

is no reasonable relation between it and the value of a key executive's services.³ In the principal case, however, it was pointed out that earnings are the chief determinative factor of a stock's market price, at least in the long run. There being no question that an executive's services are related to corporate earnings, the court felt that it was unable to say that there is no relation between those services and the market price of the corporation's stock.

The latter view seems to be the better one. Compensation must be reasonably related to the value of an executive's services, but the determination of what is reasonable is usually left to the discretion and business judgment of the board of directors.⁴ In order to prevail, therefore, the plaintiff would have to show that a reasonable man would find the "unit" plan indefensible. Yet the "unit" plan is not unlike stock option plans which have found approval in the courts.⁵ The financial reward in each plan is identical, both being based on the increase of the market price of the corporation's stock. It is difficult, therefore, to understand why the "unit" plan is more unreasonable than a stock option plan. In the opinion of this commentator, the view expressed in *Lieberman v. Koppers Co., Inc.*⁶ is clearly justifiable.

CHARLES C. WINCHESTER, JR.

Criminal Law—Partnerships—Statutory Construction—*United States v. A & P Trucking Co. et al.*¹—The United States appealed directly to the Supreme Court, pursuant to 18 U.S.C. § 3731,² from rulings of the U.S. District Court of New Jersey dismissing two informations³ charging partnerships as entities with violation of 18 U.S.C. § 835 and 49 U.S.C. § 322(a).⁴ The basis of the dismissal in each case was that a partnership as an entity is not subject to criminal liability under the statutes. On appeal⁵ the Supreme Court, Harlan, J., unanimously held that there is nothing in the nature of a partnership as an entity to exempt it from criminal responsibility where Congress intended it to be so responsible. So holding, the court faced the further problem of whether or not Congress by these statutes intended partnerships to be criminally responsible. Traditionally partnerships qua partnership have been, and still are at common law, regarded

³ Id. at 86.

⁴ *Wyles v. Campbell*, 77 F. Supp. 343, 349-351 (D. Del., 1948); *Clamitz v. Thatcher Mfg. Co.*, 158 F.2d 687 (2d Cir., 1947); *Heller v. Boylan*, 29 N.Y.S.2d 653, 680 (1941).

⁵ *Wyles v. Campbell*, *ibid.*; *Clamitz v. Thatcher Mfg. Co.*, *ibid.*

⁶ *Op. cit. supra* note 1.

¹ 358 U.S. 121 (1958).

² A statute allowing the United States the right of direct appeal where an information is dismissed on the basis of statutory construction.

³ Informations numbered 252-56 and 261-56.

⁴ *A & P Trucking Co.* was charged with violating 18 U.S.C. § 835 and 49 U.S.C. § 322(a); *Hopla Trucking Co.* was charged with violating 18 U.S.C. § 835.

⁵ Both cases were consolidated for argument.

as immune from criminal proceedings on the basis that a partnership can have no legal existence apart from its several individual partners.⁶ The decisions of the Supreme Court, however, recognize in Congress the power to change the common law and subject to criminal prosecution bodies which at common law are exempt.⁷ This being so, the ultimate question before the court was whether or not Congress manifested an intent to so change the common law in each of the statutes.⁸

49 U.S.C. § 322(a) (Motor Carrier Act) provides in substance that any "person" knowingly and willfully violating any provision of this act shall be subject to a fine. "Person" is defined in § 303(a) to include partnerships. The court unanimously held that Congress by that section expressly changed the common law.⁹ 18 U.S.C. § 835 is similar in coverage to 49 U.S.C. § 322(a) except that "whoever" is used rather than "person." "Whoever" is undefined in Title 18. Therefore, a partnership is not expressly included within § 835 as it is in the Motor Carrier Act. However, five justices reached the same conclusion as to coverage of "whoever." 1 U.S.C. § 1,¹⁰ provides that in construing acts of Congress "whoever" shall, unless the context of the act indicates otherwise, include a partnership. Once the intent of Congress to treat the partnership as an entity is present, the entity can be charged with the requisite knowledge through the doctrine of *Respondeat Superior*.¹¹

The construction given to 18 U.S.C. § 835 by the majority was opposed by four justices who were of the opinion that such a well-accepted principle of American law as the aggregate theory of partnerships can be changed only by expressed language of Congress. To simply imply such a purpose to Congress, especially in a penal statute requiring culpable intent, where the partners themselves are innocent, is to ignore the rule of strict construction of penal statutes. The innocent partners could not be held liable criminally for acts or knowledge of the partnership employees.¹² Since under the universally accepted rules of partnership law,¹³ a partnership is nothing but an aggregate of individuals, it too should be held not criminally responsible where the partners are innocent. Only when Congress expressly commands should the result be different.

The result of the court in holding that partnerships as entities are capable of being punished when Congress expressly commands cannot be questioned. The result reached by the majority where partnerships are not

⁶ *Faulkner v. Whitaker*, 15 N.J.L. 438 (1836); *XL Liquors v. Taylor*, 17 N.J. 444, 111 A.2d 753 (1955); *People v. Schonieg*, 74 Cal. App. 109, 110, 239 Pac. 413, 414; *Crane, Partnerships* 9-12 (2d ed. 1952). The Uniform Partnership Act rejects the entity theory except for limited procedural purposes.

⁷ *United States v. Adams Express Co.*, 229 U.S. 381 (1913).

⁸ *United States v. A & P Trucking Co., et al.*, 358 U.S. 121, 124.

⁹ *Ibid.*

¹⁰ An act entitled Rules of Construction.

¹¹ *United States v. A & P Trucking Co.*, *supra* note 8, at 125; Sayre, *Criminal Responsibility for the Acts of Another*, 43 Harv. L. Rev. 689 (1930).

¹² *Gordon v. United States*, 347 U.S. 909 (1954).

¹³ See note 6 *supra*.

expressly included seems well founded by the use of 1 U.S.C. § 1 and the theory of necessary implication.¹⁴

WILLIAM A. COTTER, JR.

Eminent Domain—What Constitutes an Interference Sufficient to Constitute a Taking.—*Cities Service Oil Co. et al. v. City of New York.*¹

—An action was brought by the owner and the lessee of a gasoline station to enjoin the City of New York and the New York Transit Authority from locating and maintaining bus stops in front of the entrances to the station which was located on the corner of two streets; with an entrance on each. The Supreme Court, Kings County dismissed the complaint, the dismissal being affirmed by the Appellate Division, Second Judicial Department and The Court of Appeals. HELD: That the temporary and partial blocking of the entrances did not constitute a taking of property, being merely an interference with a use of property of the type that must be borne by the land owner for the larger benefit of the community and the general public.

The distinction is to be drawn between eminent domain which involves the taking of property for public use, and regulation or interference with property falling short of a taking.² The *Cities Service* case falls into the latter category. Although the principle by itself is relatively simple, the application of this principle to concrete cases is much more difficult since it is a question of degree of interference.

In determining whether there has or has not been an interference amounting to a taking, each case must be decided on its own facts. There was no taking when the state rerouted traffic, although the result adversely affected established business.³ In *Jones Beach Blvd. Estate v. Moses*,⁴ cited with approval in *Cities Service*, a more onerous burden was placed on the plaintiff when left turns and U-turns were so limited that one entering the parkway from plaintiff's property and desiring to travel northward was compelled to drive in the opposite direction for five miles before he could turn around. This case, like *Cities Service*, was dismissed. When however, in *Holmes v. State*,⁵ a street was closed not leaving a suitable

¹⁴ *United States v. A & P Trucking Co., et al.*, supra note 8, at 124: "The conclusion is not lightly to be reached that Congress intended that some carriers should not be subject to the full gamut of sanctions—merely because of the form under which they were organized to do business."; *United States v. Adams Express Co.*, supra note 7, at 389-390, where the court reasoned that 18 U.S.C. § 835 applied to joint stock companies without the aid of 1 U.S.C. § 1 holding, "But if it [the statute] imposes upon them the duties under the words 'common carrier' as interpreted, it is reasonable to suppose that the same words are intended to impose upon them the penalty . . ."

¹ 5 N.Y.2d 110, 154 N.E.2d 814 (1958).

² *Bent v. Emery*, 173 Mass. 495, 53 N.E. 910 (1899); *Pennsylvania Coal Co. v. Mahon et al.*, 260 U.S. 393 (1922); *Wolff v. Mortgage Commission*, 270 N.Y. 428, 1 N.E.2d 835 (1936); *Nichols, Eminent Domain* § 6.3 (3rd ed. 1950).

³ *Clark County v. Mitchell*, 223 Ark. 404, 266 S.W.2d 831 (1954); *People v. Sayig*, 101 Cal. App. 2d 890, 226 P.2d 702 (Ct. App. 1st D. 1951).

⁴ 268 N.Y. 362, 197 N.E. 313 (1935).

⁵ 282 App. Div. 278, 123 N.Y.S.2d 179 (1953).