

Corporations--Pledgee's Right to Stock Dividends (Manufacturers Trust Co. v. Bank of Yorktown, 156 Misc. 793 (Mun. Ct. 1935))

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performed within a year, and not whether in fact such contract had been so performed, hence, if performance within one year was possible, the contract was not repugnant to the statute.⁷ Under the amendment, an oral agreement is unenforceable if by its terms, the performance is not to be completed before the end of a lifetime, although that contingency may occur within one year from the time the contract is made.⁸ Oral agreements for a person's support during life are within the statute, although the life may not extend beyond a year.⁹ So too, oral contracts to render services for life,¹⁰ must be in writing to be enforceable today.

M. B. G.

CORPORATIONS — PLEDGEE'S RIGHT TO STOCK DIVIDENDS.—Plaintiff is the pledgee of certain shares of capital stock of the defendant, deposited with the plaintiff as collateral for a note executed by one Skolkin to the plaintiff. The certificate of stock provided that it was transferable only upon the books of the defendant corporation. Plaintiff never presented the stock to the defendants for transfer. Skolkin, the pledgor, was also indebted to the corporation. Subsequently, plaintiff transmitted to the defendant an order of Skolkin directing that all dividends on the stock be sent to the plaintiff. Dividends were thereafter declared and plaintiff now claims these dividends by virtue of its pledge, while defendant asserts the right to offset the dividends against Skolkin's indebtedness. *Held*, failure of pledgee of corporate stock to present the stock for transfer on the books of the corporation did not affect its right to the dividends declared thereon, where the corporation had knowledge of the pledge prior to the payment of dividends, and where a copy of Section 66 of the Stock Corporation Law¹ was not printed on the stock certificate. *Manufacturers Trust Co. v. Bank of Yorktown*, 156 Misc. 793, 282 N. Y. Supp. 507 (Mun. Ct. 1935).

It is a basic and well settled principle, that in the absence of a contrary provision in the pledge agreement, it is the right of a pledgee of stock to collect the dividends declared thereon,² and that

⁷ *Mutual Life Ins. Co. v. Ritsher*, 196 Ill. App. 27 (1915).

⁸ WHITNEY, *CONTRACTS* (2d ed. 1934) 165.

⁹ *McCabe v. Green*, 18 App. Div. 625, 45 N. Y. Supp. 723 (2d Dept. 1897).

¹⁰ *Cox v. Baltimore & Ohio S. W. Ry.*, 180 Ind. 495, 103 N. E. 337 (1913).

¹ STOCK CORPORATION LAW § 66. "Transfer of Stock by Stockholder indebted to corporation.—If a stockholder shall be indebted to the corporation, the directors may refuse to consent to a transfer of his stock until such indebtedness is paid, provided a copy of this section or the substance thereof is written or printed upon the certificate of stock."

² *Guaranty Co. v. East Rome Town Co.*, 96 Ga. 511, 23 S. E. 503 (1895); *Reid v. Caldwell*, 120 Ga. 718, 48 S. E. 191 (1904); *Hunt v. Rosenbaum Grain*

it is his duty to apply them to the reduction of the indebtedness for which the stock is held as security.³ In the absence of statute or by law requiring a transfer of shares to be registered on the books of the corporation, notice of such transfer is not necessary,⁴ but where, as in the instant case, for the purpose of protecting the corporation in the payment of dividends upon its stock, the certificate of stock provides that it is transferable only upon the books of the corporation, the corporation is not bound to look beyond its books to determine who is entitled to the dividends⁵ but it may safely pay them to those persons who appear on the books to be such shareholders, and it will be protected in such payments as against a pledgee who failed to give the required notice.⁶ Where, however, the corporation has knowledge of the pledge prior to the payment of dividends, it will be liable to the pledgee or transferee, notwithstanding his omission to have the transfer registered.⁷ Furthermore, to effectuate any by-law prohibiting a transfer by any stockholder who is indebted to the corporation, it is necessary that a copy of Section 66 of the Stock Corporation Law⁸ be written or printed upon the certificate of stock, and this statute has been held to apply to domestic banking corporations.⁹ From a review of the above principles, it would seem

Corp., 355 Ill. 504, 189 N. E. 907 (1934); Union Trust Co. v. Hasseltine, 200 Mass. 414, 86 N. E. 777 (1909); Detroit Trust Co. v. First Nat. Bank, 7 F. Supp. 117 (D. C. E. D. Mich. 1934); Whetsel v. Forgey, 323 Mo. 681, 20 S. W. (2d) 523, 67 A. L. R. 476 (1929); Mandel v. No. Hudson Inv. Co., 114 N. J. Eq. 336, 168 Atl. 432 (1933); Brightson v. Claffin, 225 N. Y. 469, 122 N. E. 458 (1919); Commercial Nat. Bank v. Nat. Surety Co., 259 N. Y. 181, 181 N. E. 92 (1932) (a bank, taking stolen stock as collateral for a loan, without knowledge of the theft, is an innocent pledgee, and entitled to the dividends declared thereon); Stern & Co., Inc. v. Prizitz, 240 App. Div. 509, 270 N. Y. Supp. 715 (1st Dept. 1934); Maxwell v. Nat. Bank, 70 S. C. 532, 50 S. E. 195 (1905).

³ First Nat. Bank v. Forman, 160 So. 109 (Ala. 1935); cases cited *supra* note 2.

⁴ Alta-Cliff Co. v. Spurway, 113 Fla. 633, 152 So. 731 (1934); BALLANTINE, PRIVATE CORPORATIONS (1927) § 147.

⁵ N. Y. PERS. PROP. LAW § 164. "Corporation not forbidden to treat registered holder as owner.—Nothing in this article shall be construed as forbidding a corporation, (a) To recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends * * * etc.," Brisbane v. D. L. & W. R. R., 94 N. Y. 204 (1883).

⁶ Merchants v. Boyd Co., 143 Ga. 755, 85 S. E. 914 (1915); Bank v. Schlechter, 191 N. C. 352, 131 S. E. 732 (1926); BALLANTINE, PRIVATE CORPORATIONS (1927) § 160.

⁷ Homestake Oil Co. v. Rigler, 39 F. (2d) 40 (C. C. A. 9th, 1930); Brady v. Irby, 101 Ark. 573, 142 S. W. 1124 (1912); Mandel v. No. Hudson Inv. Co., 114 N. J. Eq. 336, 168 Atl. 432 (1933); Western Securities Co. v. Silver King Consol. Min. Co., 57 Utah 88, 192 Pac. 664 (1920).

⁸ *Supra* note 1; *In re Starbuck*, 251 N. Y. 439, 167 N. E. 580, 65 A. L. R. 216 (1929).

⁹ *In re Starbuck*, 251 N. Y. 439, 167 N. E. 580, 65 A. L. R. 216 (1929); Strahman v. Yorkville Bank, 148 App. Div. 8, 132 N. Y. Supp. 130 (1st Dept. 1911), *aff'd*, 210 N. Y. 536, 103 N. E. 1133 (1913).

that defendant's failure to cause a copy of Section 66¹⁰ to be printed upon the stock certificate was *ipso facto* sufficient ground upon which to have allowed a recovery by the plaintiff and in the writer's opinion, had a copy of Section 66 been printed on the stock certificate, the question of notice would have been immaterial and plaintiff's action would have failed.

H. T. P.

CORPORATIONS — PROMOTERS — FIDUCIARIES. — In an action brought by the plaintiff receiver to recover profits made by the defendant promoter while sole stockholder of the Duquesne Gas Corporation, an ingenious scheme for mulcting the investing public was unearthed. While in full control, the defendant had entered into two contracts with the corporation and increased its capital stock. By the first contract, the corporation agreed to purchase certain oil tracts in Pennsylvania on which the defendant had previously acquired options the actual value of which was \$2,500,000. The corporation was to issue some \$5,000,000 in bonds and pay as the purchase price for the oil lands a large block of shares and \$4,315,000 in bonds. By the second contract it agreed to sell the remainder of the bonds and stocks to the defendant promoter.

The stage having been set, nothing remained but to manipulate the machinery to unload the bonds and stocks on the investing public. By means of a one-day bank loan secured by the defendant, the deeds to the lands were released from escrow and title vested in the corporation. Immediately, the bonds were released to the eager subscribers, who had been attracted by a prospectus that grossly over-valued the property at \$6,500,000. At the close of the transaction, the corporation had been saddled with a \$5,000,000 debt represented by the outstanding bonds, and liable for some 1,250,000 shares of non-par stock. The defendant had pocketed the difference. Two years later the corporation was insolvent and the plaintiff was appointed receiver. In an action to recover illicit profits, the Circuit Court¹ had denied a recovery on the theory that the harm was personal to the individual subscribers and that the consent of the stockholders precluded the receiver of the corporation from recovery. *Held*, reversed. The defendant is liable as trustee for the creditors. No assent of the stockholders could legalize a waste of assets which would jeopardize the security of the creditors. *McCandless v. Furlaud et al.*, 296 U. S. 140, 56 Sup. Ct. — (1935).

¹⁰ *Supra* note 1.

¹ 75 F. (2d) 977 (C. C. A. 2d, 1935).