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Corporations--Foreign Corporations--Interest of Stockholders in Corporate Property Seized by Government Under Trading with the Enemy Act (Kaufman v. Societe Internationale, 72 Sup. Ct. 611 (1952))

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reposes its belief, the criticism is not constructive and ought legitimately to be inhibited by preventive or remedial enactments.

CORPORATIONS—FOREIGN CORPORATIONS—INTEREST OF STOCKHOLDERS IN CORPORATE PROPERTY SEIZED BY GOVERNMENT UNDER TRADING WITH THE ENEMY ACT.—American stockholders of a corporation organized in a neutral country seek to intervene in a suit by the corporation to recover property seized by the United States under the provisions of the Trading With the Enemy Act.[1] Petitioners claim that the corporation, allegedly dominated by officers in conspiracy with Germany during the war, would not adequately protect their interest in the specific assets. The appellate court denied the petition, declaring that the stockholders have no legal interest in the property.[2] In reversing, the Court *held* that when the Government seizes the assets of a non-enemy foreign corporation, the severable interest of innocent stockholders in the assets must be fully protected. *Kaufman v. Societe Internationale,* 72 Sup. Ct. 611 (1952).

Ecclesiastical corporations, forerunners of the modern corporation, were born of the necessity of devising a means of holding property in perpetuity.[3] From this early beginning, the courts later developed the fiction of a distinct legal entity [4] capable of holding title to property in its own name, separate from any legal interest in the stockholders.[5] The existence of this corporate entity encouraged stockholders to invest in business, since they could now do so without subjecting their personal fortunes to the risks of business.[6]

Justice Holmes, in *Klein v. Board of Supervisors,* spoke of the corporation as a person and its ownership as "a non-conductor that makes it impossible to attribute an interest in its property to its

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[1] 40 STAT. 411 (1917), 50 U. S. C. APP. § 1 *et seq.* (1946), as amended, 55 STAT. 839 (1941), 50 U. S. C. APP. § 4 *et seq.* (Supp. 1946).

[2] Kaufman v. Societe Internationale, 188 F. 2d 1017 (D. C. Cir. 1951).

[3] 1 FLETCHER, CORPORATIONS 5 (11th ed. 1931). Presumedly, the aggregation of parishioners could not take title to the property to insure continuous succession to the right to utilize the property.

[4] *See* Farmers Loan & Trust Co. v. Pierson, 130 Misc. 110, 114, 222 N. Y. Supp. 532, 538 (Sup. Ct. 1927) (excellent summary of the corporate entity theory in the United States).

[5] R. I. Hospital Trust Co. v. Doughton, 270 U. S. 69 (1926); *see* Warrior River Terminal Co. v. Alabama, 58 So. 2d 100, 101 (Ala. 1952); Corporation Comm'r v. Consolidated Stage Co., 63 Ariz. 257, 161 P. 2d 110, 111 (1945); Miller v. McColgan, 17 Cal. 2d 432, 110 P. 2d 419, 421 (1941). See also BALLANTINE, CORPORATIONS 288 (1946).

[6] See Elenkrieg v. Siebrecht, 238 N. Y. 254, 144 N. E. 519 (1924); Hanson v. Bradley, 298 Mass. 371, 10 N. E. 2d 259, 263 (1937).

members." [7] The mere fact that there is only one stockholder does not destroy the distinct corporate entity, nor permit the stockholder to enforce the property rights of the corporation.[8] Notwithstanding this, the courts at times have recognized a sufficient relationship between the entire assets of the corporation and the stockholders to ascribe an equitable,[9] pecuniary [10] and insurable interest to the stockholders.[11]

The corporate entity theory is not always held to be inviolate, for courts have pierced the "corporate veil" when it is used either as a cover for fraud,[12] or to evade the law.[13] While it has been said that there is a growing tendency to ignore the corporate form to prevent injustice,[14] it will not be disregarded merely because it is the more equitable thing to do.[15]

During World War I and the era following, the Supreme Court followed English decisions [16] that the stock ownership of alien corporations was not the test of enemy character.[17] However, the First War Powers Act of 1941 [18] empowered the President to seize prop-

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[7] 282 U. S. 19, 24 (1930).

[8] Button v. Hoffman, 61 Wis. 20, 20 N. W. 667 (1884) (stockholder denied right to bring replevin for corporate property); *cf.* Salvin v. Myles Realty Co., 227 N. Y. 51, 124 N. E. 94 (1915); *see* Brock v. Poor, 216 N. Y. 387, 401, 111 N. E. 229, 234 (1904).

[9] *See* Waller v. Waller, 185 Md. 150, 49 A. 2d 449, 453 (1946) (stockholder as equitable owner).

[10] Corporation Comm'r v. Consolidated Stage Co., *supra* note 5, 161 P. 2d at 111 (pecuniary interest of stockholder).

[11] Riggs v. Commercial Mutual Ins. Co., 125 N. Y. 7, 25 N. E. 1058 (1890) (insurable interest of stockholder). *But see* Matter of Gates, 243 N. Y. 193, 153 N. E. 45 (1926). "Clearly this insurable interest is in no sense an interest in the property of the corporation." *Id.* at 198, 153 N. E. at 47.

[12] Donovan v. Purtell, 216 Ill. 629, 75 N. E. 334 (1905); Quaid v. Ratowsky, 183 App. Div. 428, 170 N. Y. Supp. 812 (1st Dep't), *aff'd mem.*, 224 N. Y. 624, 121 N. E. 887 (1918).

[13] United States v. Milwaukee Refrigerator Transit Co., 142 Fed. 247 (E. D. Wis. 1905); Bigelow v. R.K.O. Radio Pictures, Inc., 170 F. 2d 783 (7th Cir. 1948); see 1 FLETCHER, CORPORATIONS 134 *et seq.* (11th ed. 1931). See Jenkins v. Moyse, 254 N. Y. 319, 172 N. E. 521, where the court distinguished evasion and avoidance of a statute.

[14] See Matter of Winburn's Will, 136 Misc. 19, 240 N. Y. Supp. 208 (Surr. Ct. 1930); *see* Metropolitan Holding Co. v. Snyder, 79 F. 2d 263, 266 (8th Cir. 1935).

[15] See Matter of Goldstein, 186 Misc. 584, 60 N. Y. S. 2d 41 (Sup. Ct. 1946); Wagner v. Manufacturers Trust Co., 237 App. Div. 175, 261 N. Y. Supp. 136 (1st Dep't 1932), *aff'd*, 261 N. Y. 699, 185 N. E. 799 (1933); Weisser v. Mursam Shoe Corp., 127 F. 2d 344 (2d Cir. 1942).

[16] Continental Tyre & Rubber Co. v. Daimler Co., [1915] 1 K. B. 893, *rev'd on other grounds*, [1916] 2 A. C. 307; *cf.* Queen v. Arnaud, 9 Q. B. 806, 115 Eng. Rep. 1485 (1846).

[17] Hamburg American Line v. United States, 277 U. S. 138 (1928); see Fritz Schultz Co. v. Raimes & Co., 99 Misc. 626, 164 N. Y. Supp. 454 (N. Y. City Ct.), *aff'd*, 100 Misc. 697, 166 N. Y. Supp. 567 (Sup. Ct. 1917).

[18] 55 STAT. 838 (1941), 50 U. S. C. APP. § 4 *et seq.* (Supp. 1946), amending the original Trading With the Enemy Act.

erty owned by corporations organized in neutral countries. Consequently, enemies could not avoid seizure of their property by incorporating under the laws of neutral countries.[19]

Under Section 9 of the original Act, any non-enemy has a right to recover confiscated property from the Alien Property Custodian upon proof of "any interest, right or title." [20] In two suits involving assets of a corporation whose stock had been seized by the Alien Property Custodian, the courts declined to pierce the "corporate veil" and ruled that the United States acquired only the rights of a stockholder, which do not include title to the property of the corporation.[21]

In the instant case, the Court has recognized a severable interest of the stockholders in specific assets of the corporation. The right to intervene was not decided upon any derivative or representative foundation, as was the issue in the district court.[22] No legal title having been asserted, the Court has apparently decreed an equitable interest sufficient.

The majority opinion speaks of "an interest [of the stockholders] in the assets proportionate to their stock holdings . . ." [23] but neither defines the interest nor cites authority for its recognition. Justice Reed, in the dissenting opinion, asserts that the Court has disregarded the corporate entity in declaring a present interest of stockholders in the physical property of an unliquidated corporation. Since a stockholder has such a severable interest under the provisions of this legislation, query: Would such an interest be recognized in actions for relief from other confiscatory acts of the Government, such as the exercise of the right of eminent domain [24] over corporate property?

DOMESTIC RELATIONS — ADOPTION — RELIGIOUS BELIEFS OF CHILD AND FOSTER PARENTS.—Petitioners in this adoption proceeding had obtained the necessary records,[1] and the consent of the natu-

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[19] *See* Kaufman v. Societe Internationale, 72 Sup. Ct. 611, 612 (1952).

[20] 40 STAT. 411, 419, 50 U. S. C. APP. § 9 (1946). See Standard Oil Co. of N. J. v. Markham, 57 F. Supp. 332 (D. C. S. D. N. Y. 1944); Pflueger v. United States, 121 F. 2d 732 (D. C. Cir.), *cert. denied*, 314 U. S. 617 (1941).

[21] Schering Corp. v. Gilbert, 153 F. 2d 428 (2d Cir. 1946); Knitting Machine Corp. v. Hayward Hosiery Co., 95 F. Supp. 510 (D. C. Mass. 1950).

[22] Societe Internationale v. McGrath, 90 F. Supp. 1011 (D. D. C. 1950).

[23] Kaufman v. Societe Internationale, 72 Sup. Ct. 611, 614 (1952).

[24] "In the ordinary condemnation case the award in favor of the owners of the land condemned stands in lieu of the land. . . . [O]nly those who had an estate in the land have an interest in the fund which takes its place." Oliver v. United States, 156 F. 2d 281, 283 (8th Cir. 1946).

[1] ANN. LAWS MASS., c. 210, § 5A (1950) (requires investigation by, and report from, welfare agency).