Thereon. The motion shall be served at least ten days before the time fixed for the hearing. The adverse party, prior to the day of hearing, may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.
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> Omitted are sections (d) Case Not Fully Adjudicated on Motion; (e) Form of Affidavits' Further Testimony; (f) When Affidavits are Unavailable and (g) Affidavits Made in Bad Faith.

[3] As adopted by Washington originally in 1951, Rule 19(1) was a limited version of its present text, including only the present sections (a) and (b), leaving open for