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BUSINESS CORPORATIONS AND PARTNERSHIPS

MARSHALL T. MAYS*

Business Corporations

Two important decisions pertaining to the substantive law of corporations were handed down by our Supreme Court during the period of this survey. The first concerned the personal liability of a corporate officer for negligent performance of his corporate duties. The second concerned the authority of a corporation through its president to discharge a vice-president for failure to obey a command of the president.

In the case of *Olin Mathieson Chem. Corp. v. Planters Corp.*,¹ the plaintiff had supplied equipment to the defendant corporation on consignment for sale. The defendant corporation was to hold the proceeds of sale in trust for the plaintiff. One Massey, treasurer of the defendant corporation received funds from the sale of consigned merchandise and co-mingled the funds with other funds of the corporation which thereafter became insolvent. The treasurer denied knowledge of the consignment agreement between the plaintiff and McAlpine, president of the defendant corporation. The trial judge directed a verdict against the defendant corporation and its president. The jury returned a verdict against the treasurer, Massey, who appealed. The Court held that the "mere fact that a person is a corporate officer is not sufficient to hold him liable for corporate debts or contracts."² The Court further held:

When the appellant accepted the position of vice-president, secretary-treasurer and director of Planters Corporation, he contracted to give diligent attention to the business of the corporation and to be faithful in the discharge of the duties which the positions imposed upon him. The appellant, as treasurer of Planters Corporation, in accepting such office obligated himself and assumed the responsibility of the receiving of all moneys due and payable to the corporation, and properly disbursing the same. If he failed in this duty, he was, at least guilty of

*Mays, Mays and Doyle, Greenwood, S. C.

1. 236 S. C. 318, 114 S. E. 2d 321 (1960).

2. *Id.* at 330, 114 S. E. 2d at 327.

negligence. What constitutes the proper performance of the duties of an officer of a corporation is a question of fact to be determined in each case under the evidence.³

In *Freeman v. King Pontiac Co.*,⁴ Freeman, the vice-president, secretary-treasurer, assistant to the president and general manager of King Pontiac was discharged by a newly elected board of directors for failure to obey a command of the president, F. B. Davis, Jr., transmitted to Freeman by cablegram from Scotland. Freeman's contract of employment could be terminated by twelve months' notice by either party. The Court held that failure to obey the command of the president amounted to insubordination sufficient to discharge the employee for cause without notice. The Court further held that a "deferred annual and special meeting of stockholders" could elect new directors to replace holdover directors without notice of the purpose of the meeting where Freeman was the only absent stockholder and he had actual notice of the meeting. The meeting of the board of directors was legal although it was not held at the offices of the company as required by the by-laws. The Court said, "This was a closely held corporation almost wholly owned by Davis who was present at the meeting. Under such circumstances less formality is required in holding meetings."⁵

In both of the above cases the Court stressed the fact that the corporations were closely held. It is presumed, however, that the rules laid down in these cases would apply to corporations of more diverse ownership.

Two other decisions dealt with the question of "doing business" for purposes of establishing jurisdiction and venue.

In *Boney v. Trans-State Dredging Co.*⁶ the defendant was a Florida corporation dredging in the Savannah River, but not domesticated in South Carolina. Part of the work was done in South Carolina, part in Georgia. The plaintiff's boat on the Savannah River was overturned by a dredge cable attached to the South Carolina shore. The defendant corporation's activities within South Carolina were held sufficient to subject defendant to jurisdiction of South Carolina courts and render it amenable to substituted service of process.

3. *Id.* at 327-328, 114 S. E. 2d at 326.

4. 236 S. C. 335, 114 S. E. 2d 478 (1960).

5. *Id.* at 350, 114 S. E. 2d at 485.

6. 237 S. C. 54, 115 S. E. 2d 508 (1960).

In *Seegars v. WIS-TV*,⁷ a suit for libel, the Court sustained the finding of the trial court that the defendant, WIS-TV, was not transacting business in Kershaw county and was not subject to suit in that county. The plaintiff did not appeal from a finding of the trial court that codefendant Esso Standard Oil Co. "was not such a material or bona fide defendant as to permit its joinder by plaintiff to deprive this defendant WIS-TV of the right to trial in Richland County." Apparently the only evidence of transacting business in Kershaw county was an affidavit by the county treasurer that he had seen Kershaw firms advertise on WIS-TV. The Court discussed the affidavit in terms of solicitation of advertising rather than in terms of broadcasting.

Partnerships

No decisions during the period of this survey.

7. 236 S. C. 355, 114 S. E. 2d 502 (1960).