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## CORPORATIONS--LIABILITY OF STOCKHOLDER IN NON-COMPLYING FOREIGN CORPORATION

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**CORPORATIONS—LIABILITY OF STOCKHOLDER IN NON-COMPLYING FOREIGN CORPORATION**—The defendant was a stockholder in the *A* corporation, incorporated in Indiana to do business there, but carrying on its principal business in Tennessee where it had failed to comply with a law requiring foreign corporations to domesticate. Plaintiff, a holder of a trade acceptance on which the *A* corporation was primarily liable, sued defendant in Indiana, liability on the trade acceptance having been incurred in Tennessee. The *A* corporation being insolvent, plaintiff sought to hold the defendant personally liable on the ground that the failure of the corporation to comply with domestication statutes of Tennessee made its stockholders liable as partners under the law of that State. *Held*, even assuming that the law of Tennessee applies, the defendant is not liable. *Towle v. Bittle*, (Ind. 1933) 186 N. E. 344.

It is now well settled that a corporation has for certain purposes extra-territorial existence and that its corporate acts in a foreign jurisdiction will be recognized by the courts there.<sup>1</sup> In absence of a statute to the contrary<sup>2</sup> it seems clear that the members of such corporation will not be held personally liable on contracts made by the corporation if it has in all respects complied with the laws of the foreign jurisdiction<sup>3</sup> and is not organized in contravention of any settled principle of policy of that State.<sup>4</sup> The instant case raises the ques-

<sup>1</sup> HENDERSON, *THE POSITION OF FOREIGN CORPORATIONS IN AMERICAN CONSTITUTIONAL LAW*, c's. 3 and 10 (1918).

<sup>2</sup> See California Constitution (1879), Art XII, secs. 3 (repealed in 1930) and 15, providing for a limited degree of partnership liability on stockholders of foreign corporations. See also *Provident Gold Mining Co. v. Haynes*, 173 Cal. 44, 159 Pac. 155 (1916).

<sup>3</sup> *Merrick v. Van Santvoord*, 34 N. Y. 208 (1866).

<sup>4</sup> *Empire State Mills v. Alston Grocery Co.*, 4 Willson (Tex. Civ. App.) 346, 15 S. W. 505 (1891); see annotation on this subject, *Mandeville v. Courtright*, (C. C. A. 3d, 1905) 142 Fed. 97, 12 L. R. A. 366 (1891).

tion of the effect on the liability of officers, directors, and stockholders of a failure to comply with domestication laws. Occasionally the statute provides in express terms that a failure to comply with such provisions will impose on stockholders, officers, directors and agents partnership liability with respect to all contracts made by the corporation while it is in default.<sup>5</sup> Where the statute simply imposes a fine on officers whose duty it is to secure compliance, or makes contracts made by such corporations unenforcible until they comply, a considerable conflict of authority exists. Perhaps the better-reasoned cases take the attitude that the statute is to be construed strictly and that the penalties therein provided are exclusive.<sup>6</sup> A substantial group of cases dealing with such statutes imposes partnership liability on officers and directors conducting the business in the State of non-compliance, usually on the theory of the extra-territorial non-existence of a corporation.<sup>7</sup> Some cases have refused to extend this liability to stockholders.<sup>8</sup> Cases can be found, however, in which they have been held liable, though it is difficult to find a theory on which their liability can be predicated unless actual or vicarious participation in the default can be found.<sup>9</sup> Another element of difficulty is injected in the case where the officer or stockholder is sought to be held liable in a jurisdiction other than the one in which the corporation is in default. A nice question is presented as to whether the liability of such person is to be determined by the *lex locus contractus* or by the law of the State of incorporation. Most English and American authorities take the attitude that the question of the individual liability of the officers and stockholders is to be determined by the law of the State of incorporation,<sup>10</sup> unless it can be found that there was consent to be bound by the law of the State of non-compliance.<sup>11</sup> It has been argued with much force, however, that the *lex locus contractus* should govern the individual liability of the members of a corporation as it does the other aspects of the contract.<sup>12</sup>

E. E. E.

<sup>5</sup> 1 N. D. Comp. Laws (1919), secs. 5238 and 5241.

<sup>6</sup> *Martin Bros. v. Nettleton*, 138 Wash. 102, 244 Pac. 386 (1926); *American Soap Co. v. Bogue*, 20 Ohio App. 375, 152 N. E. 393 (1925); *Boyington v. Van Etten*, 62 Ark. 63, 35 S. W. 622 (1896); *Bond v. Stoughton*, 26 Pa. Super. 483 (1904).

<sup>7</sup> *Cunningham v. Shelby*, 136 Tenn. 176, 188 S. W. 1147, L. R. A. 1917B 572 (1916); *Equitable Trust Co. v. Central Trust Co.*, 145 Tenn. 148, 239 S. W. 171 (1921); *Rowden v. Daniell*, 151 Mo. App. 15, 132 S. W. 23 (1910); *Ryerson & Son v. Shaw*, 277 Ill. 524, 115 N. E. 650 (1917) (liability imposed on the theory that the defendant was an agent contracting for a principal incompetent to contract).

<sup>8</sup> *Tribble v. Halbert*, 143 Mo. App. 524, 127 S. W. 618 (1910).

<sup>9</sup> *Cunningham v. Shelby*, 136 Tenn. 176, 188 S. W. 1147, L. R. A. 1917B 572 (1916).

<sup>10</sup> *Leyner Engineering Works v. Kempner*, (C. C. S. D. Tex. 1908) 163 Fed. 605; *Risdon Iron and Locomotive Works v. Furness*, [1905] 1 K. B. 304, [1906] 1 K. B. 49. See also, Hohfeld, "The Individual Liability of Stockholders and the Conflict of Laws," 10 COL. L. REV. 283 (1910) and cases there collected.

<sup>11</sup> *Pinney v. Nelson*, 183 U. S. 144, 22 Sup. Ct. 52 (1901); *Thomas v. Matthiesen*, 232 U. S. 221, 34 Sup. Ct. 312 (1914).

<sup>12</sup> Hohfeld, "The Individual Liability of Stockholders and the Conflict of Laws," 10 COL. L. REV. 283 and 520 (1910). See also, *Martin Bros. v. Nettleton*,

138 Wash. 102, 244 Pac. 386 (1926); U. S. Rubber Co. v. Eagle Transportation Co., (Minn. 1933) 248 N. W. 729, where it was assumed that the *lex locus contractus* governed the individual liability of stockholders. The instant case makes a similar assumption.