"The agreement looked only to a corporation, the payment and other "things specified being in preparation for its ultimate formation, "which was an adequate, as it was the actual, consideration; conse- "quently there was, prior to the loss, and under the most liberal inter- "pretation of the policies, no change in the title or possession of the "property, nor any transfer thereof, that avoided the policies."

At the last trial there was evidence to the effect that Arndt, after paying the $5,000 in cash, and executing his note for the same amount, became entitled by agreement with the insured, to participate in the profits of their business from January 1st, 1883, he paying interest on these amounts from that date. And there was some slight proof that Drennen upon one occasion spoke of Arndt as a member of his firm.

On behalf of the insured it is contended that, even if Arndt had become a partner in their firm the policy would cover their interest in the property. This results, it is claimed, from that clause in the policy providing for the termination of the insurance if the property be sold or delivered or otherwise disposed of, "so that *all* interest or liability on he part of the insured herein named has ceased." We deem it unnecessary to consider this question, because the case can be satisfactorily determined upon other grounds. In view of all the evidence, the Court, when delivering its charge, might well have assumed that there was no purpose on the part of the insured, or of Arndt, that the latter should have such an interest in the property as would belong to a partner. The Court, therefore, rightfully refused to instruct the jury that upon the undisputed evidence Arndt became a partner in the firm of Drennen, Starr & Everett. Such an instruction could not have been given without disregarding the interpretation which this Court at the former hearing gave to the written agreement of May 24th, 1883; for, it was then said that the parties, by that agreement, appeared, *ex industria*, to have excluded the possibility of Arndt's acquiring an interest in or any control of the insured property in advance of the formation of an incorporated company. That interpretation was not affected by the fact that Arndt paid $5000, in cash and gave his note for a like amount; for, as heretofore said, those acts were simply in execution of the agreement and in preparation for the ultimate formation of the proposed corporation, and were not, as the Court below properly decided, evidence of a partnership. The payment of the money and the execution of the note were plainly required by the agreement, and the purpose of both acts is to be ascertained from its provisions. The main ground upon which the Defendant at the last trial, claimed exemption from liability on the policies is indicated in two of its requests for instructions to the jury: 1st. That "if it was not the understanding that "Arndt became a lender of money, and if it was the understanding be- "tween the parties that the amount of his investment was to be risked "in their business, and become part of the capital stock, and he was to "have a share of the net profits, he is not a mere lender, but a "partner;"

2nd. "That "when a person contributes a portion of the common "capital stock, which is mingled with the contributions of other parties, "and the whole is managed for the joint interests of those who con- "tribute, the contributors each having a share of the net profits of the "business, they become thereby partners as between themselves in the "capital stock or property of the concern."

We are of opinion that the Court did not err in declining to so instruct the jury. The question is not whether Arndt by reason of his participation in the profits of the business of Drennen, Starr & Everett, could have been charged at the suit of creditors as a partner in that firm. The inquiry is, whether the insured, after the execution of the policies, and before the loss, sold or transferred the property covered by the policies, or whether there occurred, during that period, any change in title or possession. If there had been a sale or transfer of the entire property to one who had no interest in it, nor any right to control it at the time the contract of insurance was made, there would undoubtedly have been such a change in the title as to render the policies void. And, for the purposes of the present case, it may be conceded that such would have been the result had Arndt become a partner in the firm of Drennen, Starr & Everett. But the sale or transfer to which the policies refer was one that would pass an interest in the property itself. Mere participation in profits would give no such interest contrary to the real intention of the parties. Persons cannot be made to assume the relation of partners, as between themselves, when their purpose is that no partnership shall exist. There is no reason why they may not enter into an agreement whereby one of them shall participate in the profits arising from the management of particular property, without his becoming a partner with the others, or without his acquiring an interest in the property itself, so as to effect a change of title. As the charge to the jury was in accordance with these principles, and as the evidence conclusively shewed that Arndt did not, prior to the loss, acquire an interest in, or any control of, the property insured, but was only entitled to participate in the profits arising from its management after a named date, there is no reason to disturb the judgment in favor of the insured.

It is, therefore, affirmed.

PHŒNIX FIRE INS. CO. *v.* LAMAR IND. S.C.
May, 1886.

Additional insurance without consent of company was prohibited by a clause in the policy. Plaintiff averred that the additional insurance alleged to have been taken was void and not collectible and asked that judgment might be rendered on the policy in suit. The company answered, alleging that the condition of the policy had been violated, in that a policy for $500 had been taken out in another company covering a part of the property destroyed without consent, written or otherwise, of the company. The lower court held that the additional insurance alleged to have been placed upon the property was worthless and uncollectible, and thereupon gave judgment for plaintiff. *Held*—That under the stipulation in this policy other insurance without the required consent will release the company from liability, *whether such other insurance is valid and collectible, or whether it is void;* and that it can make no difference in this respect whether such unauthorized insurance is valid or not. (See 4 U.S. Rep., 582; 92 Ill. 145, and 35 Mich., 395.) *Held*—That where the prohibited policy held or received by the insured is in and of itself invalid and void, so that in fact it constitutes no contract of insurance, in such case it will not affect the validity of that under which claim for indemnity is made. But if to avoid the prohibited policy requires the production of facts extraneous to the policy, it will be within the condition against further insurance, and unless consented will render the other insurance voidable, and no liability can attach to the company.

GUARDIAN ASSURANCE COMPANY.

REPORT of the Directors presented to the Annual Meeting held on June 2, 1886.

The Directors beg to submit the following report on the business of the company for the year ending 31st December, 1885, together with the annual accounts in the statutory form.

LIFE DEPARTMENT.—The number of proposals received and disposed of during the year was 595 for £432,691. The following statement shows the new business actually completed in 1885:—Number of policies, 473; sums assured, £286,072: annual premiums, £8,997 10s 8d; single premiums, £423 4s 4d.

Re-assurances were effected with other offices during the year for £8,000, thus reducing the company's risk under the new policies issued to £278,072, as against £314,152 in the year 1884.

The deaths of the year numbered 131, and gave rise to claims under 184 policies, assuring, with bonuses, £211,972 8s 8d. From this amount, the sum of £2,064 10s, reassured with other offices, has to be deducted, leaving £209,907 18s 8d as the net amount of the claims for the year. The number of deaths has been below the expectation, but the amount of the claims has exceeded it.

The total number of policies in force on 31st December last was 7,313, assuring with bonuses £7,447,774 5s 1d.