Louisiana Law Review

Volume 2 | Number 2
January 1940

Bankruptcy - Penalty Assessed Against Trustee

H. B.

Notes

BANKRUPTCY—PENALTY ASSESSED AGAINST TRUSTEE—Section 57(j) of the bankruptcy act provides that "Debts owing to the United States or any State or subdivision thereof as a penalty or forfeiture shall not be allowed, except for the amount of the pecuniary loss sustained by the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby and such interest as may have accrued thereon according to law."[1]

It is well established, in conformity with this section, that penalties for the tax delinquency of the *bankrupt* are not allowed against his estate if they exceed the legal rate of interest.[2] The instant case presents the question of whether this limitation is applicable when the penalty accrued during a *trustee's* operation of a bankrupt business.

A trustee, in conducting a bankrupt's business for the purpose of liquidating the same, operated the bankrupt's motor trucks but failed to pay the license fees. Under the state laws the fees were doubled when payment was not made within the time allowed by the statute. *Held,* that the state's lien for the amount of the penalty was enforceable. *Boteler v. Ingels,* 308 U.S. 57, 60 S. Ct. 29, 84 L. Ed. 20 (1939).

Prior to 1934 a trustee or receiver operating the business of a bankrupt for the purpose of liquidating the estate could not be assessed under a tax statute that did not, in terms, mention trustees or receivers as taxable.[3] In that year Congress passed an act[4] which provided that trustees and receivers conducting a bankrupt business should "be subject to all State and local taxes applicable to such business the same as if such business were

---

1. Bankruptcy Act of 1898, § 57(j), 30 Stat. 561 (1899), 11 U.S.C.A. § 93(j) (1927), as amended by Act of June 22, 1938, c. 575, 52 Stat. 866 (1938).

2. New York v. Jersawit, 263 U.S. 493, 44 S. Ct. 167, 68 L. Ed. 405 (1924); California v. Moore, 88 F. (2d) 564 (C.C.A. 9th, 1937). But when the amount of the penalty was within the legal rate chargeable on the delinquent sum the courts have generally held that the claim was allowable: United States v. Childs, 266 U.S. 304, 45 S.Ct. 110, 69 L.Ed. 299 (1924); Horn v. Boone County, 44 F. (2d) 920 (C.C.A. 8th, 1930).

3. Reinecke v. Garnder, 277 U.S. 239, 48 S. Ct. 472, 72 L. Ed. 866 (1928); In re Flatbush Gum Co., Inc., 73 F. (2d) 283 (C.C.A. 2nd, 1934); In re Browning King & Co., 79 F. (2d) 983 (C.C.A. 2nd, 1935); In re Messenger's Merchants Lunch Rooms, Inc., 85 F. (2d) 1002 (C.C.A. 7th, 1936).

4. Act of June 18, 1934, c. 585, 48 Stat. 993, 28 U.S.C.A. § 124(a) (Supp. 1938).

conducted by an individual or corporation." The court decided the instant case under the provisions of this act and held that a state having the power of taxing a business conducted by a trustee on an equal footing with other businesses, must, in order to realize this equality, be given the power to impose penalties for delinquencies.

It is submitted that the 1934 act[5] was designed only to permit the assessment of trustees and receivers under general tax statutes and it does not purport to remove any of the restrictions imposed by Section 57 (j) relating to the provability of penalties. Applying the well-settled rule of construction that tax statutes should not be extended by implication,[6] it might well have been assumed that had Congress intended to allow liens for tax penalties incurred by the trustee to be secured against the estate, it would have declared such intention in the act. Since the provision in Section 57 (j) is for the benefit of the creditors and purports to protect the bankrupt estate from the imposition of penalties and forfeitures which are punitive in nature, it is difficult to find a sound practical reason for a distinction between penalties accruing against the bankrupt and those accruing against the trustee.

H. B.

CORPORATIONS—VALIDITY OF CONTRACTS BETWEEN CORPORATION AND DIRECTOR OR OFFICER—A corporation purchased an automobile from plaintiff, payment being secured by a promissory note and vendor's lien. The car was subsequently sold to the corporation's president and manager, who in turn sold it to defendant. Plaintiff sued to enforce the vendor's lien. In holding that the vendor's lien was extinguished by sale and delivery of the car, the court stated that an officer or director can contract with the corporation if the transaction is fair and in good faith. *General Motors Acceptance Corporation v. Hahn*, 190 So. 869 (La. App. 1939).

Generally a contract entered into between a corporation and one of its officers or directors is voidable at the option of the corporation without regard to the fairness of the transaction or the good faith of the officer or director.[1] This rule is subject to the

5. See note 4, supra.

6. In re Flatbush Gum Co., Inc., 73 F. (2d) 283 (C.C.A. 2nd, 1934), cert. denied, New York v. Arnold, 294 U.S. 713, 55 S.Ct. 509, 79 L.Ed. 1247 (1935).

1. Massoth v. Central Bus Corp., 104 Conn. 683, 134 Atl. 236 (1926); Frankford Exchange Bank v. McCune, 72 S.W. (2d) 155 (Mo. App. 1934); Shaw v. Crandon State Bank, 145 Wis. 639, 129 N.W. 794 (1911). See Holcomb v. Forsyth, 216 Ala. 486, 113 So. 516, 520 (1927).