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Corporations - Implied Repeal of By-Laws by Action of the Directors

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out an unconstitutional discrimination unless the positions in question were fairly well standardized as to qualifications, duties and salaries.

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CORPORATIONS—IMPLIED REPEAL OF BY-LAWS BY ACTION OF THE DIRECTORS—Plaintiff, who was elected comptroller by the board of directors of defendant company for a period of one year, was dismissed without cause. The by-laws provided that the board of directors should elect officers to serve during the pleasure of the board but authorized the board to make, alter or change the by-laws. *Held,* that since the board of directors had authority to make, alter and change the by-laws, their action in electing plaintiff for a period of one year abrogated the by-laws to that extent, and plaintiff is entitled to the balance due under his contract. *Hill v. American Co-operative Ass'n,* 197 So. 241 (La. 1940).

The power to make or amend the by-laws of a corporation ordinarily rests in the stockholders, but this power may be given to the board of directors.[1] When the power to make the by-laws rests in the stockholders, the general rule is that they may not be waived by the board of directors, and any act by the board in contravention thereof is ultra vires.[2] However, the courts have uniformly held, as in the instant case, that if the board of directors is given the power to make or alter the by-laws, it may waive any of them.[3] In reaching the above conclusion the court distinguished two earlier Louisiana cases[4] in which this power had been retained by the stockholders. In both of these cases it

1. La. Act 250 of 1928, § 28, I [Dart's Stats. (1939) § 1109, I]; Klix v. Polish Roman Catholic St. Stanislaus Parish, 137 Mo. App. 347, 118 S.W. 1171 (1909); North Milwaukee Town-Cite Co. No. 2 v. Bishop, 103 Wis. 492, 79 N.W. 785 (1899). ". . . the power to adopt by-laws resides inherently and primarily in the stockholders . . . in the absence of anything in the charter or general laws to the contrary." 8 Fletcher, Corporations (1931) 645, § 4172.

2. Hunter v. Sun Mutual Ins. Co., 26 La. Ann. 13 (1874); Fowler v. Great Southern Tel. & Tel. Co., 104 La. 751, 29 So. 271 (1901); Mulrey v. Shawmut Mutual Fire Ins. Co., 86 Mass. 116, 81 Am. Dec. 689 (1862); Douglass v. Merchants' Ins. Co., 118 N. Y. 484, 23 N.E. 806 (1890).

3. Realty Acceptance Corp. v. Montgomery, 51 F. (2d) 636 (C.C.A. 3rd, 1930); State v. Wiley, 100 Ind. App. 438, 196 N.E. 153 (1935); Bank of Holly Springs v. Pinson, 58 Miss. 421, 38 Am. Rep. 330 (1880); Farmer's State Bank v. Haun, 30 Wyo. 322, 222 Pac. 45 (1924).

4. Hunter v. Sun Mutual Ins. Co., 26 La. Ann. 13 (1874); Fowler v. Great Southern Tel. & Tel. Co., 104 La. 751, 755, 29 So. 271, 272 (1901). In the latter case the court did not find that the plaintiff was employed by the year and therefore the discussion concerning waiver of by-laws was dictum.

had been held that the board had no power to waive. But even in such cases, a constant disregard of the by-laws by the board of directors with the acquiescence of the stockholders may effect their repeal. Thus, a habitual failure of the directors to comply with by-laws providing for notice of assessments was held to abrogate them.[5] Continued disregard of the by-laws by the directors in assessing stock for a greater sum than provided,[6] or in making loans for a number of years,[7] has been held to result in waiver.

J. W. L.

CRIMINAL LAW — FALSE PRETENSE AND CONFIDENCE GAME STATUTE—MEANING OF "PROPERTY"—Defendant, superintendent of the Louisiana Highway Commission, used highway commission labor to paint his house and improvements. He was charged with obtaining "money or property" by means of false pretenses[1] and also by means of the confidence game.[2] *Held*, that labor, being neither money nor property, was not covered by these statutes. *State v. Smith*, 197 So. 429 (La. 1940).

Perhaps a result more desirable than the one reached in the instant case would have been achieved if the court had adopted a broader construction of the word "property."[3] Yet the decision has ample support in legal precedent.[4] It may appear rather

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5. Graves Valley Irr. Co. v. Fruita Imp. Co., 37 Colo. 483, 86 Pac. 324 (1906).

6. Huxtable v. Berg, 98 Wash. 616, 168 Pac. 187 (1917).

7. Blair v. Metropolitan Savings Bank, 27 Wash. 192, 67 Pac. 609 (1902).

1. La. Rev. Stats. of 1870, § 813 [Dart's Crim. Stats. (1932) § 945]: "Whoever, by any false pretense, shall obtain or aid and assist another in obtaining, from any person, money or any property, with intent to defraud him of the same, shall on conviction be punished by imprisonment at hard labor or otherwise, not exceeding twelve months."

2. La. Act 43 of 1912, § 1 [Dart's Crim. Stats. (1932) § 946]: "Every person who shall obtain or attempt to obtain from any other person or persons, any money or property, by means or by use of any false or bogus checks, or by any other means, instrument or device, commonly called the confidence game, shall be imprisoned with or without hard labor for not less than three months nor more than five years."

3. Cf. State v. Thatcher, 35 N.J. Law 445, 454 (1872), where the New Jersey Supreme Court, in giving the term "valuable thing" the broadest possible interpretation, declared that, "Under our humane system of criminal law, judicial ingenuity should not exhaust its resources to reach an interpretation in favor of wrong." Few courts have followed this reasoning.

4. Gleason v. Thaw, 185 Fed. 345, 34 L.R.A. (N.S.) 894 (C.C.A. 3rd, 1911), affirmed 236 U.S. 558, 35 S.Ct. 287, 59 L.Ed. 717 (1915) (services are not included within the word "property" as construed in connection with false pre-