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Corporations—Contracts by Foreign Corporations Before Compliance with Statutes Governing Admission—Validity. Action to quiet title to real estate alleged to belong to appellant. On January 15, 1929, the appellant, in consideration of \$24, executed a right of way agreement to the appellee to operate, lay, maintain and remove a pipe line across the land of appellant. And on February 21, 1929, over the same land, the appellant, in consideration of \$10, executed a right of way agreement to the appellee for the purpose of erecting, maintaining and removing telephone and telegraph poles and the necessary wires and fixtures. Appellant contends that the foregoing contracts were void for the reason that appellee was a foreign corporation and had not complied with the Indiana law with reference to admission of foreign corporation to do business in Indiana. It is shown, however,

²⁴ (1927), 200 Ind. 623, 157 N. E. 769, 162 N. E. 441, 163 N. E. 272. See criticisms of this case in (1927) 3 Ind. L. J. 149; (1927) 41 Harv. L. Rev. 254; (1927) 76 U. Pa. L. Rev. 210; (1928) 8 B. U. L. Rev. 59; (1928) 14 Va. L. Rev. 227; (1928) 26 Mich. L. Rev. 440.

²⁵ (1887), 110 Ind. 301, 11 N. E. 526.

²⁶ (1919), 188 Ind. 60, 121 N. E. 828.

²⁷ *Cooke v. United States* (1925), 267 U. S. 517. The United States Supreme Court might accomplish this reform by holding that it is not due process of law to punish for indirect contempt without these privileges.

Legislatures cannot put such restrictions upon the courts for the reason that courts hold that the power to punish for contempt is an inherent power of the courts, and therefore under our doctrine of separation of powers that it is unconstitutional for legislatures to take this power away from courts created by constitutions. See *Hale v. State* (1896), 55 Ohio St. 210; *Carter v. Commonwealth* (1899), 96 Va. 791; *Little v. State* (1883), 90 Ind. 338.

²⁸ Hugh E. Willis, "Punishment for Contempt of Court," (1927) 2 Ind. L. J. 312-313.

that appellee complied with the said law on April 1, 1929, prior to the commencement of this action. Held, that the contracts were not void and since the appellee had complied with the law prior to the commencement of this suit, they were enforceable agreements.¹

The decisions are in a state of irreconcilable conflict upon the question whether the failure of a foreign corporation to comply with restrictive statutes before undertaking to do business in the domestic state, will render its contracts, made in the state, void or voidable. Often the decisions are only apparently in conflict due to the statutory or constitutional provisions on which they are based. The statutes of a few states make contracts, such as those under consideration, void by express terms.² The Indiana statute, however, makes no express or implied declarations respecting the validity or enforceability of such contracts. There is to be found only a penalty and a prohibition in regards to the maintenance of any suit at law or equity, whether arising out of contract or tort in any court in this state.³

The Indiana cases themselves have been by no means in harmonious accord, and a review of them shows a profound confusion. It is utterly impossible to reconcile them. In the case of *Rising Sun Insurance Co. v. Slaughter*⁴ it was held that a policy of insurance negotiated in this state by a foreign insurance company without a previous compliance with the requirements of the act was void. But this case was in effect overruled by two later cases.⁵ In the case of *Wood Mowing etc. Co. v. Caldwell*⁶ the case first above named is expressly recognized as being overruled by the two subsequent cases, but notwithstanding this fact it was again cited with approval in the case of *Cassady v. American Insurance Co.*⁷ The court laid down the rule in *Sandage v. Studabaker*⁸ that there could be no recovery on a contract made in violation of a statute as between the parties thereto, the violation of which is prohibited by a penalty, even though the statute does not pronounce the contract void nor expressly prohibits the same. This case, however, was probably the first one in Indiana holding that such contracts were void because the statute makes the act of such corporation a crime. An Illinois case⁹ was cited in support of the above holding. This latter case does not appear to be well considered and is based upon a former Illinois case¹⁰ which was not in point. Just three years before the *Sandage* case the court had held that contracts of foreign unqualified corporations were not void, but that the right of the corporation to enforce such contracts was suspended until it had complied with the terms of the statute.¹¹

The principal case relies upon the Indiana case of *Peter and Burghard Stone Co. v. Carper*.¹² This latter case was exceedingly well reasoned and follows the weight of authority. In numerous decisions the Federal courts

¹ *Sleph v. Illinois Pipe Line* (May 3, 1934), — Ind. —, 3 Ind. Adv. Rep. 308.

² *Smith Rolfe v. Wallace* (1914), 41 Okla. 43, 139 P. 248; *Kent, etc., Co. v. Tuttle* (1897), 20 Mont. 203, 50 P. 559.

³ *Baldwin's Indiana Statutes* (1934), sec. 4972.

⁴ *Rising Sun Insurance Co. v. Slaughter* (1863), 20 Ind. 502.

⁵ *Deming v. State* (1864), 23 Ind. 416; *New England Fire Insurance Co. v. Robinson* (1865), 25 Ind. 536.

⁶ *Wood Mowing, etc., Co. v. Caldwell* (1876), 54 Ind. 270.

⁷ *Cassaday v. American Insurance Co.* (1880), 72 Ind. 95.

⁸ *Sandage v. Studabaker, etc.* (1895), 142 Ind. 148, 41 N. E. 380.

⁹ *U. S. Lead Co. v. J. W. Rudy, etc., Co.* (1906), 222 Ill. 199, 78 N. E. 567.

¹⁰ *Cincinnati, etc., Assurance Co. v. Rosenthal* (1870), 55 Ill. 85, 8 Am. Rep. 626.

¹¹ *Phenix Insurance Co. v. Penn. R. R. Co.* (1892), 134 Ind. 215, 33 N. E. 970.

¹² *Peter & Burghard Stone Co. v. Carper* (1930), 172 N. E. 319.

have held that such contracts are not void in the absence of a statute expressly making them so.¹³

The whole proposition, of course, depends upon the wording of the statutes and the interpretation the courts have given to them. Roughly, however, the statutes can be placed into three categories; first, those declaring contracts of unqualified corporations as being totally void; second, those declaring that such corporations shall do no business in the state without complying with the terms of the statute, without declaring any penalty for failure to comply with the statute; third, those declaring certain penalties for failure to comply with the statute. The cases under the first class need no discussion. As to the second class it has generally been held that contracts made in contravention to it are void.¹⁴ It was pointed out in *Thompson v. Building and Loan Association*¹⁵ that unless such contracts were held to be void, the statute would be of no effect. Where the statute provides for a penalty this objection is overcome. It is not for the judiciary to inflict additional and harsh penalties. Consequently, holding a contract void when a penalty is provided for cannot be justified. So it was said by the United States Supreme Court that if the legislature had intended to declare all contracts made by a foreign corporation doing business without complying with the law void, it could, by appropriate words, have easily and clearly expressed that intention.¹⁶ Many courts adhere to this view.¹⁷

The principal case has perhaps settled the law in Indiana on this point; and not only has it accepted the better view, but also has followed the weight of authority.

L. E. B.

Public Service Commission—Prevention of Enforcement of Commission's Orders by Courts. On December 27, 1929, upon petition of the appellant, the Public Service Commission of Indiana made an order fixing and increasing the rates to be charged the public for appellant's telephone service. Within thirty days thereafter, appellees instituted this action to enjoin the operation of the order. Issues were formed, there was a trial by the court, and a decree was entered enjoining the rates fixed by the order as unreasonable and unlawful. Appellants assigned as error on appeal the overruling of their motions to make more specific and their demurrers to the complaint, all based on the theory that the action of appellees constituted a collateral attack upon the commission's order, which could be made only if the order was wholly void. Held, that the court's power to enjoin unreasonable administrative or legislative orders or regulations is not derived from statute, but exists through and under the Constitution; and that in passing on orders of the Public Service Commission, court does not review for error, since commission acts ministerially and court, judicially.¹

¹³ *David Lupton's Son Co. v. Automobile Club* (1912), 225 U. S. 489, 56 L. Ed. 1177; *Louis Ilfield Co. v. Union Pac. R. Co.* (C. C. A. 1927), 23 F. (2nd) 65; *Johnson v. New York, etc.* (C. C. A. 1910), 178 F. 513; *Ockenfels v. Boyd* (C. C. A. 1927), 297 F. 614.

¹⁴ *Reliance Mut. Insurance Co. v. Sawyer* (1897), 160 Mass. 413, 36 N. E. 59; *Haverhill Insurance Co. v. Prescott* (1861), 42 N. H. 547, 80 Am. D. 123.

¹⁵ *Thompson v. National Mut. Building and Loan Association* (1905), 57 W. Va. 551, 50 S. E. 756.

¹⁶ *Fritts v. Palmer* (1889), 132 U. S. 281, 33 L. Ed. 317.

¹⁷ *Neuchatel Asphalt Co. v. New York* (1898), 155 N. Y. 373, 49 N. E. 1043; *Ward Land, etc., Co. v. Mapes* (1905), 147 Cal. 747, 82 P. 426; *Brewing Co. v. Grimes* (1899), 173 Mass. 252, 53 N. E. 855; *Despres v. Zieley* (1910), 163 Mich. 399, 128 N. W. 769.

¹ *Public Service Commission v. City of LaPorte* (1935), — Ind. —, 193 N. E. 668.