

# Foreign Corporation--Equity Jurisdiction-- Stockholder's Action (Frank v. Amer. Comm. Alcohol Corp., et al., 152 Misc. 123 (1934))

St. John's Law Review

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### Recommended Citation

St. John's Law Review (1934) "Foreign Corporation--Equity Jurisdiction--Stockholder's Action (Frank v. Amer. Comm. Alcohol Corp., et al., 152 Misc. 123 (1934))," *St. John's Law Review*: Vol. 9 : No. 1 , Article 27.  
Available at: <https://scholarship.law.stjohns.edu/lawreview/vol9/iss1/27>

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The plaintiff is not without remedy—he may file a claim with the liquidator of the insurer or he may restore the action to the calendar.<sup>9</sup>

M. E. W.

FOREIGN CORPORATION—EQUITY JURISDICTION—STOCKHOLDER'S ACTION.—The defendants are the controlling officials and directors of a foreign corporation. They fraudulently carried out a plan by which, in anticipation of the repeal of the Eighteenth Amendment, they caused the corporation to issue to their dummies 25,000 shares of common stock for grossly inadequate considerations. The plaintiff, a minority stockholder and resident of this state, brings an action in equity for a restoration and an accounting. *Held*, the courts of this state have jurisdiction in an action against the directors of a foreign corporation to enjoin a fraudulent conspiracy to dissipate the assets of that corporation and to compel the defendants to account for their fraud or negligence. *Frank v. Amer. Comm. Alcohol Corp., et al.*, 152 Misc. 123, 273 N. Y. Supp. 622 (1934).

The general rule is that the courts of equity will not assume jurisdiction of a case involving the internal affairs and management of a corporation regulated by the statutory law and public policy of a foreign country or of a sister state, and that such issues will be relegated to the local jurisdiction of incorporation.<sup>1</sup> It is consistent with this rule, however, for the courts of another jurisdiction to enjoin a fraudulent conspiracy to dissipate the property of the foreign corporation and to call the directors and officers to account for misconduct or negligence, for this is in aid of the corporation and its creditors.<sup>2</sup> If the illegal acts of the directors or officials of the corporation

<sup>9</sup> *Wecht v. Kornblum*, 147 Misc. 653, 264 N. Y. Supp. 333 (1933).

<sup>1</sup> *Sauerbrunn v. Hartford Life Ins. Co.*, 220 N. Y. 363, 115 N. E. 1001 (1917); *Cohn v. Mishkoff Costello Co.*, 256 N. Y. 102, 175 N. E. 529 (1931); *Hallenborg v. Greene*, 66 App. Div. 590, 73 N. Y. Supp. 403 (1st Dept. 1901); *Butler v. Standard Milk Flour Co.*, 146 App. Div. 735, 131 N. Y. Supp. 451 (1st Dept. 1911); *People ex rel. Ruman v. National Slav. Soc.*, 144 App. Div. 574, 137 N. Y. Supp. 1057 (1st Dept. 1911); *Cuppy v. Ward*, 187 App. Div. 625, 176 N. Y. Supp. 233 (1st Dept. 1919); *Howell v. Chicago & N. W. Ry. Co.*, 51 Barb. 378 (N. Y. 1868); *Berford v. N. Y. Iron Mine Co.*, 4 N. Y. Supp. 836 (1888); *Gregory v. N. Y., L. E. & W. R. R. Co.*, 40 N. J. Eq. 38 (1885); BALLENTINE, CORPORATIONS 868; CLARK, CORPORATIONS (3d ed.) 800.

<sup>2</sup> *Miller v. Quincy*, 179 N. Y. 294, 72 N. E. 116 (1904); *Fisk v. Chicago, R. I. & P. R. Co.*, 53 Barb. 513 (N. Y. 1868); *Kraft v. Griffon Co.*, 82 App. Div. 29, 81 N. Y. Supp. 438 (1st Dept. 1903); *Jacobs v. Mexican Sugar Refining Co., Ltd.*, 104 App. Div. 242, 98 N. Y. Supp. 541 (1st Dept. 1905); *Acken v. Coughlin*, 103 App. Div. 1, 92 N. Y. Supp. 700 (1st Dept. 1905); *Weber v. Wallenstein*, No. 1, 111 App. Div. 693, 97 N. Y. Supp. 846 (4th Dept. 1906).

offend solely against the majesty of the state to which it owes its life, or, in other words, constitute public wrongs only, then the courts of another state can provide no remedy.<sup>3</sup> This is on the theory that the courts of this state should not entertain actions simply to redress the outraged dignity of foreign governments.<sup>4</sup> If, however, such illegal acts also cause injury to the property rights of individual stockholders who are citizens of this state, those citizens are entitled to full relief, so far as such relief can be accomplished by acting directly on the persons of the defendants.<sup>5</sup> The plaintiff does not sue in his own right but in the right of the corporation and to redress wrongs not personal and peculiar to himself, but to the corporation and alike to all its stockholders.<sup>6</sup> The right of the stockholder to compel a restoration by the officers of the corporation is coextensive with the right of the corporation itself.<sup>7</sup> The corporation would not be confined to the courts of the state which created it but could pursue its officers in whatever jurisdiction it might find them; otherwise, it would be remediless if these officers remained without the state.<sup>8</sup>

A contrary rule would be unfortunate at this time, when the majority of corporate enterprises in this state are carried on under incorporations effected under the laws of other states.<sup>9</sup> Under any other rule, the directors and officials of a foreign corporation, transacting business and having its principal office in this state, might plunder the corporation with impunity and the courts of this state would be without power to redress such wrongs.<sup>10</sup>

J. E. H.

INSURANCE—EXCLUSION OF LIABILITY CLAUSE—VEHICLE AND TRAFFIC LAW.—Automobile liability insurance was issued in Connecticut, the place in which the insured resided. The policy excluded liability “while (the automobile is) being driven \* \* \* by any person in violation of law as to age or under the age of sixteen (16) years in any event.” An accident occurred in New York while the vehicle was being operated by a driver under the minimum age limit in New York, although he was over the age of sixteen years and validly li-

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<sup>3</sup> *Miller v. Quincy*, *supra* note 2; *Ernst v. Rutherford and B. S. Gas Co.*, 38 App. Div. 388, 56 N. Y. Supp. 403 (2d Dept. 1898).

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

<sup>6</sup> *Greaves v. Gouge*, 69 N. Y. 154 (1877); *Alexander v. Donohue*, 143 N. Y. 203, 38 N. E. 263 (1893); *BALLENTINE, CORPORATIONS* 611, 616; *CLARK, CORPORATIONS* (3d ed.) 486.

<sup>7</sup> *Miller v. Quincy*, *supra* note 2; *Ernst v. Rutherford and B. S. Gas Co.*, *supra* note 3.

<sup>8</sup> *Ibid.*; *BALLENTINE, CORPORATIONS* 861.

<sup>9</sup> *Supra* note 3.

<sup>10</sup> *Miller v. Quincy*, *supra* note 2; *Ernst v. Rutherford and B. S. Gas Co.*, *Fisk v. Chicago, R. I. & P. R. Co.*, both *supra* note 3.