GARNISHMENT OF CORPORATE STOCK

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Garnishment of Corporate Stock — Ancillary to an action on a foreign judgment obtained against defendant, plaintiff started a garnishment proceeding in Minnesota against certain domestic corporations including the Weisman Holding Co. Officers of the Weisman Holding Co. refused to make disclosures of the stock ownership of the principal defendant on the grounds that the plaintiff had no right to garnish defendant's shares of stock after the certificates for those shares had been delivered. Held, that the disclosure should be made because shares of corporate stock are "personalty" in possession of the corporation and subject to garnishment as the property of the shareholder, even where the stock certificates have been delivered.1 Wackerbarth v. Weisman, 207 Minn. 507, 292 N. W. 214 (1940).

The fundamental theory of garnishment statutes is based on the fact that the garnishee is a debtor or holds property of the principal defendant, who in turn is indebted to the plaintiff.2 But a corporation does not owe a debt to, or hold property of, one of its stockholders in respect of his shares of stock.3 Thus the ordinary writ of attachment or execution is not an appropriate remedy against such shares unless its scope has been extended by legislation.4 Nor is garnishment a proper remedy by which to subject them to the satisfaction of a debt of the owner, unless it is made so by statute. Modern garnishment statutes have been so extended, either by express legislation or by judicial interpretation.5 The courts have little difficulty in holding that certificates of stock in a foreign corporation which are in possession of a third party within the state boundaries are subject to a garnishment action.6 A knottier problem presents itself, however, with reference to the garnishment of certificates of a domestic corporation.

1 One judge concurred in the result but dissented on the question whether the corporation was a proper garnishee defendant after the issuance of certificates. The dissent was on the theory that there can be no possession or control over the property without possession or control of the certificate.

2 12 R. C. L. 775 (1916).


4 Id. Here the court had before it a statute which provided, "The stock owned by any defendant in any body corporate shall be liable to execution like other goods or chattels." Pa. Stat. Ann. (Purdon, 1931), tit. 12, § 2113 (enacted in 1863). Since the statute did not mention the stock of foreign companies, the court held that the writ of attachment did not extend to them. Dupont v. Moore, 86 N. H. 254, 166 A. 417 (1933).


Logically there is no reason why certificates of a domestic corporation in the hands of a third party should not be as proper a subject for garnishment proceedings as stock certificates in a foreign corporation, and some courts have accepted this position. But a more effective remedy is to proceed against the corporation itself as garnishee defendant; for the creditor may have difficulty in “finding” the one who has possession of the stock certificates, while the corporation is always easily accessible. Where the certificates have not been issued there is no doubt but that this remedy is available. However, where the certificates have been issued, it seems that a choice must be made between garnishing the corporation and garnishing the one in possession of the certificates, for a contrary conclusion would allow two garnishments of the same property interest. Some courts refuse to allow the garnishment of the corporation after the certificates have been issued. This is on the theory that the corporation parts with the property interest of the stockholder when the certificates are delivered. The principal case adopts the opposite view and allows the corporation to be brought in as a garnishee defendant even after the certificates of stock have been issued. This seems to be the better reasoned view because it gives effect to the distinction between the stock of a corporation and the certifi-


8 First Nat. Bank & Trust Co. of Minneapolis v. Malerich, 193 Minn. 626, 259 N. W. 546 (1935), noted in 19 Minn. L. Rev. 808 (1935). The Minnesota court expressly reserved decision on whether or not shares of stock in a corporation could be garnished after the certificates had been issued and delivered. Illinois Anglo-American Storage Battery Co. v. Long, 41 Ill. App. 333 (1891).

9 In First Nat. Bank & Trust Co. of Minneapolis v. Malerich, 193 Minn. 626, 259 N. W. 546 (1935), there is dictum to the effect that if the certificates had been issued and were in the hands of the garnishee they would have been subject to garnishment. If this dictum becomes the ruling law in cases arising subsequent to the principal case, a paradoxical situation will exist and the courts will be faced with the absurd proposition that stock certificates and the shares they represent are separate entities, each subject to garnishment proceedings independently.

10 Pease v. Chicago Crayon Co., 235 Ill. 391, 85 N. E. 619 (1908). In this case the court took the position that once the certificates are issued, the corporation cannot be said to be either indebted to its stockholders or to have in its possession property or effects belonging to the stockholder. Ross v. Ross, 25 Ga. 297 (1858). Pennsylvania has solved this problem by statute, Pa. Stat. (Purdon, 1938), tit. 15, § 313, providing that no levy or attachment on stock with outstanding certificate shall be valid unless such certificate is actually seized or surrendered to the corporation issuing it, or its transfer by the holder enjoined.

cate representing such stock,\textsuperscript{12} while at the same time it recognizes the true situs of the property interest of the shareholder in the corporation.\textsuperscript{13}

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\textsuperscript{12} 2 \textit{Cook, Corporations}, 8th ed., § 485 (1923). The logical inconsistency in allowing garnishment of certificates of stock in foreign corporations in the possession of one within the state borders and suggesting that such garnishment proceedings should not be allowed in the matter of certificates of a domestic corporation, can be explained by the practicalities of the two situations. Garnishment of the certificate is the only method by which a debtor's interest in a foreign corporation can be reached, but as to stock in a domestic corporation, there is another and better method, to wit, by a garnishment action directed at the corporation.

\textsuperscript{13} See generally, 18 L. R. A. (N. S.) 1158 (1909) and 122 A. L. R. 338 (1939).