

Corporations--Stockholders' Representative Actions (Dresdner, et al. v. Goldman, Sachs Trading Corp. et al., 269 N.Y. Supp. 360 (2d Dept. 1934))

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lation is a valid exercise of the inherent⁹ and inalienable¹⁰ police power.¹¹ That its exercise in such cases is valid and not violative of the due process clause has been conclusively decided by *Munn v. Illinois*.¹² Moreover, emergencies will extend its scope so that "A legitimate public purpose may always be served without regard to the constitutional limitations of due process and equal protection."¹³ Even though it be admitted that the more recent trend had been toward conservatism,¹⁴ the proposition has been reiterated by the courts at various intervals.¹⁵

These thoughts and others have been expressed in, and the reader is referred to, the last preceding issue of this review.¹⁶

W. E. S.

CORPORATIONS—STOCKHOLDERS' REPRESENTATIVE ACTIONS.—

The defendants, directors of the corporation, have wrongfully wasted and dissipated the assets of the corporation. The plaintiff, stockholders, bring this action to recover the value of the assets wrongfully wasted by the directors, alleging specific acts of misconduct. Similar actions were started previously by other stockholders. The defendant made a motion to dismiss this action on the ground that there were similar actions pending. *Held*, a derivative action accrues to the stockholders of a corporation when its directors have wrongfully depreciated its assets even though a prior action had been commenced. *Dresdner, et al. v. Goldman, Sachs Trading Corp. et al.*, — App. Div. —, 269 N. Y. Supp. 360 (2d Dept. 1934).

⁹ *Town of East Hartford v. Hartford Bridge Co.*, 51 U. S. (10 How.) 511 (1850).

¹⁰ *Goszler v. Corporation of Georgetown*, 19 U. S. (6 Wheat.) 593 (1821); *Boyd v. Alabama*, 94 U. S. 645 (1876); *Boston Beer Co. v. Massachusetts*, 97 U. S. 25 (1877); *Atlantic Coast Line R. Co. v. City of Goldsboro*, 232 U. S. 548, 34 Sup. Ct. 364 (1913).

¹¹ 6 R. C. L. §§252, 211, and cases cited. See also *Lemieux v. Young*, 211 U. S. 489, 29 Sup. Ct. 174 (1908); *cf. Wright v. Hart*, 182 N. Y. 330, 75 N. E. 404 (1905) (regulation of sale prices held to be an invalid exercise of police power), overruled, *Klein v. Maravelas*, 219 N. Y. 383, 114 N. E. 809 (1916).

¹² 94 U. S. 113 (1876).

¹³ *People v. Perratta*, *supra* note 8, citing *People ex rel. Durham Realty Co. v. La Fetra*, 230 N. Y. 429, 130 N. E. 601 (1921); *New York ex rel. Bryant v. Zimmerman*, 278 U. S. 63, 49 Sup. Ct. 61 (1928).

¹⁴ Note (1933) 8 ST. JOHN'S L. REV. 82, 84.

¹⁵ *German Alliance Ins. Co. v. Kansas*, 233 U. S. 389, 34 Sup. Ct. 612 (1913); *O'Gorman & Young, Inc. v. Hartford Fire Ins. Co.*, 282 U. S. 251, 51 Sup. Ct. 130 (1931); *Stephenson v. Binford*, 287 U. S. 251, 53 Sup. Ct. 181 (1932); see *People v. Nebbia*, *supra* note 8, at 268.

¹⁶ Note (1933) 8 ST. JOHN'S L. REV. 82.

Stockholders' actions (not collusive) may be brought for three distinct purposes: one, for the genuine purpose of benefit to all the stockholders¹ with determination to pursue the suit to judgment, with all stockholders invited in good faith to join in labor and in expense; two, for the purpose of individual benefit by private settlement² with the fact of bringing of the suit kept secret; three, a suit brought purely for "strike"³ purposes. The derivative right of stockholders to maintain an action⁴ to recover the assets belonging to its stockholders from those who have confiscated or wasted them.⁵

There are many actions representative in character where the principle is applied that a suit by one will not bar a later suit by another similarly situated.⁶ The judgment, when obtained, is a bar to other actions,⁷ no matter what the result may be.⁸ It is a bar not only to questions decided but as to those which might have been presented and tried but were not.⁹

Courts should not be eager to prevent presentation of all issues by parties sufficiently interested to bring suit, but should pursue a liberal policy in permitting them freely to participate in the trial, where the judgment will eventually become binding upon them¹⁰ so that other stockholders will be assured of a complete remedy.¹¹ There is no rule of law which permits a stockholder who commences the first derivative action to have any priority of right in controlling the litigation.¹² If the first action is free from collusion and is being prosecuted with skill and in good faith, grounds for a stay of prosecution may be shown¹³ but the defendant may not have a dismissal¹⁴ of the action.

M. E. W.

¹ BALLANTINE, PRIVATE CORPORATIONS (1927) p. 611; *Home Fire Ins. Co. v. Barber*, 67 Neb. 644, 93 N. W. 1024 (1903); Note (1907) 21 HARV. L. REV. 202; *Morrill v. Little Falls Mfg.*, 46 Minn. 260, 48 N. W. 1124 (1891).

² *Brinckerhoff v. Bostwick*, 99 N. Y. 185, 1 N. E. 663 (1885).

³ *Rose v. Bradley*, 65 N. W. 509, 91 Wis. 619 (1895).

⁴ *Brennan v. Barnes*, 133 Misc. 340, 232 N. Y. Supp. 112 (1928); *Simon v. David*, 241 N. Y. Supp. 188 (1930).

⁵ *Kavanaugh v. Commonwealth Trust Co.*, 181 N. Y. 121, 73 N. E. 562 (1905); *O'Connor v. Virginia Passenger & Power Co.*, 184 N. Y. 46, 76 N. E. 1082 (1906).

⁶ In *Brinckerhoff v. Bostwick*, *supra* note 2, the court said: "The bringing of the action by the original plaintiff did not prevent other stockholders from bringing similar actions. But the moment a judgment should be recovered in one action for the benefit of all stockholders, the proceeding in all others would be stayed"; *Hirshfield v. Fitzgerald*, 157 N. Y. 166, 51 N. E. 997 (1898).

⁷ *Ibid.*

⁸ BALLANTINE, PRIVATE CORPORATIONS (1927) §195, p. 633.

⁹ *Cromwell v. County of Sac*, 94 U. S. 351, 352 (1876); *Hull v. Hull*, 225 N. Y. 342, 122 N. E. 252 (1919).

¹⁰ *Supra* note 8.

¹¹ *Innes v. Lansing*, 7 Paige 583 (N. Y. 1839).

¹² *Brinckerhoff v. Bostwick*, *supra* note 6; *Hirshfield v. Fitzgerald*, *supra* note 6.

¹³ *Brinckerhoff v. Bostwick*, *supra* note 6.

¹⁴ N. Y. CIVIL PRACTICE RULES (1921) R. 107, subd. 4.