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CORPORATIONS

DAVID Y. MONTEITH, III*

Cases

Three cases dealt with corporate questions during the survey period. None is so startling in its holding as to require detailed treatment.

The first of these cases dealt with the jurisdiction of the common pleas court over a foreign corporation when the subject matter of the action was not within the jurisdiction of the court. In *Gibbs v. Young*¹ the plaintiff, a resident of California, brought an action for injuries arising out of a collision in the state of Georgia. In the action, the plaintiff joined a foreign corporation authorized to do business in South Carolina and an authorized agent of that corporation.

The corporate defendant demurred to the complaint on the ground that, as to it, there was no jurisdiction of the subject matter of the action. The trial court overruled the demurrer.

The South Carolina Code provides:

An Action against a corporation created by or under the laws of any other state, government or county may be brought in the circuit court . . . (2) by a plaintiff not a resident of this State when the cause of action shall have arisen or the subject matter of the action shall be situate within this State.²

On appeal, there was no question that the jurisdiction over the *person* of the individual defendant and the corporation was valid; nor was there any doubt that the court had the right to entertain the transitory cause of action against the agent, because the court had jurisdiction over the *subject matter* and *person* of the individual defendant.

The question presented by these facts was whether the joinder of an individual defendant, over whom the court had jurisdiction of both the *person* and the *subject matter*, gave the court jurisdiction as to the corporation, over whom the court had jurisdiction of the *person only*. No previous authority was available on this specific point.

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1. 242 S.C. 217, 130 S.E.2d 484 (1963).

2. S.C. CODE ANN. § 10-214 (1962).

In an opinion by Mr. Justice Bussey, the South Carolina Supreme Court unanimously held that the joinder of the individual defendant did not give jurisdiction over the corporation. The court reaffirmed the principle that its jurisdiction over the subject matter of an action depends upon the authority granted it by the constitution and the laws of the state. Because of his overriding principle and the clear prohibition of the statute, the demurrer should have been sustained.

In *Reedy v. Alderman*³ the court was faced with a problem which will not be likely to arise under the corporation statute now in effect. In that case, two factions of a bank's shareholders held equal shares. The board of directors, at the time of the 1962 meeting, was composed of seven members elected by one faction and two members elected by the other faction. The shareholder factions were deadlocked because the faction with only two directors on the board insisted on a greater proportional representation on the board. This could only have been accomplished by reducing the boards' membership. The articles of incorporation did not provide for the number of directors to be on the board and no agreement was reached.

Because of the inability of the shareholders to elect a new board, the old board held over as provided in the bank's by-laws. Successive motions to re-elect the present directors or to elect nine directors failed because of a tie vote. A motion to adjourn until the shareholders should decide to reconvene, or until the next meeting, or until ordered to do so by a court was finally passed.

The faction with two directors brought a petition for a writ of mandamus, ordering that the two factions hold a meeting and elect directors by cumulative balloting. The court below held that the writ did not lie and the petitioners appealed.

On appeal, the court adhered to the long established principle that mandamus will lie only to compel performance of a non-discretionary duty. The determination of the number of directors is not a non-discretionary duty, and a court cannot compel a decision to be made. Although cumulative voting is a non-discretionary act that the court can compel to be performed, there could not, of necessity, be a vote by cumulative ballot until the number of directors to be elected is decided. Until the discretionary act is performed, there can be no enforcement of the non-discretionary act.

3. 242 S.C. 552, 131 S.E.2d 689 (1963).

There is little likelihood that the problem of this case will arise under the 1962 South Carolina Corporation Law. The 1962 law requires that the number of directors be fixed by the articles of incorporation.⁴ Changes in the number of directors may be made by: (1) amending the articles; (2) new by-laws adopted by the shareholders; and (3) action of the board of directors pursuant to shareholder action.⁵

The third case, *Lawson v. Jeter*,⁶ is a reaffirmation of the principle that the relationship of buyer and seller is not that of agent and principal, as such, so as to allow valid service of process on the seller through the buyer. Since the finding by the lower court that there was no jurisdiction was not manifestly erroneous, the judgment was affirmed.

Statutes

In the 1964 session, the general assembly amended several sections of the 1962 Business Corporation Act.⁷ The amendments are generally technical in nature and concern delivery of documents for filing, informal or irregular action by shareholders, pre-emptive rights, and sale of assets in other than the regular course of business.

A further enactment dealt with eliminating the requirement that the names of building and loan associations and savings and loan associations contain words indicative of corporate status.⁸

4. S.C. CODE ANN. §§ 12-14.3(a)(5), -18.3(a) (1962).

5. S.C. CODE ANN. § 12-18.3(b)(1-3) (1962).

6. 243 S.C. 103, 132 S.E.2d 276 (1963).

7. S.C. ACTS & J. RES. 1964, Nos. 771, 823, 1074.

8. S.C. ACTS & J. RES. 1964, No. 849. Other amendments affecting savings and loans associations are Nos. 812 and 813.