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Corporations - Validity of Contracts Between Corporation and Director or Officer

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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).

qualification that where the corporation is represented in the transaction by a disinterested majority of the board of directors or other competent agents the contract is valid if it is fair to the corporation and if, further, the officer or director has acted in good faith.[2] However, such contracts are subject to close scrutiny by the courts.[3]

In accordance with the above mentioned rule, it has been held in Louisiana that a sale of property by a corporation to one of its directors is voidable at the option of the corporation when unfair to it, notwithstanding the fact that the transaction was approved by a disinterested majority of the board of directors.[4] Whether or not a "fair" contract between a corporation and one of its officers or directors is valid is a question which has not yet been squarely presented to a Louisiana court.[5] However, a corporation's deed executed by its president to himself, where made upon an annexed resolution reciting that it had been unanimously approved by the board of directors, was held valid on its face, so that a good faith purchaser relying thereon would be protected.[6]

The dictum[7] in the instant case lends added weight to the inference, which may be drawn from the above authorities,[8] that,

2. Aetna Indemnity Co. v. Altadena Min. Inv. Syndicate, 11 Cal. App. 26, 104 Pac. 470 (1909); Citizen's Development Co. v. Kypawava Oil Co., 191 Ky. 183, 229 S.W. 88 (1921). See Holcomb v. Forsyth, 216 Ala. 486, 113 So. 516, 520 (1927); Massoth v. Central Bus. Corp., 104 Conn. 683, 689, 134 Atl. 236, 238 (1926); Veeser v. Robinson Hotel Co., 275 Mich. 133, 137, 266 N.W. 54, 55 (1936); Frankford Exchange Bank v. McCune, 72 S.W. (2d) 155, 158 (Mo. App. 1934); Crocker v. Cumberland Min. & Mill Co., 31 S.D. 137, 146, 139 N.W. 783, 784-785 (1913); Williams & Miller Gin Co. v. Knuttson, 63 S.W. (2d) 576, 577 (Tex. Civ. App. 1933). See also 3 Fletcher, Corporations (Perm. ed. 1931) 287, § 931.

3. Twin-Lick Oil Co. v. Marbury, 91 U.S. 587, 23 L.Ed. 328 (1875); Gall v. Cowell, 118 W.Va. 263, 190 S.E. 130 (1937).

4. Crescent City Brewing Co. v. Flanner, 44 La. Ann. 22, 10 So. 384 (1892).

5. Such contracts have been declared subject to close scrutiny by the courts. See Bland v. Paradice Colonization Co., Inc., 146 So. 778, 779 (La. App. 1933). Since such a rule would be meaningless if *any* contract between a corporation and one of its officers or directors is voidable at the option of the corporation, a strong implication is raised that such a contract, if fair to the corporation, would be valid.

6. De Soto Corp. v. Roberts Lumber & Grain Co., Inc., 174 La. 620, 141 So. 78 (1932).

7. The issue as to whether or not the corporation could have avoided the contract does not appear to have been raised.

8. See footnotes 4, 5, and 6, supra. See further Bland v. Paradice Colonization Co., Inc., 146 So. 778, 779 (La. App. 1933), wherein the court, after holding the evidence insufficient to prove that plaintiff was an officer or director of defendant corporation and that for that reason the rules governing contracts between a corporation and its officers or directors were not applicable stated: "Furthermore, even if the above doctrine were applicable, in the face of positive testimony to the contrary, courts cannot assume that a wrong has been done merely because a favorable opportunity for its perpetration existed."

in Louisiana, an officer or director may contract with the corporation (at least where the latter is represented by a disinterested majority of the board of directors or by other competent agents), provided the transaction be free from any overreaching or unfairness.

K. J. B.

CRIMINAL PROCEDURE—HOMICIDE—EVIDENCE OF DANGEROUS CHARACTER AND PRIOR THREATS—In a prosecution for homicide the defendant relied on self defense. The trial judge excluded evidence as to the dangerous character of the deceased and as to two previous attempts upon the life of the defendant by the deceased on the ground that no "overt act" was shown to have been committed by the latter. On appeal, *affirmed:* (1) an overt act is a hostile demonstration of such a character as to create in the mind of a reasonable person the belief that he is in immediate danger of losing his life or suffering bodily harm;[1] (2) the proof of such hostile demonstration must be made to the satisfaction of the trial judge subject to the review of the Supreme Court before the evidence is admissible.[2] *State v. Stracner,* 190 La. 457, 187 So. 571 (1938).†

Ordinarily in a trial for homicide evidence of prior threats or the dangerous character of the deceased are inadmissible.[3] However, if the defendant claims the killing was in self defense, it becomes incumbent on him to satisfy the jury that he acted in a reasonable belief that he was in imminent danger of life or limb at the time he perpetrated the homicide. Hence his knowledge of the dangerous character of the deceased or threats on the defendant's life made by him and communicated to the latter are admissible for this purpose.[4] Furthermore in some jurisdictions, though the defendant had no knowledge of such facts, evidence thereof is admissible for the purpose of determining whether the deceased or the accused was the aggressor.[5]

† See The Work of the Louisiana Supreme Court for the 1937-1938 Term (1939) 1 LOUISIANA LAW REVIEW 314, 383.

1. Accord: State v. Brown, 172 La. 121, 133 So. 383 (1931); State v. Jones, 175 La. 1066, 145 So. 9 (1932).

2. Accord: State v. Brown, 172 La. 121, 133 So. 383 (1931); State v. Scarbrock, 176 La. 48, 145 So. 264 (1932); State v. Boudreaux, 185 La. 434, 169 So. 459 (1936).

3. Wharton, Criminal Evidence (11 ed. 1935) § 339.

4. Ibid.

5. Ibid. This exception has not been made in Louisiana generally, yet some few early cases held that such evidence was admissible to show who was the aggressor. State v. Robinson, 52 La. Ann. 616, 27 So. 124 (1900); State v. Lindsay, 122 La. 375, 47 So. 687 (1908); State v. Barksdale, 122 La. 788, 48 So. 264 (1909).