PARTNERSHIP BY ESTOPPEL

The doctrine of the common law that one may be liable as a partner when in fact he is not, often referred to as partnership by estoppel, is well ingrained in the law of Iowa.[1] This is perhaps best evidenced by the fact that the Iowa Court has seen fit to consider the application of the doctrine in no less than five distinct types of factual situations. These include (1) where one holds himself out as a partner to another and the other seeks to bind him on a partnership obligation,[2] (2) where one holds out another as a partner and a third party seeks to hold the other on a partnership obligation,[3] (3) where one holds out another as his partner and a third party seeks to make the acts of the other binding upon the one so holding out,[4] (4) where any of the above situations exist and one seeks to hold either the actual or the apparent partner for a tort committed by the other,[5] and (5) where a proposed corporation is defectively or never incorporated and continues to carry on business.[6] It is the purpose of this note to consider the problems involved in the application of the doctrine to each of the above.

While one early case held that partnership by estoppel was predicated upon principles of public policy in relation to commercial transactions,[7] it has generally be recognized that the doctrine involves a true estoppel *in pais*.[8] For this reason the courts have often considered certain general principles of the law of estoppel such as that estoppels are not favored in law and must always be clearly proved[9] or that estoppels must be certain to every intent.[10] While these principles undoubtedly do have some effect on the court's approach to a problem, a careful reading of the cases seems to indicate that they have never been a decisive factor. The primary concern has always been the presence or absence of two essential elements in determining the existence of a partnership by estoppel. These are (1) either a holding out of partnership by the party to be charged or a wrongful failure to correct a public misconception that a partnership is generally believed to exist and (2) reliance upon the existence of a partnership by the party alleging the estoppel.

---

[1] This is still a common law doctrine in Iowa. The adoption of the Uniform Partnership Act in many other states has codified much of this area in those jurisdictions. For that reason many references to the U.P.A. are contained in the footnotes.

[2] Cuttill v. Harrington, 165 Iowa 537, 170 N.W. 788 (1918). See also U.P.A. § 16 (1).

[3] *In re* Estate of Schultz, 196 Iowa 125, 194 N.W. 242 (1923): Anfenson v. Banks, 180 Iowa 1066, 163 N.W. 608 (1917). See also U.P.A. § 16 (1).

[4] Peck v. Lusk, 38 Iowa 93 (1874). See also U.P.A. § 16 (2).

[5] Sherrod v. Langdon, 21 Iowa 518 (1866).

[6] Kinney v. Bank of Plymoth, 213 Iowa 267, 236 N.W. 31 (1931); Comstock v. Wood, 204 Iowa 1027, 216 N.W. 640 (1927).

[7] Price v. Alexander, 2 G. Greene 427 (Iowa 1850).

[8] Anfenson v. Banks, 180 Iowa 1066, 163 N.W. 608 (1917) (an allegation of partnership embraces the issue of ostensible partnership); Christ v. Tallman, 190 Iowa 1248, 179 N.W. 522 (1920); *In re* Estate of McDonald, 167 Iowa 582, 149 N.W. 897 (1914); Hancock v. Hintrager, 60 Iowa 374, 14 N.W. 725 (1883).

[9] Jewell v. Huhn, 173 Iowa 112, 155 N.W. 174 (1915); Baldwin v. Lowe, 22 Iowa 367 (1867).

[10] O'Dell v. Hansen, 241 Iowa 657, 42 N.W.2d 86 (1950); Hubbard v. Hartford Fire Ins. Co., 33 Iowa 325 (1871).

Where a partnership by estoppel is established as the result of a holding out by an apparent partner or his consent to a holding out by another he is liable as though he is an actual member of the partnership.[11] In addition, when a partnership by estoppel is established as the result of a member of an existing partnership representing an outsider as a partner, he is liable for the acts of the party so represented as though the latter were an actual partner.[12] This situation could perhaps better be termed an *agency* by estoppel in that no partnership obligation is created except in so far as all the partners consented to the holding out.[13]

It is important to note when dealing in this area, that success in establishing the estoppel will never accomplish anything more than preventing the party charged from denying that he is a partner. It can never create a partnership in fact[14] nor can it allow the apparent partners to treat it as such.[15]

I—What Constitutes A Holding Out

The general rule is that there must be some affirmative holding out by the party to be estopped and that one will not be prevented from denying a partnership simply because there was a representation by another that one existed.[16] To hold that one person could be held as the partner of another simply upon the declarations of the other would provide no safety for anyone. A person can be held as a partner where he is not a partner only when *his* conduct has been such as to mislead others.[17] However, where the representation of another is coupled with some manifestation of consent by the apparent partner the courts have uniformly found a sufficient holding out by the party to be charged to estop him from denying the relationship.[18] Knowledge of the holding out is of course a prerequisite to consent thereto.[19]

---

11 Davenport Gas & Elec. Co. v. Reimers, 96 N.W. 1084 (Iowa 1903); Wallerich v. Smith, 97 Iowa 308, 66 N.W. 184 (1896); Eye v. Tasker, 77 Iowa 48, 41 N.W. 561 (1889). See also U.P.A. § 16(1)(a).

12 Central Nat'l Bank & Trust Co. v. Redman Freight Lines, 229 Iowa 661, 294 N.W. 915 (1940); Peck v. Lusk, 38 Iowa 93 (1874). See also U.P.A. §§ 16(1)(6) and 16(2).

13 The U.P.A. recognizes the distinction in sec. 16(2).

14 Lyons v. Van Oel, 183 Iowa 114, 165 N.W. 376 (1917); Stanchfield v. Palmer, 4 G. Greene 23 (Iowa 1853). Apparently this rule prevents a creditor of the supposed firm from asserting a priority over individual creditors of the alleged partners with regard to what the former believed to be partnership assets, in spite of Thayer v. Humphrey, 91 Wis. 276, 64 N.W. 1007 (1895). Lewis, *The Uniform Partnership Act*, 24 YALE L.J. 617, 625 (1915), in which a drafter of the U.P.A. explains this result on the basis of § 16(1)(6). See also Crane, *Partnership* 503 (1938), defending the *Thayer* case in the light of U.P.A. § 4(2). But see Lewis, *The Uniform Partnership Act—A Reply to Mr. Crane's Criticism*, 29 HARV. L.REV. 291, 300 (1916). The Iowa Court has never resolved this problem.

15 Nissen v. International Brotherhood, 229 Iowa 1028, 295 N.W. 858 (1941); Hanley v. Elm Grove Mut'l Tel. Co., 150 Iowa 198, 129 N.W. 807 (1911).

16 Delong v. Whitlock, 204 Iowa 701, 215 N.W. 954 (1927); Taylor v. Successful Farming Publishing Co., 197 Iowa 618, 196 N.W. 77 (1923); Florence v. Fox, 193 Iowa 1174, 188 N.W. 966 (1922); Iowa Leather & Saddlery Co. v. Hathaway, 78 N.W. 193 (Iowa 1899).

17 Delong v. Whitlock, 204 Iowa 701, 215 N.W. 954 (1927); Brown & Bliss v. Rains, 53 Iowa 81, 4 N.W. 867 (1880).

18 Anfenson v. Banks, 180 Iowa 1066, 163 N.W. 608 (1917); *In re* Estate of McDonald, 167 Iowa 582, 149 N.W. 897 (1914).

19 Iowa Leather & Saddlery Co. v. Hathaway, 78 N.W. 193 (Iowa 1899); Brown & Bliss v. Rains, 53 Iowa 81, 4 N.W. 867 (1880).

The manifestation itself may be by some act evidencing concurrence or by silence where it amounts to acquiescence.[20]

A representation by an agent to the effect that his principal is the partner of another is binding upon the principal if made within the scope of the agent's authority.[21] In this type of case the consent is found in the acts of the alleged partner prior to rather than contemporaneously with or subsequent to the representation. In *Johnson Bros. v. Carter & Co.*[22] the Court was faced with the problem of an agent who was formerly employed by the alleged partner Brown and was now with the partnership Carter & Co. looking out after any interest that Brown might have had in that enterprise at Brown's expense. He represented that Brown was a partner while ordering some goods for Carter & Co. The agent signed a note for the goods on behalf of the partnership and the holder sought to bind Brown as either an actual partner or a partner by estoppel. After finding that no actual partnership existed the Court said,

> If Brown was not in fact a member, Campbell must have been employed to assist Carter, and, if so, was not authorized to act for Brown in making purchases. In such circumstances the latter would not be bound by what Campbell said in buying goods. . . . In other words, the facts of the case are such that the issue of estoppel ought not to be submitted.[23]

The representation of partnership, may be by words, either written[24] or oral,[25] or by conduct[26] and in one case[27] the court went so far as to say,

> The averment of partnership of two parties may be established as to third parties by circumstances and inferences fairly warranted by the *attitude* of the alleged partners toward the public.[28] [Emphasis added.]

The holding must be of such a nature as to justify the third party's assumption that the party sought to be charged as a partner was in fact a partner at the time of the transaction.[29] While generally such is not the case the Court has pointed out on more than one occasion that where the holding out is of such nature as to warrant it, the lender or creditor may be under some duty to investigate.[30]

---

[20] *In re* Estate of McDonald, 167 Iowa 582, 149 N.W. 897 (1914).
[21] Johnson Bros v. Carter & Co., 120 Iowa 355, 94 N.W. 850 (1903).
[22] *Ibid.*
[23] Id. at page 362, 94 N.W. at 852.
[24] Richard v. Hellen & Son, 153 Iowa 66, 133 N.W. 393 (1911) (entering into a contract in the firm name); Hancock v. Hintrager, 60 Iowa 374, 14 N.W. 725 (1882) (statement of personal liability accompanying an order).
[25] Christ v. Tallman, 190 Iowa 1248, 179 N.W. 522 (1920); Cuttill v. Harrington, 185 Iowa 537, 170 N.W. 788 (1919); Wallerick v. Smith, 97 Iowa 308, 66 N.W. 184 (1896); Peck v. Lusk, 38 Iowa 93 (1874).
[26] Davenport Gas & Elec. Co. v. Reimers, 96 N.W. 1084 (Iowa 1903); Winter v. Pipher, 96 Iowa 17, 64 N.W. 663 (1895) (profit sharing in a joint adventure); Eye v. Tasker 77 Iowa 48, 41 N.W. 561 (1889) (approving the use of a misleading firm name); Jenkins v. Barrowa, 73 Iowa 438, 35 N.W. 510 (1887).
[27] McCarney v. Lightner, 188 Iowa 1271, 175 N.W. 751 (1920).
[28] *Id.* at page 1279, 175 N.W. at 754.
[29] *In re* McDonald's Estate, 167 Iowa 582, 149 N.W. 897 (1914).
[30] *E.g.* Central Nat'l Bank & Trust Co. v. Redman Freight Lines, 229 Iowa 661, 294 N.W. 915 (1940) where holding out consisted solely of certificate which included name of alleged partner).

II—What Constitutes A Wrongful Failure To Act

Some courts have been willing to recognize a partnership by estoppel in the absence of any holding out by the alleged partner where there has been a holding out by another which comes to the attention of the alleged partner and he wrongfully fails to correct any resulting misconception.[31] In the classic case of *Fletcher v. Pullen*[32] the court said,

> If one is held out as a partner, and he knows it, he is chargeable as one, unless he does all that a reasonable and honest man should do, under similar circumstances, to assert and manifest his refusal, and thereby prevent innocent parties from being misled.[33]

On the other hand, the majority rule has always been that to be held as a partner the party charged must have consented to the holding out as a matter of fact.[34]

When faced with this split, the drafters of the Uniform Partnership Act attempted to adopt the majority rule by requiring consent.[35] However, in *Mc Briety v. Phillips*,[36] the same court that had decided *Fletcher v. Pullen* fifty years before, affirmed the "reasonable and honest man" rule in spite of the intervening adoption of the Uniform Partnership Act in Maryland. The court reached this result by saying in effect that failure to act as a reasonable and honest man in asserting a denial amounts to consent.

When the Iowa court was faced with this problem in one early case, it held that evidence of general reputation growing out of the acts of another is not admissable against the alleged partner.[37] However, in the leading case *of Anfenson v. Banks*,[38] where the party to be charged did not reside in the same community in which the representation was made and the misconception prevailed, and he had directed those who had published the representation to cease from doing so, the court seemed to retreat, if only slightly, from its earlier position when after citing the rule it said,

> If, in any case, general reputation may have the force of notice to a person affected thereby, such rule must in reason apply only to those who are living or doing business in the community where the reputation prevails, and where it may reasonably be presumed that the matter would have come to their attention. . . . Few people would have time for anything else if they were legally bound to inquire what others were saying about them, or about their business enterprises and relations, in order to protect themselves against being estopped to deny the verity of a reputation so made.[39]

While the true basis of the decision, as is indicated by the above quoted language, was the apparent partner's lack of knowledge of the holding out while it was continuing, the Court here and elsewhere in the lengthy opinion indicated a preference for a position somewhere between that of the Mary-

---

31 Tanney & DeLaney Engine Co. v. Hall, 86 Ala. 305, 5 So. 584 (1889); Martin & Co. v. Maggard & Son, 206 Ky. 558, 267 S.W. 1102 (1925).
32 70 Md. 205, 16 Atl. 887 (1889).
33 *Id.* at 215, 16 Atl. at 889, quoting from Parsons, *Partnership*, § 134.
34 Munton v. Rutherford, 121 Mich. 418, 80 N.W. 112 (1889).
35 See comments of the drafter in Lewis, *The Uniform Partnership Act*, 24 YALE L.J. 617, 625 (1915).
36 180 Md. 569, 26 A.2d 400 (1942).
37 Brown v. Rains, 53 Iowa 81, 4 N.W. 867 (1880).
38 180 Iowa 1066, 163 N.W. 608 (1917).
39 *Id.* at 1099, 163 N.W. at 618.

land court and the majority view. This is evidenced by the Court's characterization of the alleged partner's conduct in directing those who had published the representation to cease as all that could be reasonably required of him under the circumstances. The Court stated its position most clearly in the following language:

> [T]he burden is upon the plaintiffs to show that he (defendant) assented to or ratified such act by holding out, or that he *by negligence so gross as to be tantamount to fraud*, permitted such holding out to go on,[40] . . . [emphasis added.]

The presence of the underlined phrase would seem to indicate that while the alleged partner may not be required to do all that a reasonable and honest man would do under the circumstances, he may not sit back and enjoy the fruits of a holding out of partnership and claim that he never consented no matter what the situation.[41]

III—Reliance

After establishing the existence of a holding out of the alleged partner as such the plaintiff must further show that he had a right to rely upon the holding out, that he did in fact believe that a partnership existed and that he acted upon this belief during the transaction in question.[42]

The creditor's belief in the existence of the partnership must be founded upon such facts and circumstances that, supposing him to be a man of ordinary prudence and judgment, would justify that belief. In *In re McDonald's Estate*[43] the plaintiff relied entirely upon the representations of a son and a sign at the place of business in believing the decedent father to be a partner. The court held that the plaintiff was not justified in assuming a partnership as he could easily have checked the veracity of the representation. This holding was really not necessary to the result as the case might well have been disposed of under the general rule that one will not be estopped to deny a partnership solely on the basis of representations of another, but in *Central National Bank & Trust Co. v. Redman Freight Lines*[44] upon comparable facts except that there was some evidence of a holding out by the parties to be charged in the form of a certificate filed with the Commerce Commission which included the name of the alleged partner the Court said:

> [W]hen it happens that such a concern does desire to borrow or a member or officer proposes to give or tenders a promissory note in its name, it is no hardship upon the lender or creditor to require him to look into the authority of one who proposes to bind others who are not present or consenting.[45]

When considering whether or not the plaintiff has relied in fact upon the holding out in his transaction with the alleged partner or partnership we are dealing with the subjective motivations of the plaintiff's mind. This

---

[40] *Id.* at 1111, 163 N.W. at 622.

[41] About three years prior to *Anfenson* in *In re* McDonald's Estate the court seemed to say that consent would be found solely on the basis of knowledge of the holding out. However, Anfenson clearly requires more.

[42] *In re* McDonald's Estate, 167 Iowa 582, 149 N.W. 897 (1914).

[43] *Ibid.*

[44] 229 Iowa 661, 294 N.W. 915 (1940).

[45] Id. at 665, 294 N.W. at 917; See also Morgan v. Farel, 58 Conn. 413, 20 Atl. 614 (1890).

of course presents a question of fact. However, where special circumstances have been present the Court has been willing to find a lack of reliance as a matter of law.

In some of these cases the court has held that the plaintiff could not have relied because he lacked knowledge at the time of the transaction, as where the holding out followed the transaction,[46] or when he was not apprized of the alleged partner's general reputation as such at the time of the transactions.[47] In others the Court has indicated that the plaintiff either knew or should have known whether or not a partnership existed and therefore could not have relied upon the holding out, as where the plaintiff sought to have an association of which he was a member classified as a partnership by estoppel,[48] or where a wife sought to have her husband's business associate declared to be his apparent partner.[49]

Knowledge of the true situation may be imputed from an agent to his principal in determining whether or not the principal should have relied upon the holding out. In *Spurway v. Shenandoah Milling Co.*[50] the stockholders of a bank brought suit on a note against the officers of the bank and two others as partners in the defendant company and argued that the officers were estopped to deny the partnership. The Court held that from the nature of the case an allegation of apparent partnership would not lie. If the bank's officers were not partners in fact, they necessarily knew it. There could therefore be no misleading of the bank by an appearance of partnership.

At least two Iowa cases have held that while declarations of another without the consent of the defendant (alleged partner) are not admissable for the purpose of showing a holding out, they are admissable to prove that the plaintiff in his dealing did in fact rely upon the existence of a partnership.[51] It is difficult to see how proof of the plaintiff's reliance upon something which he had no right to rely on is relevant to his case. The Court apparently recognized this point in *Johnson Bros. v. Carter & Co.*[52] when it held that the plaintiff could not estop Brown (the alleged partner) by showing a holding out by Brown of which the plaintiff had no knowledge at the time of the sale and a holding out by another without authority on which the plaintiff relied.

In addition to the above plaintiff must show that his justifiable belief in the existence of the partnership played a substantial part in inducing him to act. The presence or absence of this factor seems to be the central consideration in determining the liability of partners by estoppel for each other's

---

46 Taylor v. Successful Farming Publishing Co., 197 Iowa 618, 196 N.W. 77 (1923).

47 Sheldon v. Bigelow, 118 Iowa 586, 92 N.W. 701 (1902). *But see* U.P.A. § 16(1), which specifically provides for the opposite result. Hearsay problems sometimes arise in this regard. In Anfenson v. Banks, 180 Iowa 1066, 163 N.W. 608 (1917), evidence of reliance upon the statements of others who had read the circulars containing the representations was inadmissable.

48 Hanley v. Elm Grove Mutual Telephone Co., 150 Iowa 198, 129 N.W. 807 (1911).

49 Winter v. Pipher, 96 Iowa 17, 64 N.W. 663 (1895).

50 207 Iowa 1332, 224 N.W. 564 (1929).

51 Southwick v. McGovern, 28 Iowa 533 (1869) (declarations of an employee); Iowa Leather & Saddlery Co. v. Hathaway, 78 N.W. 193 (Iowa 1899) (Dun & Bradstreet classification).

52 120 Iowa 355, 94 N.W. 850 (1903).

torts.[53] For instance, it can hardly be said that plaintiff's reliance upon the existence of a partnership caused him to be struck by a wagon driven by an apparent partner.[54] On the other hand courts have recognized certain cases in which reliance may have been a causative factor in the commission of the tort. In *Sherrod v. Langdon*,[55] for example, one of the defendants was estopped from denying a partnership in a breach of warranty action as the result of his participation in the negotiations for the sales of some sheep. In *Maxwell & Downs v. Gibbs*,[56] where the plaintiff sought damages resulting from a bailment, the Court held that if the defendants represented themselves as partners and the team was hired under such circumstances as to lead plaintiffs to believe them to be, they could be estopped from denying the partnership.

IV—Related Situations

The Iowa Court has also applied the doctrine of partnership by estoppel to two related, but distinguishable, factual situations on a number of occasions. These involve (1) corporations that have not perfected their incorporation and (2) partnerships in dissolution. The Uniform Partnership Act does not cover the first of these situations, and does not treat the second as part of the partnership by estoppel area.[57]

Most courts have held that although a corporation is defectively organized, it may amount to a "de facto" corporation, and if so third persons cannot treat the associates as partners for the purpose of imposing personal liability upon them.[58] On the other hand some states, including Iowa, take cognizance of a legislative intent to restrict corporate privileges to those who comply to the prescribed requirements of incorporation and hold the associates liable as partners.[59] In doing so, however, the Iowa Court has used language suggesting partnership by estoppel on a number of occasions.[60] For instance, in *Lyons v. Van Oel* the Court said,

> Where there is an attempt to organize a corporation, and the parties fail to make a legal organization, but continue doing business under the corporation name, they may be held as copartners. But this would only be on the basis of estoppel, and against third persons, but not as between themselves.[61]

While the language is certainly somewhat descriptive of what occurs in these cases, care must be taken to distinguish it from the words of art as used in the other cases. Here there is often no holding out of partnership

---

[53] ROWLEY, PARTNERSHIP § 16.1 (e) (2) (2d ed. 1960).

[54] In Florence v. Fox, 193 Iowa 1174, 188 N.W. 966 (1922), the court disposed of the partnership by estoppel argument on the lack of evidence of a holding out, but the reliance argument could have been just as effective in reaching this result.

[55] 21 Iowa 518 (1866).

[56] 32 Iowa 32 (1871).

[57] See U.P.A. § 35.

[58] Tisch Auto Supply Co. v. Nelson, 222 Mich. 196, 192 N.W. 600 (1923); Interstate Airlines Inc., v. Arnold, 127 Neb. 665, 256 N.W. 513 (1934).

[59] Kaiser v. Lawrence Sav. Bank, 56 Iowa 104, 8 N.W. 772 (1881). This intent is derived from Iowa Code §§ 491.22 and 491.65 (1962). See Hayes, *Iowa Corporations and Partnerships: 1942-1952*, 38 IOWA L. REV. 462, 468 (1953). The same result may follow, perhaps without use of "partnership" labels, under § 496A.141.

[60] Kinney v. Bank of Plymouth, 213 Iowa 267, 236 N.W. 31 (1931) (finding partnership by estoppel held not permissible, on other grounds); Lyons v. Van Oel, 183 Iowa 114, 165 N.W. 376 (1917).

[61] 183 Iowa 114, 120, 165 N.W. 376, 378 (1917).

and probably no reliance upon its existence. The estoppel merely operates to prevent the associates from asserting those immunities expressly reserved for corporations in fact. Perhaps "partnership by default as the result of an estoppel" would be an even more descriptive phrase. Of course a true partnership by estoppel situation could still develop where a corporation held itself out as a partnership.[62]

Partnerships after dissolution also present special problems. It has been uniformly held that an ex-partner can bind the partnership as to certain matters when dealing with a third party without notice after dissolution.[63] However, ex-partners may still be partners by estoppel without regard to these special rules[64] and the courts have usually been very willing to hold them as such.[65] This has had the effect of putting the ex-partner and the remaining partners under a greater obligation with regard to dispelling any misconception that may exist in the public mind.[66]

Conclusion

Some of the controversies that have arisen in the area of partnership by estoppel are more apparent than real. This is perhaps best illustrated by the split between the Maryland Court and the majority view with regard to the wrongful failure to correct a holding out by another.[67] In spite of the fact that the court that decided *Fletcher v. Pullen*[68] talked in terms of the duty of the reasonable and prudent man to correct the representation of another and the court that decided *Munton v. Rutherford*[69] felt that the absence of consent was controlling, a reading of the two cases conveys the impression that the same result would have been obtained in each of them no matter which approach had been adopted. *McBriety v. Phillips*[70] equated the two views and in any event the distinction if it exists is a fine one. For instance, in *Anfenson v. Banks*[71] the Iowa Court, which appeared to be more "consent" oriented, could just as easily have held that a reasonable and prudent man is not required to incur the expense of discovery and publication in order to correct the unauthorized statements of another. Perhaps the real question that the courts have been examining in all these cases is whether or not the failure to deny on the part of the party to be estopped has substantially contributed to the apparent authenticity of the representation or to put it in the language of the U.P.A., has there been a manifestation of consent in the alleged partner's failure to act.

HARVEY S. LEVENSON (August, 1963)

---

62 Mulkey v. Anglin, 166 Okla. 8, 25 P.2d 778 (1933); Ogden Packing & Provision Co. v. Wyatt, 59 Utah 481, 204 P. 978 (1922).

63 U.P.A. § 35. Notice is also necessary to terminate the effect of a partnership by estoppel. Miller v. Pfeiffer, 168 Ind. 219, 80 N.E. 409 (1907).

64 See U.P.A. § 35(4) providing: "Nothing in this section shall affect the liability under section 16 of any person who after dissolution represents himself or consents to another representing him as a partner in a partnership engaged in carrying on business."

65 Davenport Gas & Elec. Co. v. Reimers, 96 N.W. 1084 (Iowa 1903).

66 Southwick v. McGovern, 28 Iowa 533 (1869).

67 See discussion in Part II, *supra*.

68 70 Md. 205, 16 A. 887 (1889).

69 121 Mich. 418, 80 N.W. 112 (1889).

70 180 Md. 569, 26 A.2d 400 (1942).

71 180 Iowa 1066, 163 N.W. 608 (1917).