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RECEIVERS — PROVABILITY OF DEBTS OWED BY INSOLVENT SUBSIDIARY TO PARENT CORPORATION — The defendant, a Massachusetts corporation, was organized by the plaintiff corporation in order to enable the latter to extend its line of railroad into Massachusetts. The plaintiff corporation owned the entire stock of the defendant company; all the money used by the defendant was advanced by the plaintiff; the management structures of the two corporations were practically the same, a majority of the directors and the principal officers of the one company occupying a like position with the other; the books of account of both companies were kept in the office of the plaintiff by its accountants — in short, the only separation between the two units was the formal and routine

action of electing officers and directors. Upon the receivership of the defendant, the plaintiff asserted a claim for advances made by it to the defendant. *Held*, that the control exercised by the plaintiff corporation over the affairs of the defendant was so complete that it could not have its advances to the subsidiary paid before the claims of third parties. *Central Vermont Ry. v. Southern New England Ry.*, (D. C. Mass. 1932) 1 F. Supp. 1004.

The claims of a parent corporation which are sought to be proved against an insolvent subsidiary in competition with the latter's creditors are uniformly rejected, or subordinated to the claims of such creditors, where the control exercised by the parent corporation has been so pervasive as to break down the separate identity of the two corporations.[1] The few cases which have permitted the parent corporation to prove its claim in competition with the creditors of the subsidiary are those in which the court has decided that the parent corporation has not so controlled the subsidiary as to assimilate the business identities of the two units.[2] These authorities are far from derogating from the general proposition, which is based upon the wholesome principle that a debtor may not be permitted to prove in bankruptcy against his own creditors. The converse of the instant case is also true, that the subsidiary cannot claim against an insolvent parent corporation in bankruptcy or receivership proceedings.[3] A logical extension of these principles is reflected in cases which have held that the property and assets of the subsidiary may be administered as assets of the bankrupt parent corporation where the latter completely dominates the organization and management of the former.[4] The result in the parent-subsidiary corporation cases may be the outgrowth of an ethical approach. In a strikingly analogous field, the courts have not been loath to permit a sole stockholder to claim against his bankrupt corporation for moneys advanced.[5] Where, as in the instant case, the parent

[1] New York Trust Co. v. Island Oil & Transport Corp., (C. C. A. 2d, 1932) 56 F. (2d) 580; Clere Clothing Co. v. Union Trust & Savings Bank, (C. C. A. 9th, 1915) 224 Fed. 363; Hunter v. Baber Motor Vehicle Co., (D. C. N. D. N. Y. 1915) 225 Fed. 1006 at 1015, aff'd (C. C. A. 2d, 1916) 238 Fed. 894; S. G. V. Co. of Delaware v. S. G. V. Co. of Pennsylvania, 264 Pa. 265, 107 Atl. 721 (1919). See also In re Marcella Cotton Mills, (D. C. M. D. Ala. 1925) 8 F. (2d) 522.

As to the problem of the assimilation of the identities of the two units, see BALLANTINE, CORPORATIONS 33-37 (1927); 1 FLETCHER, CYCLOPEDIA OF CORPORATIONS, perm. ed., sec. 43 (1931); POWELL, PARENT AND SUBSIDIARY CORPORATIONS, chs. 1-5 (1931); Douglas and Shanks, "Insulation from Liability through Subsidiary Corporations," 39 YALE L. J. 193 (1929).

[2] Finn v. George T. Mickle Lumber Co., (C. C. A. 9th, 1930) 41 F. (2d) 676; Lange v. Burke, 69 Ark. 85, 61 S. W. 165 (1901).

[3] Edward Finch Co. v. Robie, (C. C. A. 8th, 1926) 12 F. (2d) 360. But see In re Watertown Paper Co., (C. C. A. 2d, 1909) 169 Fed. 252.

[4] In re Horgan, (D. C. S. D. N. Y. 1899) 97 Fed. 319; In re Muncie Pulp Co., (C. C. A. 2d, 1905) 139 Fed. 546; In re Rieger, Kapner & Altmark, (D. C. S. D. Ohio 1907) 157 Fed. 609; In re Looschen Piano Case Co., (D. C. N. J. 1919) 261 Fed. 93; In re Eilers Music House, (C. C. A. 9th, 1921) 270 Fed. 915; Central Republic Bank & Trust Co. v. Caldwell, (C. C. A. 8th, 1932) 58 F. (2d) 721; BALLANTINE, CORPORATIONS 36 (1927).

[5] Vennerbeck & Clase Co. v. Juergens Jewelry Co., (R. I. 1933) 164 Atl. 509; Peckett v. Wood, (C. C. A. 3d, 1916) 234 Fed. 833, noted in 15 MICH. L. REV.

corporation owns all the stock of the subsidiary, it has been said that "a subsidiary corporation is simply a species of one man corporation." [6] Perhaps the fact that the parent-subsidiary structure offers greater possibilities of fraud and unfair advantage explains the antithetical results in the two classes of cases.

A. R. A.

172 (1916); Wheeler v. Smith, (C. C. A. 9th, 1929) 30 F. (2d) 59, noted in 29 COL. L. REV. 524 (1929); Briggs & Co. v. Harper Clay Products Co., 150 Wash. 235, 272 Pac. 962 (1928); Salomon v. Salomon & Co., [1897] A. C. 22.

[6] Ballantine, "Separate Entity of Parent and Subsidiary Corporations," 14 CAL. L. REV. 12 at 20 (1925).