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Paul M. Hebert

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entitled to compensation based on the higher pay rate.²⁹ Perhaps a more difficult problem would have faced the court if the plaintiff had been able to characterize the aggravations as separate "accidents."³⁰

V. BUSINESS AND COMMERCIAL LAW

*Paul M. Hebert**

BANKRUPTCY. CORPORATIONS. INSURANCE

BANKRUPTCY

Revival of debt discharged in bankruptcy. What constitutes promissory language sufficient to support subsequent legal action on a debt discharged in bankruptcy? In *Irwin v. Hunnewell*,¹ applying the well settled doctrine that a promise to pay a debt discharged in a bankruptcy proceeding must be direct, definite, unequivocal and more than a mere acknowledgment or expression of an intention, hope, desire or expectation to pay, the court held that the plaintiff's action could not be maintained against the bankrupt.² A message had been sent to the plaintiff that the bill for his services "was to be taken care of" and that the account "would be paid." This was held not to be a definite promise to pay the debt. An expression in a subsequent letter that, after payment of certain debts to the bankrupt's employer, the plaintiff would "come first," was likewise held to be ineffective as a promise. Similarly the bankrupt's expression—"my intentions were good and the delay unavoidable"—coupled with an offer to assign the proceeds of a life insurance policy payable at death of the bankrupt to the plaintiff was held not to revive the discharged debt.³

The reason underlying the rule requiring an express and unequivocal promise to revive a debt discharged in bankruptcy is that the discharge in bankruptcy extinguishes the pre-existing debt and does not merely bar the remedy.⁴ In Louisiana, despite vacillation in the jurisprudence on the question of whether

29. *Holliday v. Martin Veneer Co.*, 206 La. 897, 20 So. (2d) 173 (1944).

30. Compare the interesting rationalization along this line in *Harris v. Southern Carbon Co., Inc.*, 162 So. 430 (La. App. 1935).

* Deán and Professor of Law, Louisiana State University Law School.

1. 207 La. 422, 21 So. (2d) 485 (1945).

2. 7 Remington, *A Treatise on the Bankruptcy Law of the United States* (1939) § 3505.

3. See *Linton v. Stanton*, 4 La. Ann. 401 (1849).

4. See 7 Remington *op. cit. supra* note 2, at § 3501.

the enumeration of the kinds of natural obligations set forth in Article 1758 of the Civil Code⁵ is exclusive, it has been held that a debt discharged in bankruptcy will be considered a natural obligation.⁶ In the *Irwin* case the language of the court would indicate that there is no distinction between the natural and the moral obligation. In this respect, the court's treatment of natural and moral obligations as synonymous terms overlooks sound civil law doctrine.⁷ Treated as a natural obligation it is clear that a promise based on such an obligation is legally enforceable.⁸ The current doctrine requiring the reviving promise to be "definite, express, distinct and unambiguous" appears to be applied correctly to the facts of the instant case.⁹ The court raised but left open the question of whether an unequivocal oral promise to pay a discharged debt is enforceable. It would seem that such a promise is not required to be in written form and that Louisiana would be in accord with the general doctrine that an oral promise sufficiently definite in character will revive the debt.¹⁰

CORPORATIONS

Compensation for Past Services of Corporate Officers. The decision in *Stafford's Estate v. Progressive National Farm Loan Associations*¹¹ applied the well settled corporation law principle that the salary of a corporate officer cannot be retroactively increased. One of the principal issues in that case was the validity of a note for back salary to the appellee as secretary-treasurer of a farm loan association. The original resolution of appointment

5. See *Succession of Miller v. Manhattan Life Insurance Co.*, 110 La. 652, 34 So. 713 (1903); *Succession of Burns*, 199 La. 1081, 7 So. (2d) 359 (1942), noted in 17 Tulane Law Review 310 (1942). Contra: *In re Atkins Estate*, 30 F. (2d) 761 (C.C.A. 5th, 1929). An excellent treatment of the subject is found in Martin, *Natural Obligations* (1941) 15 Tulane L. Rev. 497.

6. This is an analogical interpretation from Art. 1758(2), La. Civil Code of 1870. *Beck v. Howard*, 3 La. Ann. 501 (1848); *Bach v. Cohn*, 3 La. Ann. 101 (1848); *Bartlett v. Peck*, 5 La. Ann. 669 (1850); *Glenn v. Dunbar*, 10 La. Ann. 253 (1855).

7. See Note (1942) 17 Tulane L. Rev. 310-313; Martin, *Natural Obligations* (1941) 15 Tulane L. Rev. 497, 506: "The natural obligation requires more than a moral duty. To be given effect, the obligation must be binding not only 'in conscience' but 'according to natural justice.'" Art. 1757, La. Civil Code of 1870.

8. Art. 1759(2), La. Civil Code of 1870.

9. See Collier, *Bankruptcy* (14 ed. 1940) 1673, § 17.34. The new promise may be made subsequent to the filing of the petition but before the discharge. *Zavelo v. Reeves*, 227 U.S. 625, 33 S. Ct. 365, 57 L.Ed. 676 (1913).

10. Art. 2278, La. Civil Code of 1870, does not specifically cover a promise to pay a debt discharged in bankruptcy and should not be extended by analogy. See *Armstrong v. Baldwin*, 181 So. 72 (La. App. 1938); Martin, *supra* note 5, at 512-513. See 7 Remington, *op. cit. supra* note 2, at § 3503.

11. 207 La. 1097, 22 So. (2d) 662 (1945).

had provided for compensation solely upon a fee basis. The note in question was apparently predicated on a subsequent resolution which provided that the secretary-treasurer should be compensated on a salary basis at fifty dollars per month. In rejecting the appellee's claim based upon this note, the court pointed out that the resolution providing for compensation on a salary basis was "wholly silent" with reference to past services, and that it could not be validly effective as to past services. Justice Hamiter, after a very comprehensive survey of prior Louisiana jurisprudence and general authorities in the field of corporation law, applied the general rule that the voting or payment of compensation to corporate officers for past services is wholly without consideration and *ultra vires* as a misapplication of corporate funds. This holding is consistent with the general theory that the ordinary services of corporate officers, unless otherwise expressly stipulated in advance, are deemed to have been rendered without expectation of compensation. The general rule against the voting of back pay to corporate officers is bottomed on the idea that they occupy a fiduciary relation and often control the policies and decisions of the corporation. The reason for the doctrine fails when the officer in question is a ministerial officer—as a manager, supervisor, treasurer or secretary—who exercises no controlling influence over the board of directors.¹² The record in the instant case does not disclose that the appellee had any control or substantial voice in the control of the policies of the association. The duties performed were of a ministerial nature where it might logically be assumed reasonable compensation was anticipated. Were it not for the fact that a prior resolution had definitely fixed and limited the appellee's compensation on a fee basis, the court might have recognized an exception to the general rule to the extent of validating a resolution providing a reasonable salary for the services rendered as secretary-treasurer of the association.

12. "The reason for the doctrine that the directors of a corporation are not entitled to compensation in the absence of express provision or agreement, either when acting as directors or in other offices, does not apply to ministerial officers and employees—as a manager, superintendent, treasurer, secretary, cashier, etc.—who are not directors, and have no control over the property and funds of the corporation, even though they may be stockholders; and if such an officer or employee is elected or appointed to perform valuable services for the corporation under circumstances indicating intention and expectation of payment, but without any express contract, the law will imply a promise on the part of the corporation to pay a reasonable compensation." Ballantine on Corporations (1927) 406.

INSURANCE

Co-insurance Clause—Use and Occupancy Insurance. Act 136 of 1922¹³ prohibits a clause in a fire or storm insurance policy making the assured liable as co-insurer. A proviso in the statute makes this prohibition inapplicable to policies issued upon property valued at more than \$25,000 or upon personal or movable property. The application of this statute to a fire insurance policy covering loss of use and occupancy of a cotton warehouse was involved in *Arcadia Bonded Warehouse Company, Incorporated v. National Union Fire Insurance Company*.¹⁴ The policy was for five thousand dollars. Loss of the use and occupancy for the three months required to rebuild the warehouse after a fire amounted to \$4,245.18. The company offered settlement for the portion for which the company admitted liability under the co-insurance clause. Relying upon the mentioned statute the insured rejected the offer and sued for the total loss of the use and occupancy, the statutory penalty of twelve per cent and attorney fees.¹⁵ Under the 1922 statute it is necessary to determine (a) that the policy on which the property is issued be worth more than \$25,000; or (b) that the policy is issued upon personal or movable property, regardless of its value, in order to establish the validity of the co-insurance clause. How is a policy which protects insured only against loss of net profits, expenses and charges not earned to be considered? The insurance company's contention that the property upon which the policy was issued should be considered incorporeal movable property was rejected by the court. Chief Justice O'Niell concluded that the right on which the policy was issued is the right of use and occupancy of immovable property and that the property insured was therefore to be classified as incorporeal immovable property under Article 470 of the Civil Code.¹⁶ While there was not a "use" as defined in the Civil Code¹⁷ because the immovable property was owned by the owner of the so-called use of the property, by analogy the court concluded that the use and occupancy insurance should be characterized as incorporeal immovable property. The court

13. Dart's Stats. (1939) § 4189.

14. 206 La. 682, 19 So. (2d) 514 (1944).

15. La. Act 168 of 1908 [Dart's Stats. (1939) §§ 4177-4180].

16. Art. 470, La. Civil Code of 1870, provides: "Incorporeal things, consisting only in a right, are not of themselves strictly susceptible of the quality of movables or immovables; nevertheless they are placed in one or the other of these classes, according to the object to which they apply and the rules hereinafter established."

17. Art. 626, La. Civil Code of 1870.

likewise rejected the company's contention that the net profits and overhead expenses during the one year term of the policy constituted the value of the subject matter insured. The value of the property insured was held to be the unearned profits and running expense for the three months required for reconstruction. As the property insured was immovable property and as the value was less than \$25,000 the 1922 statute made the co-insurance clause void.

This case raised the further question of the liability of the insurer for the statutory penalty.¹⁸ Proofs of loss had not been furnished as required by the statute, but this did not relieve the insurance company from liability for the statutory penalty and attorney fees because a complete investigation of the loss had been made by the company and liability had been denied, thereby making it unnecessary under the jurisprudence to furnish proofs of loss on the company's forms.¹⁹

The method of treatment in this case, while reaching a desirable result, might have been obviated by pursuing the court's alternative suggestion, namely, that the property insured was the warehouse—immovable property—and that the amount of unearned profits and overhead expenses should be considered as merely measuring the extent of the company's liability.

Incendiarism as a defense. Incendiarism as a defense to an action on a fire insurance policy was involved in *Pizzolato v. Liverpool & London Globe Insurance Company, Limited*.²⁰ The question was essentially one of fact calling for application of the well settled legal principles that incendiarism is an affirmative defense with the burden of proof for its establishment by preponderance of the evidence upon the insurer; that circumstantial evidence, as well as direct evidence, is admissible to prove the defense; but that circumstantial evidence must do more than cast a suspicion of guilt on the insured. Although the facts and circumstances surrounding the fire were sufficiently suspicious to have warranted investigation by the State Fire Marshal and the filing of a charge of arson against the insured, the grand jury

18. La. Act 168 of 1908 [Dart's Stats. (1939) §§ 4177-4180].

19. *McClelland v. Greenwich Insurance Co.*, 107 La. 124, 31 So. 691 (1902); *Thompson v. State Assurance Co.*, 160 La. 683, 107 So. 489 (1926); *Talbert v. Northwestern National Insurance Co.*, 167 La. 603, 120 So. 24 (1929) were relied upon by the court. *Tedesco v. Columbia Insurance Co. of New Jersey*, 177 La. 142, 148 So. 8 (1933) was distinguished on the facts which indicated active interference with orderly settlement and adjustment of the claim by an insured who did not supply the requested proofs of loss as required by Section 3 of La. Act 168 of 1908 [Dart's Stats. (1939) § 4179].

20. 207 La. 101, 20 So. (2d) 551 (1944).

had refused to indict the insured. The court concluded on the record that the district court was justified under the evidence in rejecting the insurer's defense of incendiarism. The factors contributing to this conclusion were several. There was testimony by the local fire department head that the fire was so far advanced when it reached the scene that he could not tell how or where the fire started despite his opinion that certain materials smelling of oil were found with wire, string, matches, rags and flashlight attached. Similarly, the record contained evidence that indicated a possibility that the fire may have originated in a fireplace used by insured's tenant for cooking. Finally, the court gave consideration to the facts that the amount of the insurance was considerably less than the cost and value of the property, that the policy was a renewal policy, and that the assured owned a successful business and had money in the bank. Finding lack of motive and inconclusive evidence as to the cause of the fire, the court affirmed the trial court's judgment for the amount of the policy, attorney fees and the statutory penalty of twelve per cent.²¹

*Disability—Disease not common to both sexes. Campasi v. Mutual Benefit Health & Accident Association*²² was a suit by an administrator for disability benefits alleged to be due to the assured at the time of her death. Double the amount of the disability benefits and attorney fees were claimed under Act 310 of 1910²³ which imposes such liability upon an insurance company guilty of delay in payment unless upon just and reasonable grounds. The deceased assured was a woman who died of cancer originating in the ovary and which, prior to her death, had metastasized, not only to the omentum, but to the intestines. This was the physical condition of assured at the time claim was made for disability benefits under a policy of insurance issued by defendant. The policy contained a clause:

“(a) This policy does not cover death, disability, or other loss sustained in any part of the world except the United States and Canada, or while engaged in military or naval service, or while the Insured is not continuously under the professional care and regular attendance, at least once a week, beginning with the first treatment, of a licensed physician or surgeon, other than himself; or received because of or while

21. La. Act 168 of 1908, § 3 [Dart's Stats. (1939) § 4179].

22. 207 La. 758, 22 So. (2d) 55 (1945).

23. Dart's Stats. (1939) §§ 4106-4111.

participating in aeronautics; or resulting from insanity; or disability from any disease of organs which are not common to both sexes.'"²⁴

The insurance company contended that the disability *resulted from* a disease of an organ not common to both sexes and that the risk was excluded by the clause above cited. The court held that such a clause does not exempt the insurance carrier from liability for a disability originating in an organ not common to both sexes which spreads to organs common to both sexes. In the view of the court, the construction contended for by the company would require the court to interpolate the words "originating in" into the exempting clause and broaden its effect beyond the written words of the clause or to change the punctuation and structure of the exemption clause. The medical testimony in the record amply supported the finding of the district court as to the existence of a disability following the spread of the disease. The action of the trial court in assessing the penalties imposed by Act 310 of 1910 was affirmed. Just and reasonable grounds for delay were found not to be present because the insurance carrier made no investigation following the proof of disability. If such investigation had been made it would have informed the insurer that the disability was due to a disease common to both sexes. The insurer's delay continued during the remaining fifteen months of the lifetime of the assured. These circumstances presented a strong case for the application of penalties despite the fact that the clause here involved had not been previously interpreted by a Louisiana court.²⁵ The defendant's argument that the penalty statute is not applicable to suit by an administrator but only to the assured individually was held too narrow a construction of the statute.

While the result of this case is unquestionably sound, based on the evidence which showed clearly that the disability could be traced to the disease of cancer, which, at the time of the disability,

24. 207 La. 758, 766, 22 So. (2d) 55, 58 (1945).

25. Pointing out that sick benefits if not promptly paid are not benefits at all and that the insurer was not entitled to litigate its contentions at the expense of the assured—except upon just and reasonable grounds, Chief Justice O'Niell, at 207 La. 758, 765, 22 So. (2d) 55, 57 (1945) further said: "Suits like this, as a rule, are cases in which the law's delay amounts to a denial of justice. This suit has been pending for a year and 9 months,—which is 6 months longer than the assured lived after she gave the insurance company notice and proof of her disability. Of what benefit can the so-called sick benefits of \$100 a month—or the \$100 a month for hospitalization—be to one who suffers for a year and three months in painful sickness, struggling to approach the feet of Justice, and passes on without having a glimpse of her fair face?"

was present in organs common to both sexes, great emphasis was placed on the fact that the cancer had spread to this extent. Is recovery to be allowed only under such circumstances? Suppose the disease had confined itself to an organ not common to both sexes? There is considerable authority interpreting similar clauses as not exempting the insurer from liability if the disease is one to which both sexes are susceptible but which attacks an organ peculiar to one sex.²⁶ Thus it has been held that a fibroid tumor of the womb is not caused by a "disease of the organs of the body not common to both sexes" since this disease may exist in any fibrous organ in either man or woman.²⁷ A decision of the Louisiana Court of Appeal for the Second Circuit appears to be in accord with this view.²⁸ The court in the *Campasi* case might easily have based its decision on the broader ground that the risk was not excluded even if the cancer had not metastasized, as the disease of course is one common to both sexes.

Policyholder entitled to priority over the United States in fund deposited as qualifying security. Is a claim of the United States for income and social security taxes due by an insurance company in receivership in Louisiana entitled to be paid out of the proceeds of funds deposited with the state treasurer as qualifying security by preference or priority over the policy obligations of the company? In *Conway v. Imperial Life Insurance Company*²⁹ it was held that qualifying securities deposited by an insurance company are held in trust for the policyholders and that the claims of policyholders to the fund are superior to the claims of the United States based on Section 3466 of the Revised Statutes of the United States.³⁰ Act 169 of 1908³¹ requiring the

26. *Mutual Benefit Health and Accident Association v. Blaylock*, 163 Miss. 657, 143 So. 406 (1932). The cases are collected in an annotation (1933) 87 A.L.R. 681-682. But cf. *Hamilton v. Mutual Ben. Health & Accident Association*, 133 Neb. 464, 275 N.W. 863 (1937). See 6 Couch, *Cyclopedia of Insurance Law* (1930) 4668.

27. *Business Men's Assur. Ass'n v. Read*, 48 S.W. (2d) 678, 679 (Tex. Civ. App. 1932); *Stewart v. Hoosier Casualty Co.*, 67 Ohio App. 509, 37 N.E. (2d) 438 (1941).

28. *Scott v. Continental Life Insurance Co.*, 15 La. App. 221, 131 So. 478 (1930). The clause here involved differed in phraseology excepting diseases peculiar to women. Cf. *Shuler v. American Benevolent Ass'n*, 132 Mo. App. 123, 111 S.W. 618 (1908); *National Life & Accident Ins. Co. v. Weaver*, 226 S.W. 754 (Tex. Civ. App. 1920).

29. 207 La. 285, 21 So. (2d) 151 (1945).

30. "Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority hereby established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed or absent

deposit of qualifying securities specifically provides that such deposit shall be "held by the state treasurer in trust for the benefit and protection of and as security for the policyholders of the corporation."³² Assets amounting to \$23,185 in the form of bonds, previously part of the reserve funds of the insurance company's transferrer along with other bonds of the company had been deposited as qualifying security in accordance with Act 169 of 1908. On petition of the Secretary of State of Louisiana, a receiver was appointed for the insurance company on the ground of insolvency. In a previous decision the supreme court had ordered that the United States be recognized as a creditor on the tableau of debts for unpaid social security taxes of \$1,364.24 and for unpaid income taxes in the amount of \$41,647.97.³³ As the previous decree did not involve the question of priority, the receiver listed the United States as an ordinary creditor subordinate to the claims of policyholders to the fund of \$16,563.25 in the hands of the receiver. The supreme court affirmed the action of the lower court in refusing priority to the United States. Revised Statutes of the United States, Section 3466, was held inapplicable to confer priority on the United States because of the "legal nature of the corporation's assets from which satisfaction is sought to be obtained." The court concluded that the Louisiana statute created an expressed trust in favor of and for the benefit of the policyholders and that the securities were "earmarked, segregated and set aside" for the protection of policyholders as a definite group. This expressed trust was held to create priority in the policyholders over the claims of the United States. The court held that the Louisiana statute created more than an inchoate general lien and on this basis distinguished the case from *United States v. Knott*,³⁴ wherein the United States Supreme Court had sustained a claim of the United States for priority against qualifying securities deposited by a surety company reversing the decision of the Supreme Court of Florida that such deposit was held in trust for creditors.³⁵

It is doubtful that the distinction drawn by the Louisiana Supreme Court in this case will be sustained when this issue is presented to the United States Supreme Court. In *United States*

debtor are attached by process of law, as to cases in which an act of bankruptcy is committed." Rev. Stats. § 3466 (2 ed. 1878), 31 U.S.C.A. § 191 (1927).

31. Dart's Stats. (1939) §§ 4083-4087.

32. La. Act 169 of 1908, § 4 [Dart's Stats. (1939) § 4086].

33. 198 La. 999, 5 So. (2d) 314 (1941).

34. 298 U.S. 544, 56 S.Ct. 902, 80 L.Ed. 1321, 104 A.L.R. 741 (1936).

35. *Kelly v. Knott*, 120 Fla. 580, 163 So. 64 (1935).

v. Knott emphasis was placed on the fact that the persons who would share in the proceeds of the deposited securities "could not be known until they were exhausted in satisfaction of judgments, or until the entry of the decree of distribution. . . ."³⁶ The fact that the Florida court had declared that the deposit was a trust fund for creditors was considered as not conclusive. Similar reasoning would apply to the specific phraseology of the Louisiana statute. Strong expressions in the recent case of *United States v. Waddill, Holland and Flinn, Incorporated*,³⁷ would indicate that a claim for priority over the United States will be closely scrutinized. It was suggested that even the exception of a specific and perfected lien on the property might not be sustained when that question is squarely presented. The United States Supreme Court further said:

"But it is a matter of federal law as to whether a lien created by a state statute is sufficiently specific and perfected to raise questions as to the applicability of the priority given the claims of the United States by an act of Congress. If the priority of the United States is ever to be displaced by a local statutory lien, federal courts must be free to examine the lien's actual legal effect upon the parties. A state court's characterization of a lien as specific and perfected, however conclusive as a matter of state law, cannot operate by itself to impair or supersede a long-standing Congressional declaration of priority."³⁸

It would appear that the so-called trust declared by the Louisiana statute will fare no better than the inchoate liens which the supreme court has held are subordinate to the government's priority under Revised Statutes, Section 3466.

Effect of Dissolution of Insurance Company in State of Incorporation. *Owens v. Allied Underwriters*³⁹ involved the following: Six days after the defendant insurance company was placed in receivership in Texas, the state of its incorporation, the administrator of the estate of Owens filed suit in the Nineteenth Judicial District for the Parish of East Baton Rouge, Louisiana, on a \$10,000 judgment obtained in the United States District

36. 298 U.S. 544, 550, 56 S.Ct. 902, 905, 80 L.Ed. 1321, 1327, 104 A.L.R. 741, 746 (1936).

37. 323 U.S. 353, 65 S.Ct. 304 (1945).

38. 323 U.S. 353, 356, 65 S.Ct. 304, 306 (1945). A landlord's lien and a city's tax lien were held not "specific" so as to deprive the United States of priority.

39. 207 La. 437, 21 So. (2d) 490 (1945).

Court for the Eastern District of Arkansas. Defendant's qualifying deposit with the state treasurer of Louisiana, in the amount of \$20,000.00 was attached and a lien and privilege claimed on the fund.⁴⁰ Shortly thereafter a receiver to liquidate claims of citizens of Louisiana was appointed by the Nineteenth Judicial District Court, Parish of East Baton Rouge. The Louisiana receiver and the appropriate state officials filed exceptions of no cause and no right of action and asked for dissolution of plaintiff's attachment and dismissal of the suit. The supreme court affirmed the dismissal of the plaintiff's action on the ground that the Texas receivership proceedings operated as a dissolution of the corporation. Apparently it was not disputed that judgment dissolving the Texas corporation had actually been entered by the Texas court. It was held that the law of the state of incorporation governed its dissolution and that a corporation dissolved under the laws of the state of its charter could not thereafter be sued in another state. The court also held that the Louisiana receivership proceedings, even though subsequent to the plaintiff's suit, would have caused the action to abate. Plaintiff's remedy was held to be in the Louisiana receivership proceeding.⁴¹

The principal contentions of the plaintiffs were levelled against giving the Texas judgment dissolving the corporation extra-territorial effect coupled with the argument that the suit could be continued based on the decisions of *Frederico Macaroni Manufacturing Company v. Great Western Fire Insurance Company*⁴² and *Lichtenstein Brothers & Company v. Gillett Brothers*.⁴³ The two mentioned decisions were held inapplicable on the ground that the first case involved liability of a surety on the insurer's bond and the second was a receivership under a creditor's bill rather than a statutory receivership operating as a dissolution of the corporation.

There is ample authority to support the court's decision that following dissolution, action cannot thereafter be maintained against a corporation.⁴⁴ The Louisiana cases hold that if a cor-

40. Deposit was a cashier's check in amount of \$20,000 given to comply with La. Act 158 of 1932 and as a condition precedent to doing business in Louisiana. Dart's Stats. (1939) §§ 4254-4255.

41. See *Cognovich v. Sun Indemnity Co. of New York*, 176 La. 373, 145 So. 774 (1933) holding that a judgment creditor's suit against a surety on the qualifying bond of an insolvent foreign insurance company was properly transferred to the court where the receivership proceedings were pending.

42. 173 La. 905, 139 So. 1 (1931).

43. 37 La. Ann. 522 (1885).

44. Numerous authorities are cited by the court, 207 La. 438, 442, 21 So. (2d) 490, 491 (1945).

poration is dissolved, actions by or against it abate.⁴⁵ The crucial question in cases of this kind is whether the appointment of the receiver actually operates as a dissolution of the corporation under applicable law.⁴⁶ As it appeared that the corporation was actually dissolved under Texas law the court correctly applied principles of conflict of laws to this situation.⁴⁷ But even though a corporation is civilly dead in the state of incorporation, it may be considered still alive in another state under a statute continuing the corporate existence for the purpose of winding up in respect to remedies of that state's citizens against property in its jurisdiction.⁴⁸ An interesting question not passed on by the court is whether the fund deposited in Louisiana could be reached by non-resident creditors.⁴⁹

VI. PROCEDURE

*Robert W. Williams**

A comparatively large number of cases touching on procedural questions were decided by the supreme court at its 1944-1945 term, but, as is so often the case, the majority of these questions should never have been raised because of the certainty of the rules which were invoked. However, several very intriguing questions were presented to and decided by the court and will undoubtedly lend themselves to more intensive study than is contemplated by this summary.

Appeals, Appellate Jurisdiction and Procedure

*Walsh v. Bush*¹ presents one of the increasingly numerous phenomena growing out of the housing shortage which has gripped the entire country. Here, plaintiff sued for \$5,030.00 damages caused by defendant's interference with plaintiff's occupancy of a residence and garage rented by him from defendant

45. *Musson v. Richardson*, 11 Rob. 37 (La. 1845); *McCoy v. State Line Oil & Gas Co.*, 130 La. 579, 157 So. 116 (1934). See La. Act 250 of 1928, § 62 [Dart's Stats. (1939) § 1142].

46. See *Tangipahoa Bank & Trust Co. v. Guwang*, 15 So. (2d) 148 (La. App. 1943).

47. See 2 Beale, *A Treatise on the Conflict of Laws* (1935) §§ 157.2, 192.3.

48. 16 Fletcher, *Cyclopedia of the Law of Private Corporations* (1942) § 8115, citing *Rodgers v. Adriatic Fire Ins. Co.*, 148 N.Y. 34, 42 N.E. 515 (1895).

49. See *Cognovich v. Sun Indemnity Co. of New York*, 176 La. 373, 145 So. 774 (1933), cited *supra* note 3.

* Lecturer on Louisiana Practice, Louisiana State University Law School. Member of the Bar of Baton Rouge.

1. 206 La. 303, 19 So. (2d) 144 (1944).