Conflict of Laws-Foreign Corporations-Stockholder's Individual Liability

Follow this and additional works at: https://www.repository.law.indiana.edu/ilj

Part of the Business Organizations Law Commons, Conflict of Laws Commons, and the Securities Law Commons

Recommended Citation
Available at: https://www.repository.law.indiana.edu/ilj/vol9/iss5/4

This Note is brought to you for free and open access by the Law School Journals at Digital Repository @ Maurer Law. It has been accepted for inclusion in Indiana Law Journal by an authorized editor of Digital Repository @ Maurer Law. For more information, please contact rvaughan@indiana.edu.
RECENT CASE NOTES

CONFLICT OF LAWS—FOREIGN CORPORATIONS—STOCKHOLDER'S INDIVIDUAL LIABILITY—Plaintiff brought an action against defendants, common stockholders of the Acme Manufacturing Company, an Indiana corporation, for amounts due on three trade acceptances given in Tennessee. The Acme Company was an Indiana corporation doing business in Tennessee without having complied with their statute pertaining to qualification of foreign corporations doing business in that state. Plaintiff sought to hold them individually liable, on the theory that the law of Tennessee, as interpreted by the Supreme Court of that state, imposes partnership liability on stockholders of a foreign corporation which has failed to comply with their statute. Plaintiff's complaint contained no allegation that defendants were domiciled in Tennessee, nor that any of them knew of or took part in any of these transactions; nor that the articles of incorporation in any way indicated or authorized the doing of business in Tennessee. Defendants demurred for insufficient facts. The demurrer was sustained and plaintiff appealed. Held, affirmed.1

As a general proposition the law of the jurisdiction granting the charter to a corporation determines the liability of its shareholders. When one becomes a shareholder in a corporation he is said to contract with reference to all the laws of the state under which the corporation is organized.2 In some instances, however, liability may be imposed upon the shareholders by the law of another jurisdiction. This is true where agents of the corporation have performed acts in the foreign jurisdiction. But before the foreign state may impose such liability it must be shown that the shareholder is subject to the legislative jurisdiction of that state.3 When such jurisdiction is shown, the liability may be enforced in any jurisdiction.4

In the principal case, the corporation has caused acts to be done by its agents in a foreign jurisdiction. Thus the sole question involved is: Did the state of Tennessee acting through its legislature have jurisdiction over defendant shareholders?

Upon an examination of the authorities, it is apparent that the precise question involved here, has never been before an Indiana court, and has seldom been raised in the courts of other states. From the meager authority available, however, it is evident that the state may through its

---

1 Towle v. Beistle, Appellate Court of Indiana, June 27, 1933, 186 N. E. 344.
3 American Law Institute, Restatement of Conflict of Laws, Proposed Final Draft No. 1, Sec. 209; Thomas v. Matthiessen (1913), 222 U. S. 221, 55 L. Ed. 577.

316
RECENT CASE NOTES

legislature exercise jurisdiction over shareholders of a foreign corporation in three different instances.

First, where the articles of incorporation expressly authorize that business be carried on in a foreign jurisdiction. The earliest case is Pinney v. Nelson,5 decided by the United States Supreme Court, involving the liability of a stockholder of a corporation expressly organized to carry on business in California. The basis of the court's decision is that the stockholders contracted with reference to the laws of California. The court failed to pay any attention to the fact that the stockholders were domiciled in California. The New York court6 later refused to follow, in a case similar to Pinney v. Nelson except that the stockholders were non-residents of California, distinguishing Pinney v. Nelson, on the ground that there the stockholders were domiciled in California. Whatever doubt may have existed as to that point was removed by the decision of the United States Supreme Court in Thomas v. Matthiessen,7 which held that the liability of a non-resident stockholder of a foreign corporation, organized to do business in California was governed by the law of California. Such a rule has been followed in most of the state courts where the question has arisen.8 And it is not necessary that all of the business shall be carried on in that state. It is sufficient that any part of the business is to be carried on there.9 Nor is it material that the stockholder expressly stipulates that he is not to be personally bound. If he becomes a stockholder under these conditions he will be bound by the law of that state as to acts done therein.10

Second, where the stockholder has taken part in causing the act to be done there. Thus in Mandeville v. Courtright,11 defendants actively operating a dental business in Pennsylvania, incorporated under the law of New Jersey were personally liable for injury caused to plaintiff. Several of the courts12 class these as “participating” stockholders and they are classed as such by the Indiana court in the principal case.

Third, where the shareholder is domiciled in the state.13 It is submitted

---

5 (1901), 133 U. S. 144, 46 L. Ed. 125.
6 Coulter Dry Goods Co. v. Rosenbaum (1911), 134 N. Y. S. 487.
7 (1913), 232 U. S. 221, 58 L. Ed. 577. However a general authorization is not sufficient, see Risdon Iron and Locomotive Works v. Furness (1906), 1 K. B. 49.
8 Thomas v. Wentworth Hotel Co. (1910), 158 Cal. 257, 110 Pac. 942. The Federal Courts have not taken a definite stand. In Leyner Engineering Works v. Kempner (1908), 163 Fed. 605, the learned judge said the doctrine was monstrous. No doubt he was ignorant of Pinney v. Nelson. In Thomas v. Matthiessen, (1913), 192 Fed. 495, the court said there was no liability unless the shareholder authorized such acts.
9 Thomas v. Wentworth Hotel Co. (1910), 158 Cal. 275, 110 Pac. 942.
10 Thomas v. Matthiessen (1913), 232 U. S. 221, 58 L. Ed. 577; Thomas v. Wentworth Hotel Co. (1910), 158 Cal. 275, 110 Pac. 942.
11 (1905), 142 Fed. 97.
13 American Law Institute, Restatement of Conflict of Laws, Proposed Final Draft No. 1, Sec. 209, Comment. (b); See also Hohfeld, The Individual Liability of Stockholders and The Conflict of Laws, 10 Col. L. Rev. 283 (296).
that no one will question this legal proposition. Domicile has always been the basis for legislative jurisdiction.\textsuperscript{14}

Examining the principal case it is clear that the state of Tennessee had no legislative jurisdiction over defendant stockholders.\textsuperscript{15} Defendants were non-resident; the articles of incorporation neither impliedly or expressly authorized the doing of business outside the state of Indiana; they took no part in causing the acts to be done there, in fact, were entirely ignorant of them. Since the shareholders were not subject to the jurisdiction of the state of Tennessee, it follows that the Indiana court reached a correct result in not applying the law of Tennessee.

C. M.

**CONSTITUTIONAL LAW—COURT OF CLAIMS—LEGISLATIVE COURTS—REDUCING JUDGE'S SALARY—** The plaintiff is a judge of the Court of Claims of the United States. Under a ruling of the Comptroller General, his salary was reduced from $12,500 to $10,000 per annum. Plaintiff contends that such reduction is unconstitutional as violating Article 3 of the Constitution, in respect to diminishing the compensation of judges of Federal Courts. Held, that such reduction of the salaries of judges of the Court of Claims is not a violation of the Constitution because the Court of Claims is not a court created under Article 3, but that it is a legislative court and therefore the provisions of Article 3 do not apply.\textsuperscript{1}

It is well settled that Congress has power to create courts aside from Art. 3 of the Constitution.\textsuperscript{2} Since courts created under powers other than those of Art. 3 are not constitutional courts, the provisions as to tenure and salaries do not apply to them.\textsuperscript{3} Such courts may be given administrative duties, may be required to give advisory opinions, and in general are subject to the direct control of Congress.\textsuperscript{4} Before deciding whether a reduction in the salaries of judges of the Court of Claims is unconstitutional, it must first be determined whether the Court of Claims is a judicial or constitutional court, or whether it is a legislative court.

Originally the Court of Claims could only make findings of facts.\textsuperscript{5} In 1863, the court was completely reorganized and jurisdiction was given to reconsider counterclaims and provision was made for appeals to the Supreme Court in certain cases.\textsuperscript{6} Several cases in their dicta have held that the Court of Claims is a constitutional court created under Art. 3.\textsuperscript{7}

\textsuperscript{14}Goodrich, The Conflicts of Law, (1927) pp. 131-139.
\textsuperscript{15}Williams v. United States (1933), 53 S. Ct. 751.
\textsuperscript{1}Ex Parte Bakelite Corporation (1928), 279 U. S. 438, 73 L. ed. 789; American Insurance Co. v. Cantor (1828), 1 Pet. 611, 7 L. ed. 242; Benner v. Porter (1850), 9 How. 236, 13 L. ed. 119; Clinton v. Englebright (1871), 13 Wall. 434; Reynolds v. United States (1875), 98 U. S. 145, 25 L. ed. 244.
\textsuperscript{2}American Insurance Co. v. Cantor (1828), 1 Pet. 511, 7 L. ed. 242.
\textsuperscript{4}10 Stat. 612, (1855); Belt v. United States (1870), 15 Ct. Cl. 92.
\textsuperscript{5}12 Stat. 755-66, (1863).