Volume 58 | Issue 2 Article 8

February 1956

Courts--Construction of Local Statute by Foreign Court--Survival of Criminal Action After Corporate Dissolution

M. J. P.
West Virginia University College of Law

longer lawfully do, or else lose the property. As mentioned above, such a result would be illogical. But by taking the doctrine of the *Shelley* and *Barrows* cases one step further, it might be said that the determination by a state court that such a reverter is valid, is state action which denied equal protection of the laws to persons within its jurisdiction. Such reasoning is not illogical when compared with the progress toward equalization of all persons, within the meaning of the fourteenth amendment. If the above arguments are valid, the holding of the principal case would not be sustained, on appeal, or in a subsequent action.

C. M. C.

COURTS—CONSTRUCTION OF LOCAL STATUTE BY FOREIGN COURT—SURVIVAL OF CRIMINAL ACTION AFTER CORPORATE DISSOLUTION.—The United States was prosecuting *D* corporation and three of its subsidiaries *X, Y,* and *Z,* for violation of the Sherman Anti-Trust Act §§ 1, 2, 26 STAT. 209 (1890), 15 U.S.C. §§ 1, 2, (1946), in conspiring to fix prices, and to monopolize sales. After the filing of the information *X* dissolved pursuant to the laws of West Virginia, its incorporating state, and *Y* and *Z* merged with *D* corporation, pursuant to the laws of their incorporating states, Delaware and New York. *D* moved to dismiss the information as to such subsidiaries on the ground that they were no longer in existence. *Held,* motion granted, the law of the incorporating state governs the effect to be given to the merger or dissolution of a corporation, and none of the states of incorporation has statutes abrogating the common law principle that criminal actions against corporations abate upon dissolution or merger. *United States v. Union Carbide & Carbon Corp.,* 132 F. Supp. 388 (D. Col. 1955).

Is the federal court's construction binding on our own state courts? Prior decisions leave no room for doubt that our local courts can place their own constructions on the statute without considering the interpretation placed on it by the federal courts. *Union Pacific R.R. v. Weld County,* 247 U.S. 282, 287 (1917). In *Johnson v. Jordan,* 22 F. Supp. 286 (E.D. Okla. 1938), where a federal court had construed a state statute, and the state court later had placed a different construction on it, the federal court was now confronted with the question of which construction is was bound to follow. The court ruled that "[a]fter a contrary construction by the state court of last resort, it being a matter peculiarly within

the province of the state court, the federal courts should no longer adhere to its [*sic*] former holding, but, on the contrary, should accept the construction of the state court." *Id.* at 290.

The significant part of the West Virginia statute construed in the principal case reads: "When a corporation shall . . . be dissolved . . . the board of directors and the executive officers . . . may cause suits to be brought, conducted, prosecuted, or defended." W. VA. CODE c. 31, art. 1, § 83 (Michie 1949). The instant decision is of particular interest to the West Virginia bar for the reason that our own highest court heretofore had no occasion to pass on the applicability of the above section to criminal prosecutions. The court in the principal case expressed that if there were any West Virginia cases in point it would follow the construction given by the local court; *United States v. Union Carbide & Carbon Corp., supra* at 390. In the absence of a local construction it is well settled that federal courts are "at liberty . . . to exercise . . . independent judgment." *Oklahoma-Arkansas Telephone Co. v. Southwestern Bell Telephone Co.,* 45 F.2d 995, 998 (8th Cir. 1930), *cert. denied,* 283 U.S. 822 (1930).

On the merits the court felt itself "bound by the decision of the Court of Appeals [for the Tenth Circuit] in United States v. Safeway Stores, [140 F.2d 834 (1944), which citation the court failed to incorporate in its opinion] that 'suits, actions and proceedings' under the Delaware code do not embrace criminal prosecutions." *United States v. Union Carbide & Carbon Corp., supra* at 390. Since the court found the pertinent West Virginia statute "enough alike," though not "literally parallel," *id.* at 389, it found itself to be "consistent in adhering to that decision that 'suits' under West Virginia Law do not include criminal actions." *Id.* at 390.

Although the interpretation placed upon the statute in the principal case is correct in principle, nevertheless, the West Virginia Supreme Court of Appeals is at liberty to allow the survival of criminal actions. Thus, it may rule that the term "suits" in this statute is not qualified by the adjective "civil," and that there is no reason for reading such a qualification into the statute. Marcus, *Suability of Dissolved Corporations—A Study in Interstate and Federal-State Relationships,* 58 HARV. L. REV. 675, 687 (1945). Such interpretation however, would not be in keeping with the ordinary meaning of the term "suit." In addition, such construction would be opposed to the common law rule that only exisiting persons can be found guilty of crimes. *United States v. Daniel,* 47 U.S. (6 How.) 11

(1848). But these arguments might be outweighed by a public policy consideration, for does it not follow from the decision in the instant case that "corporations could commit serious public offenses until caught and then escape punishment simply by dissolving and either transferring their assets to a related corporation or creating a new one"? Marcus, *supra* at 703.

In a recent decision a federal district court, realizing the obligation of the court to the public, enjoined a proposed corporate dissolution in view of an impending prosecution. *United States v. Western Pa. Sand and Gravel Ass'n,* 114 F. Supp. 158 (W.D. Pa. 1953). Although theoretically ideal, such a solution is not ordinarily available since courts usually have no notice of an impending dissolution. Therefore it might be suggested that as soon as an information against a corporation is filed with a court, a restraining order enjoining dissolution during pendency of the criminal prosecution should be issued as a matter of routine, at least in cases where dissolution is not unlikely.

There is little doubt that a major public policy question is involved. Since a corporation increases its profits at the expense of the public it should not be permitted to escape criminal liability by dissolution. With the rise of the corporation's dominance in the economic life of the nation the problem is an increasing one. Thus, financially the wrongs of corporations tend to outweigh those of individual wrongdoers.

To prevent the frustration of policy on which the criminal liability of corporations is based, two courses are open to the West Virginia court when the question arises here: (1) to follow the instant decision, in which case an implementation as that suggested by *United States v. Western Pa. Sand and Gravel Ass'n, supra,* is almost mandatory. But this solution could not insure more than limited success because of the practical problems involved. It might therefore be suggested that (2) the West Virginia court disregard the present decision, which it is at liberty to do, and to interpret "suit" as including criminal prosecutions. However, such an interpretation would be inconsistent with the maxim of construing words according to their ordinary meaning. Moreover, since upon dissolution the corporate assets may pass into the hands of the stockholders within as short a period as two weeks after expiration of ample time for the payment of exisiting debts, see W. VA. CODE c. 31, art. 1, § 80 (Michie 1955), better means might have to be found to hold the property subject to the imposition of a fine until the end of the criminal proceedings.

Since neither solution is wholly satisfactory the legislature may have to be charged with the task of providing a remedy by statute, (A) to extend criminal liability of corporations beyond corporate dissolution and (B) to allow the assets to be followed into the hands of stockholders, the real parties in interest, and require them to respond to the extent of their distributive shares. See *State v. Circuit Court for Milwaukee County,* 184 Wis. 301, 199 N.W. 213 (1924).

M. J. P.

DEEDS—VALIDITY OF A DEED NOT SIGNED BY ALL PARTIES DESIGNATED AS GRANTORS.—In a proceeding brought to partition real estate, reversed on other grounds, *D* entered, as evidence that she was not a proper party to the suit, a deed designating eight grantors but signed by only *D* and four others. Dictum, that such deeds are governed by the rule laid down in *Ely v. Phillips;* that those parties signing a contract prepared for signatures of other persons, to be affixed along with theirs, and intended to be signed by all the parties named in it, are not bound until all have signed it, and incur no obligation, if any of those who were to have signed refuse to do so. *Stalnaker v. Stalnaker,* 80 S.E.2d 878, 883 (W. Va. 1954).

In *Ely v. Phillips,* 89 W. Va. 580, 109 S.E. 808 (1921), the court was not applying real property law to a deed but was considering an undelivered deed as memorandum of an oral contract in a suit for specific performance. The West Virginia Supreme Court of Appeals and other courts have held than an undelivered deed that has been signed is sufficient memorandum of an oral contract to sell real property to remove the contract from the Statute of Frauds. *Moore, Keppel & Co. v. Ward,* 71 W. Va. 393, 76 S.E. 807 (1912); *Parrill v. McKinley,* 9 Gratt. 1 (Va. 1852). The court in the *Ely* case, applying the contract rule that the parties are not bound pointed out that such is the general rule but that there is an exception, that in the absence of evidence showing an intent not to be bound, the parties are bound by their signing the contract. That case turned on the point that the contract was for the sale and removal of timber, the court refusing specific performance on the ground that all cotenants would have to agree to removal before the timber could be removed, holding that this was sufficient to show that those signing did not intend to be bound until all the cotenants signed. Obviously, the *Ely* case is distinguishable as the court there was applying contract law. The authorities are uniform in holding