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CORPORATIONS: LIABILITIES INCIDENT TO TRANSFER OR ISSUE OF STOCK AS COLLATERAL. G became a stockholder in corporation X but did not pay for his stock. X was indebted to A and W and it was agreed that G's stock should be delivered to A and W as collateral for the pre-existing debt. This was accomplished by a surrender of G's certificate to X and the issue of new certificates to A and W. Subsequently, with the consent of A and W, G made a written assignment to S of all his interest in the stock, subject to the pledge to A and W. X becoming insolvent, the question is whether S is liable for the unpaid balance on the stock, to collect which a creditor's bill is filed against him. It should seem that G ceased to be a stockholder when the new certificates were issued to A and W. Did A and W become stockholders in virtue of such issue? It is clear that all parties intended G to retain an equitable

interest in the shares, which equitable interest he afterwards assigned to S. If G had transferred his stock direct to A and W they would have became stockholders and, as such, liable for the unpaid balance. As the transfer would have been in such case subject to a trust, it should seem that G also would have remained liable. No liability could have been incurred by S. Is the result affected by the circumstance that G surrendered his certificate and caused new certificates to be issued to A and W? Clearly the result, as to S, is the same. By such a surrender G could not escape liability to creditors but the assignment of his equity to S could not impose liability upon the latter. Such is the result reached by the Circuit Court of Appeals, Seventh Circuit, in *Sturtevant* v. *National Foundry and Pipe Works*, 88 Fed. 613 (July 26, 1898). The court, however, complicates the decision by announcing what are conceived to be certain untenable propositions. After citing the provision of the Wisconsin Statutes (§ 1753) which makes void all issues of stock for which no payment of money or property is made at the date of the issue, the court declares that the certificate originally issued to G was void—but concedes that he became and remained liable to creditors for the par value of the stock. This is obviously a concession that he became a stockholder notwithstanding the statutory prohibition. The court then declares that the certificates issued to A and W were likewise void but holds that A and W did not become stockholders inasmuch as the stock was issued to them merely as collateral. This view is based, in part, upon the unsound theory once announced by the Court of Appeals of New York in *Christensen* v. *Eno*, 106 N. Y. 97 (1885), that the liability of a stockholder is purely contractual as distinguished from being a liability incident to status. The doctrine of *Christensen* v. *Eno* has been repudiated by the Supreme Court of the United States. *Handley* v. *Stutz*, 139 U. S. 417 (1890). Nevertheless we find the doctrine cited approvingly by the Circuit Court of Appeals in the present case (just as it had been similarly cited in *Andrews* v. *National Foundry and Pipe Works*, 76 Fed. 166 (1896)), and we find the court further seeking to support its conclusion that A and W did not become stockholders by citing *Burgess* v. *Seligman*, 107 U. S. 20 (1882). In that case, however, the decision that the registered holder of stock as collateral did not become liable to creditors was based upon a local statute; whereas here the court has no such statute to rely upon. Clearly A and W became stockholders when the certificates were issued to them. Any other conclusion is in conflict with fundamental principle. The statutory provision should be regarded as depriving the holder of watered stock of the privileges of a stockholder but it cannot be treated as exempting him from liability. Equally clear is it that S incurred no liability to creditors, for he never became a stockholder nor did he assume the liability by contract. The court should have protected him upon these grounds instead of wrongly deciding that A and W

had never become liable and then proceeding to treat S as a successor to their immunity. In point of law there was no privity between S on the one hand and A and W on the other. S derived his rights by assignment from G but he never succeeded to his liability.

G. W. P.

CONSTITUTIONAL LAW; FREEDOM OF CONTRACT; "TRUCK ACTS;" CORPORATIONS. The Kansas Court of Appeals has sustained the constitutionality of an act, applying in its terms only to corporations or trusts employing ten or more persons, which forbids payment of wages except by lawful money of the United States or by check or draft upon active account: *Hann* v. *State*, 54 Pac. 130.

The validity of the statute was attacked for want of uniformity, for violation of the Fourteenth Amendment, and for repugnance to the State Bill of Rights, providing that "all men are possessed of equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness." The court says: "We believe no case has been pointed out where such an enactment has been unqualifiedly declared to be a valid exercise of the police powers of the state in respect to natural persons," and proceed to sustain the act solely on the reserved right of the state to amend charters of corporations. These artificial persons, the court points out, except for the powers granted them by the legislature, could make no contracts whatever. Surely, then, it is competent for the state to specify what kinds of contracts they may make. Laws to prevent the withholding of wages or the imposition of a fine by the employer for imperfect work, laws providing for payment of employes at specified times, "Screen Acts," laws prescribing notices of discharge, and these "Truck" or "Scrip" or "Company-store" Acts, all fall in much the same category. All constitute a technical violation of the freedom of contract, as applied to the individual, at least, and in case of all the same difficulty is found of formulating a uniform rule of application. The distinction made by the Kansas court, between corporations and individuals, as to the liability of their contracts to state interference, is not in accord with the majority of decisions. *San Antonio & A. P. R.* v. *Wilson*, 19 S. W. (Tex.) 910 (1892), declared unconstitutional, for want of uniformity, a statute prescribing the time of payment of railway employes, although the Texas Constitution has no provision against class legislation. *Braceville Coal Co.* v. *People*, 35 N. E. (Ill.) 62 (1893), pronounced invalid a similar law applying to all corporations for profit. The decision was based on a provision of the Illinois Constitution (sec. 2, art. 2), which follows the Fourteenth Amendment, to the effect that "no person can be deprived of life liberty or property, except by due process of law." The court observes "the restriction of the right to contract, affects not only

the corporation, and restricts its right to contract, but that of the employe as well." The result reached by the court was founded partly, however, on a provision of the Illinois Constitution forbidding the amendment of corporate charters by special laws. *Godcharles* v. *Wigeman*, 113 Pa. 437 (1886), and *Showalter* v. *Ehlan*, 5 Pa. (Super.) 242, 248 (1897), sweepingly condemn all such legislation as "an insulting attempt to put the laborer under legislative tutelage," violating his inalienable right as an Anglo-Saxon to contract to be paid in company-store orders, if, upon one consideration, he considers it to his interest so to do. The court did not discuss the question of the economic compulsion which circumstances place on the laborer, more effectually destroying his boasted "Anglo-Saxon" freedom of contract than even this proposed "Socialistic" legislation could do. *Wheeling Bridge & T. R. Co.* v. *Gilmore*, 8 Ohio C. C. 658 (1894), says, "The liberty of making contracts is absolutely essential to the acquisition, possession and enjoyment of property;" "the police power of the state extends to matters only affecting the public welfare [*sic*], the health, safety, and morals of the people" and "beyond this [*i. e.*, the police power] the state cannot interfere with the dealings and contracts of such companies with the employes who are *sui juris*, any farther than it lawfully can with those of other employers of labor." *Hancock* v. *Yaden*, 121 Ind. 366 (1889), sustained a statute requiring miners to be paid only in lawful money. No attempt was made to distinguish corporations from natural persons, in applying the act. In *State* v. *Loomis*, 22 S. W. (Mo.) 350 (1893), the act in question forbade manufacturing and mining corporations to issue any wage orders payable otherwise than in lawful money. The court held the law unconstitutional. Barclay, J., dissented, however, on similar grounds to those given by Mr. Justice Holmes, dissenting, in *Comm.* v. *Perry*, 155 Mass. 117 (1891). These learned justices both would justify such legislation on the "police power" of the state to provide against fraud. The legislature has a right to interfere in behalf of a weak or ignorant class, and to deprive certain classes of employers of a contract right which they are using in the opinion of the legislature, for a dishonest purpose. This applies both to corporations and natural persons. The Supreme Court of Massachusetts seems to have come around to Mr. Justice Holmes's views: *Opinions of Justices*, 163 Mass. 589 (1895).

On the other hand, in Rhode Island, a weekly payment law applying only to employes of corporations was upheld in *State* v. *Brown Co.*, 25 Atl. (R. I.) 246 (1892), on the same grounds as those stated in the principal case. *Leep* v. *R.*, 25 S. W. (Ark.) 75 (1894), sustained a weekly payment act as to corporations, but held invalid as regards natural persons. In *State* v. *Goodwill*, 33 W. Va. 179 (1891), a "Scrip Act," applying only to mining and manufacturing corporations was declared void as class legislation. Another act, however, applying to all corporations "engaged

in any trade or business" was sustained in *State* v. *Coal Co.*, 36 W. Va. 802 (1892), partly because corporations are creatures of the state receiving extraordinary powers and hence subject to extraordinary restrictions, and partly because "the public tranquility and the good and safety of society demand, where the number of employes is such that specific contracts with each laborer would be improbable if not impossible, that in general contracts justice shall prevail as between operator and miner" and . . . . "that all opportunities for fraud shall be removed" And further, "once concede that the coal industry is a proper subject for the exercise of police regulation, and it follows, by all the authorities, that the legislature and not the courts, is to judge of the propriety and reasonableness of any given regulation . . ." One judge expresses his opinion that the act would apply constitutionally to natural persons as well, but, of course, the case determines no more than the validity of the act as it stands. See, also, *McAunich* v. *R.*, 20 Ia. 343 (1866); *R.* v. *Haley*, 25 Kans. 35 (1881); *Shaffer* v. *Mining Co.*, 55 Md. 74 (1874), which upheld similar acts.

The first tendency of the courts to pronounce unconstitutional, all legislation restricting the freedom of contract, seems now to be changing, much to the horror of those who live in dread of state socialism, "the coming slavery."

In this connection the English "Truck Act" is of interest: (1 & 2 William IV., cap 37, 22 St. at Large, 484, 490). This act inflicts penalties in a number of specified trades, on any settlement of wages by way of barter. Of course, no distinction between natural and corporate persons is made in England. Written guaranties of natural rights do not there fetter the legislature. See Mr. W. Stanley Jevons's "The State in Relation to Labour," p. 10, *et. seq.* Parliament in passing an act does not bother about abstract metaphysical rights. It simply inquires whether the wrong is so great as to make the remedy worth while. On the general question, see Stinson's "Handbook to the Labor Laws of the U. S.," Chap. II.

MEASURE OF DAMAGES; SURETY'S LIABILITY, EXPRESS AND IMPLIED. *DeCamp* v. *Bullard et al.* (Supreme Ct. N. Y., Jan., 1898; 50 N. Y. Suppl. 807), was an action on an undertaking executed by the defendants as sureties. J. Dix and E. Thomson, Jr., had bought land, under the advice of counsel, that they would be free to float timber cut thereon down the North Branch of Moose River and through the plaintiff's premises. They improved the river and cut down 11,000,000 feet of timber, but an injunction against them was obtained by the plaintiff, which, when finally affirmed by the Appellate Division of the New York Supreme Court, left them with 2,000,000 feet of timber up stream with no other way of bringing it to market, or of utilizing it.

To relieve this hardship the Appellate Division afterwards per-

mitted them to float down the timber already cut on condition of their filing an undertaking with two sureties, "to indemnify the plaintiff against any and all loss or damage whatsoever sustained by reason of suspending such judgment." The plaintiff now sues the sureties, not for any positive hurt he received as a result of the lumbering operations, but for the fair value of the use of the stream during the six weeks it was covered with logs. Although nothing in the deed, beyond what has been quoted, favored his claim, the court allowed it, holding that the plaintiff sustained loss to the amount of the fair value of the use of the stream, within the exact meaning of the undertaking, which of course must be strictly construed. The very fact that the plaintiff himself could have made no profit from the stream, and was, therefore, nowise actively damaged by the Appellate Court's remission of its injunction, was seized upon as showing that the defendants must have meant to obligate themselves for what the occupation of the river was reasonably worth, otherwise they would have performed an idle ceremony because actual loss could hardly occur to the plaintiff's unimproved premises: Cf. *Goodwin* v. *Bunzl* (1886), 102 N. Y. 224.

Although this decision, on a first reading, is somewhat startling and although very few parallel cases are to be found, nobody, viewing it from the plaintiff's standpoint, should fail to recognize the justice of his demand. His injunction was remitted, not for any dictate of public policy, but solely because some timber, bought and felled in ignorance of the law, lay in danger of rotting and could be turned to account only by floating it over his land to the saw mill below. Out of consideration for the purchaser's plight, they were allowed to trespass on his property. His entire ownership of that part of the river was conceded, and there can be no doubt that it would have been a violation of property rights to forbid his full recovery against Dix and Thomson: Cf. *Phillips* v. *Homfray* (1883), 24 Ch. D. 439, Etc. ; but see Hale on Damages, p. 357.

Turning to the legal principles which secured his recovery against the sureties, we find them equally decisive. Sureties, while bound only on the strictest interpretation of their contract, may yet come under a more enlarged obligation than is set down in the terms of the contract if their intention to do so is clearly manifested therein: *McElroy* v. *Mumford* (1892), 128 N. Y. 303; 28 N. E. 502. "The real purpose of the undertaking, the situation and character of the property affected and the status in respect to it of the parties may be considered in determining the defendants' real intention." Cf. § iii, Brandt on Suretyship and Guaranty, and Sedg. Dam., §§ 185-6. This intention was intelligible, the court declared, only on the supposition that the sureties obligated themselves for the fair rental value of the river, which was assessed at $500.

PRACTICE OF MEDICINE; CHRISTIAN SCIENCE. A timely question was discussed by the Supreme Court of Rhode Island in the

case of *State* v. *Mylod*, 40 Atl. 753 (Aug. 17, 1898). The defendant was indicted for practicing medicine without authority. He was a Christian Scientist and maintained an office where he could be consulted at certain times. He made no use of drugs or medicines in his treatment of visitors, but pursued the system of the sect to which he belonged, in which silent prayer and advice as to the importance of having faith, and "looking on the bright side of things," are prominent elements. The defendant did not recommend to any one a course of physical treatment. The court held that the question was whether the acts complained of were included in the words "practice of medicine" in their ordinary or popular meaning, since it did not appear from the statute (Gen. Laws R. I. c. 165) that the legislature intended to give a broader meaning. The conclusion was that the acts of the defendant did not constitute the practice of medicine. Bosworth, J., speaks of the defendant as "a person who does not know, or pretend to know, anything about disease or about the method of ascertaining the presence or the nature of disease, or about the nature, preparation, or use of drugs or remedies, and who never administers them."

In the case of *Application of the First Church of Christ Scientist*, 6 Pa. Dist. 745 (1897), Pennypacker, J., came to a different conclusion. A number of Christian Scientists sought to obtain a charter for a church, but the application was refused on the ground that the organization was attempting not merely to "inculcate a creed or promulgate a form of worship," but to "establish a prescribed method of practicing the art of healing the diseases of the body." The latter purpose was contrary to the policy of the Commonwealth, as expressed in the Act of March 24, 1877, P. L. 42, which makes it a misdemeanor to announce one's self as a "practitioner of medicine, surgery, or obstetrics, or to practice the same," without a diploma from a chartered medical school duly authorized to confer the degree of doctor of medicine.

In *State* v. *Buswell*, 40 Neb. 158 (1894), it was held that the practice of Christian Science, although not a practice of medicine as those terms are usually understood, is a violation of law, because it is a treatment for physical or moral ailments, which is included in the practice of medicine, by the express words of the statute.

From the above cases, it is seen how much the decision of future cases on the subject will depend upon the exact wording of the statutes in regard to the practice of medicine.