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Banks and Banking-Relation of Directors to Corporation-Laches

RECENT CASE NOTES

BANKS AND BANKING—RELATION OF DIRECTORS TO CORPORATION—LACHES—Action to rescind the sale of real estate by defendant to plaintiff. Defendant director of plaintiff bank, having purchased a building from the insolvent president of plaintiff bank, sold said building to plaintiff bank for $25,000, building being estimated to be worth $16,000. Purchase approved by unanimous vote of five directors, both defendant and insolvent president being present and voting. Five years later an entirely new board of directors makes tender of title and accrued rents to defendant and demands return of purchase price claiming the building unsuited for the purposes for which it was bought, that plaintiff had no need for it, that the purchase price was excessive and that defendant in making the sale to plaintiff was motivated by desire to further his own interests not those of the bank. *Held*: Judgment for plaintiff bank affirmed. *Schemmel v. Atlas State Bank.* Appellate Court of Indiana, August 30, 1929, 167 N. E. 625.

Relationship of principal and agent exists between a corporation and its officers and the rules relating to honesty and fair dealing in management of principal's business by the agent apply in view of the relationship of the parties. The facts stated constituted constructive fraud. *Ibid. Leader Pub. Co. v. Grant Trust and Savings Co.*, 182 Ind. 651, 108 N. E. 121, in accord.

The law will not permit an agent to act for himself and principal in same transaction. "Such transactions are void as respects the principal unless ratified by him with a full knowledge of all the circumstances." Manning, J., in *People v. Township Board*, 11 Mich. 222. Under this theory it would seem to be unnecessary to show constructive fraud in the principal case, the transaction being void *ab initio* in absence of ratification by the corporation.

But the better rule seems to be that directors occupy a *sui generis* relationship with the corporation. "Directors are neither agents for the stockholders nor trustees but occupy an intermediate relation," *Board of Commissioners of Tippecanoe Co. v. Reynolds*, 44 Ind. 509. "Sale of property by a director to a corporation will be upheld if open, fair and honest and corporation was adequately represented by other directors," *Howland v. Corn*, 232 Fed. 35; *Figge v. Bergenthal*, 130 Miss. 594. Transactions wherein a director is interested are void or voidable at option of corporation, *Port v. Russel*, 36 Ind. 60; *Twin Lock Oil Co. v. Marbury*, 91 U. S. 587. But see *Fed. Life Ins. Co. v. Griffin*, 173 Ill. App. 5, and *Mainwright v. P. H. & F. M. Roots Co.* (Ind.), 97 N. E. 8, holding sale by a director is valid if director affected by a personal interest is not necessary to make up a quorum. (See 21 Harv. L. Rev. 51.) There is no presumption of the dishonesty of interested directors and the transaction is voidable only if shown to be unfair. *Wyman v. Bouman*, 127 Fed. 257. The extreme view is that the interested parties may be counted to make up a quorum. *Minn. Loan & Trust Co. v. Peteler Car Co.*, 132 Minn. 277. The modern tendency

is in conformity with *Fed. Life Ins. Co. v. Griffin, supra.* (25 Harv. L. Rev. 553.) *Schemmel v. Atlas Bank* repudiates *Port v. Russel* and seems to go even beyond *Wainwright v. P. H. & F. M. Roots Co.* in requiring proof of unfair dealing where interested parties are required to make up the quorum. But in such cases the burden always lies on director to prove no advantage was taken of his position. *Drennen v. So. States Fire Ins. Co.*, 252 Fed. 776.

Laches is tantamount to ratification, *Pittsburgh, etc. R. R. v. Keokuk, etc., Bridge Co.*, 131 U. S. 271, and action must be taken within a reasonable time, *Stephany v. Marsden*, 78 N. J. Eq. 90. There is no laches where the corporation is entirely in control of the erring directors, *Klein v. Independent Brewery Assn.*, 83 N. E. 434. In the principal case court found a majority of the directors to be innocent and ignorant of the constructive fraud. Notice to agent adversely interested is not notice to the principal. *Brannen v. May*, 42 Ind. 92.

It is difficult, on the findings of fact, to reconcile the relationship of principal and agent with the verdict and under the facts as stated in the opinion, the decision appears doubtful even under the *sui generis* doctrine of directors and corporation, because of the apparent laches here.

J. S. G.

BANKS AND BANKING—RIGHT TO PREFERENCE—SPECIAL DEPOSIT—The material facts involved here are simple and may be stated briefly: Plaintiff deposited certain Liberty bonds with receiver's bank and latter gave him a written receipt therefor, and agreed therein that on the surrender of such receipt after sixty days' written notice by either party it would deliver bonds of the same issue and amount and would pay interest semi-annually on the par value of such bonds at the rate of three-quarters of 1 per cent per annum, *in addition* to the rate of interest payable on the bonds. The bank sold the bonds and the proceeds from the bonds were used to augment the assets of the bank. The bank subsequently suspended business. The plaintiff filed his complaint asking that the said bonds or other bonds of the same issue be returned to him, or, in case that was impossible, that he recover the value of such bonds and that his claim be decreed a preferred claim and be paid before the payment of the general claims. The defendant as receiver was ordered to pay plaintiff before paying the general creditors of the bank and from that order the defendant takes this appeal. *Held:* Order below affirmed. That the transaction betwen the plaintiff and the bank was a special deposit and created the relation of bailor and bailee between the parties, and that as a consequence the plaintiff was entitled to a preference over the general creditors. *Stults v. Gordon.* Appellate Court of Indiana, August 28, 1929. 167 N. E. 564.

Clearly the plaintiff is entitled to a preference if there was a mere bailment involved here. The correctness of the court's decision turns upon the proper relationship which grew out of the agreement between the plaintiff and the bank. An analysis of this agreement discloses: first, bonds of the same issue and amount (*but not the identical bonds*) were to be returned to plaintiff on 60 days' notice having been given by either party; second, the bank was to pay interest semi-annually on the par value of such bonds at the rate of three-quarters of 1 per cent *in addition* to the rate of interest payable on the bonds.