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have been fulfilled he holds a fee that is subject only to persons under a legal disability and further that such persons have one year after the removal of the disability to redeem the land. If such persons, after the removal of the disability, recover the land the purchaser receives the value of all the improvements and the amount of the taxes with interest at 15 per cent. If, however, the person holds under a tax deed that is fair on its face but nevertheless some statutory requirement is missing the claimant may hold the land for five years and by taking advantage of the short statute of limitations defeat any action brought by the previous owners for the recovery of the land. If the person bringing the action is successful, the purchaser receives the value of all taxes, costs, penalties and improvements as ascertained by the jury trying the action with interest at 12 per cent.[24] If the purchaser is defeased at any time after his purchase these above sections give him his investment back with a fine rate of interest.

The procedure for obtaining land in this method is obviously fraught with many legal pitfalls, many beyond the control of the purchaser, but if his investment is not too large and he exercises and causes the county treasurer to exercise as much care as possible in following the statutory conditions there seems no reason why a purchaser may not obtain a title to land that would be indefeasible as to all but those under a legal disability. Such a risk seems to be reasonable particularly in days of such severe tax schedules especially when viewed in the light that if the land is redeemed by any one at any time the investment draws more interest than that which is possible to receive in any corresponding business investment today.

Francis J. Paulson.

CURRENT LAW REVIEW DIGEST SERIES

COLLATERAL REVIEW OF CONVICTIONS IN FEDERAL COURTS—By Alexander Holtzoff, Boston University Law Review, January, 1945.—The conventional concept of an appellate review of a trial court judgment of conviction involves a reconsideration of the case by an appellate of conviction involves a reconsideration of the case by an appellate tribunal solely on the trial court record. Under existing criminal procedure in the Federal courts, the defendant must move for an appeal within five days after entry of judgment of conviction; otherwise direct review of his case is forever barred.

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24 Chapter 142, Sec. 262 Colorado Statutes Annotated, 1935 as amended in 1937.

The form of collateral review dealt with in this article consists in the marked expansion of the scope of the writ of *habeas corpus*. The limits of this expansion are well-defined by abundant citations to Federal decisions, but the need for brevity precludes their being individually detailed here. The author reminds us of the oft-forgotten fact that the writ of *habeas corpus* in its original form only had to do with facilitating the liberation of persons imprisoned without sufficient cause. As a matter of fact, the celebrated English Habeas Corpus Act did not contemplate the use of this high prerogative writ for the freeing of persons incarcerated pursuant to a conviction and judgment. On the contrary, it expressly excluded from its operation persons who were confined by reason of a conviction of a crime.

In any event, the underlying legal principle to be extracted from the many cases cited by the author is that the *jurisdiction* of the trial court is the *only* issue that may be litigated when resort is had to a writ of *habeas corpus* to attack a conviction in a criminal case. Thus it appears that the so-called enlargement of the writ with which we are now dealing is in truth an enlargement of the judicial construction of the term *jurisdiction,* as it has been formulated over the years in the Federal courts.

From his examination of the authorities, the author concludes that in the following instances a convicted defendant can collaterally attack his conviction by a *habeas corpus* proceeding in a Federal court of appellate jurisdiction:

1. Where the trial court lacks jurisdiction of the offense.
2. Where the court lacks jurisdiction of the person.
3. Where the statute pursuant to which the defendant is prosecuted is unconstitutional.
4. Where the indictment attempts to charge an offense unknown to or not cognizable under any Act of Congress.
5. Where defendant is prosecuted by information when he was entitled to prosecution by indictment.
6. Where defendant was tried without a jury, and it appears that his right thereto was not waived.
7. Where defendant alleges that he was not accorded the right of counsel as guaranteed by the Sixth Amendment.
8. Where defendant alleges that he was induced to plead guilty by misrepresentations or threats and coercion.
9. Where defendant alleges that he was mentally incompetent, either by reason of insanity or influence of drugs, when he pleaded guilty.
10. Where defendant alleges that he was convicted on the basis of perjured evidence, mob influence or a generally hostile atttitude of those conducting the trial.

Since the courts still reiterate that *jurisdiction* is the sole test in determining the propriety of the writ in criminal cases, it necessarily follows, the author concludes, that each of the foregoing objections, if sustained on the facts, constitute jurisdictional defects. He observes that some of them preclude jurisdiction from attaching in the first instance, while others cause jurisdiction to be lost or divested in the course of the proceeding.

On the other hand, the following objections are not open for consideration in a *habeas corpus* proceeding, in as much as they are not regarded by the courts as affecting jurisdiction:

1. That the indictment is defective or insufficient.
2. That evidence was introduced at the trial in violation of the provision of the Fourth Amendment proscribing unreasonable searches and seizures, or reception of evidence in contravention of the privilege against self-incrimination guaranteed by the Fifth Amendment. It is interesting to note in this regard that the mere fact that a constitutional guaranty has been violated at the trial does not *ipso facto* permit a review by *habeas corpus*.
3. That the evidence was sufficient to sustain a verdict of guilty.
4. That the trial court erred in failing to direct a verdict of acquittal.
5. That the court made erroneous rulings in respect to reception or exclusion of evidence during the trial.
6. That the court committed error in its charge to the jury.

It should be observed that the use of the writ of *habeas corpus* as developed in this paper is not limited to the review of convictions in Federal courts. On the contrary, the grounds for invoking *habeas corpus* herein set out would apply with equal weight to persons imprisoned in state institutions, as the Federal courts are petitioned on the theory that the state court judgment is invalid because obtained in violation of the procedural guarantees found in the Fourteenth Amendment.

By way of conclusion, the author states that the nature of the collateral attack on judgments by *habeas corpus* differs radically from that of the conventional appellate review in the following particulars:

1. There is no time limit within which a petition of a writ of *habeas corpus* must be filed; action may be instituted at any time while the defendant is in prison, whereas an appeal must be taken within five days under present Federal procedure.
2. The review on *habeas corpus* is not limited to the record of the trial court, as is the case with appellate review; evidence *dehors* the record is admissible.
3. The decision in a *habeas corpus* proceeding is not *res judicata* on the point determined, and so does not constitute a bar to a new proceeding looking to the same relief.

4. The defendant need not raise all his objections in the same petition, but may bring up various matters at different times in different proceedings.

From the foregoing analysis, it is apparent that the author brings into sharp focus the many distinctions obtaining between direct appeal and collateral attack by *habeas corpus* in reviewing convictions in federal courts.

David S. Landis.

PARTNERSHIPS IN TAX AVOIDANCE — By Randolph Paul. George Washington Law Review. February, 1945.—*Partnerships in Tax Avoidance* points up a current problem that is of equal interest to the Treasury Department as it is to the average lawyer or his client. Due mainly to the tremendous need for monies which in turn has started the tax ball rolling, men in business are plumbing all the possibilities that the law allows.

Where once the cases were hard to find now a great share of the tax litigation concerns itself with this type of entity. As pointed out the Internal Revenue code requires partnerships to file a return which in itself is non-taxable since it is merely an information return for the purpose of showing only the distributive shares.

The early cases in partnership were somewhat incidental to other problems but now appear to be a real problem in themselves. The rule major of the present discussion is: "Income is taxable to the person who earns it . . . A mere assignment of income, does not transfer liability for tax upon the income from assignor to assignee. An assignment of capital which produces income will transfer liability for tax upon the income from assignor to assignee." However Paul admonishes: "There must be a complete transfer divesting the assignor of the substantial attributes of ownership namely, domination and control, as well as the mere technical forms of ownership."

Here then is stated the *sineque non* of partnerships between husband and wife and it is about the above quotes that all the litgation swirls. Since local law may not determine what the Federal law wants, the capacity for man and wife to become partners is strictly a federal question. In so many of the cases treated in this article there is an assignment from husband to wife of an equity in a business and they proceed to file a partnership return . . . when the Bureau questions the returns they will find that there is not an assignment of capital but of income since the wife or other near relative does nothing to warrant the remuneration. Thus in looking behind the scenes many cases of *pseudo*-partnership are uncovered which the bureau has to eliminate.

The definition accepted in *Meehan v. Valentine* is concluded to be the best: "Requisites are . . . that the parties must have joined together to carry on a trade or adventure for their common benefit, each contributing property or services, and having a community of interest in the profits." "The common practice then of merely citing the wife as a partner sometimes without her knowledge is *prima facie* contrary to the definition."

Subterfuges of many kinds exist and are especially suspect when they follow a dissolution of a corporation. In all cases where there is personal service involved it has been held that partnerships cannot be sustained. However, in the business field, manufacturing, etc., it has been frequently held that an assignment to the wife coupled with a reassignment to the business constitutes a bona fide partnership within the meaning of the Code. The *participation* angle is very important whether it be capital or services. Where only the husband's skill or special knowledge makes a concern run you will find no partnership held for obvious reasons.

Regarding the contribution of capital to the business: the wife must show the source and bookkeeping entries are closely checked, as well as other evidential prying, so it's pretty hard to get away with something less than a legal situation. One other unusual type has cropped up recently and that is the wife and children partnership. Held valid in quite a few cases, it generally must have the wife hold in trust the childrens' shares in the business. Thus it would seem that the right of the taxpayer to avoid taxes is not hampered too much by some rulings of the Tax Board in this regard.

Finally if you wish to avail yourself of an instrument of this type watch out for these things: avoid ambiguous conduct, and agreements of like nature; don't make the motive too obvious since in a close situation it won't help, and when in the final analysis you find the change was made so dominion could stay and tax liability move out, you are in a bad spot. Better legislation would help but this can only be achieved after the Treasury Department has executed a format readily acceptable to the hunter and the hunted.

John D. O'Neill.

PERSONAL PROPERTY TAXES ON VESSELS REGULARLY ENGAGED IN INTERSTATE OR FOREIGN COMMERCE—By John Ambler, Washington Law Review, January, 1945.—In this article the author presents the problem of imposing personal property taxes on vessels engaged in interstate or foreign commerce. In covering this field the author sets forth two basic questions that are to be answered.

The first question to be discussed is the location of the source where the vessels are taxable. The author first brings out the old "home port" theory. This theory was that the vessels were taxable wherever they were registered and this was considered their home port. This theory has long since been overruled. The present theory which is followed by the courts is that the vessels are taxable at the place of residence of the owner or owners of the vessel. The author then cites a number of cases from which the following rules of personal property taxation are established.

1. A vessel regularly engaged in foreign commerce between ports in the United States and ports abroad is taxable only in the domicile of its owner.

2. The same rule applies to vessels regularly engaged in interstate commerce.

3. An exception is recognized when the vessel is wholly employed within the limits of the taxing state. If so, then irrespective of residence of ownership elsewhere, it is taxable by the state within whose limits it is so engaged.

4. The home port of the vessel is immaterial to the question of the tax situs.

5. The fact that a "business domicile" or "business situs" has been established by the owner of such vessels in a state other than the domicile of the owners, appears to be immaterial on the subject of their taxation situs.

6. Failure of the inability of the vessels to enter physically the domicile of the owner is immaterial on taxation at such domicile.

In summation to the first question, the author states that the vessels engaged in interstate or foreign commerce are to be taxed only in the state where the owner or owners are residents.

The second question presented has to do with the amount the vessels are taxed. In the answering of this question the author shows the tendency of the Pacific Coast states to reduce the personal property taxes to the level where they would attract the owners of shipping lines to establish their residence within the state. To achieve this goal California, Oregon, and Washington have amended their constitutions so as to exempt all vessels from all taxation except those for state purposes.

The author in conclusion of his article believes that the trend of reduced taxes on vessels engaged in interstate or foreign commerce will be continued and reduced to a further extent.

Arthur A. May.

STATE AND LOCAL TAXATION ON FEDERAL PROPERTY—By Roy G. Blakey. Tennessee Law Review, February, 1945.—In this article we see again the never ending conflict between state and federal government in the United States. The author explains that the proposition that neither the national nor the state government may tax each other's instrumentalities and employees has grown into a confusing body of legal principles. New Deal projects and the war have made the problem more acute. Mr. Blakey tells us that over 24% of all the land in the United States is owned by the federal government.

The Federal Real Estate Board classifies the property in the following categories: (1) Real estate used for the care of wards of the government. (2) Real estate used for the general administration of the government. (3) Real estate used for national defense. (4) Real estate used for the development and protection of commerce. (5) Real estate used for land utilization and conservation projects. (6) Real estate used for welfare programs. (7) Conservation and utilization of water resources. (8) Surplus property no longer needed by the government.

The New Deal projects which were primarily designed to stimulate employment were located in cities, yet the local units of government could not tax them for local upkeep. They could, however, make a charge for such services as fire and police protection. The 1937 Federal Housing Act made a provision for payment in lieu of taxes to local units. Another type of New Deal land acquisition was for irrigation flood control, power development, etc. The legislation authorizing each project defined the payment in lieu of taxes. The author points out the inadequacy of these payments, using the T.V.A. for an example.

War purchases of property by the government also left local units of government with decreasing taxable real estate. The government housing projects contributed their share. Finally to help find a solution for the growing problem the Federal Real Estate Board was established. Other studies of the problem have been made by the President's Special Committee of the National Emergency Council, the Municipal Law Officers, and the Congressional Joint Committee on Reduction of Unnecessary Federal Expenditures. Recently more favorable federal legislation has been passed regarding "in lieu" payment on tax free federal property, but the problem still is acute.

The author concludes by making several recommendations, including a suggestion for a standing Congressional committee to represent state and local government interest. This article points up the necessity for cooperation. Neither the Federal nor the State Governments can do the job alone; they must work together. Just how far each should go is not answered here, but the question raised deserves serious thought.

Arthur M. Diamond.

THE RIGHT OF MINORITY STOCKHOLDERS TO PREVENT THE DISSOLUTION OF A PROFITABLE ENTERPRISE—By Robert A. Sprecher. Kentucky Law Journal. March, 1945.—The question presented in this article, though it may seem highly academic to some people and one which would not too often present itself to the courts, is in reality a very down to earth proposition which is recurring in our courts constantly. Some may cast this problem aside without a second thought by saying, "How can the minority stockholders prevent anything which has to do with the corporation." In answer to these the author here has made a very comprehensive study of the cases in the various jurisdictions and has endeavored to develop the general rules as they prevail.

The author, at the outset, sets out the fact that the rights of the minority stockholders depend upon the determination of the dividing line between two fundamental rules of corporate law. Rule one is that the majority of stockholders of a corporation are entrusted with the matters of important corporate policy, — not a court at the insistance of a minority stockholder. Rule two is that the relationship between the majority and minority stockholder is fiduciary in nature, and as such the minority stockholder may veto or object to the acts of the majority stockholder if the acts objected to constitute a breach of the fiduciary relation. The author to top off the presentation of these two rules goes on to say that the dividing line between the two has been and is a wavering one with the various courts granting decisions to both parties at different times.

After having laid down this basic groundwork the author goes on to aver certain fundamental rules of corporation law. He mentions the right of the majority of stockholders to dissolve an insolvent or unprofitable business, whether provided for by statute or not. He then goes to the other side of the fence by showing that minority stockholders can enjoin any majority action that is fraudulent, illegal, or *ultra vires*.

Having spoken of these basic problems which do not bear strictly upon the problem at hand, the author moves on to speak of fiduciary relationship between the majority and the minority stockholder. This relationship arises only when a majority stockholder steps out of his role as a stockholder and takes up the business of managing or conducting the corporation without regard to the interests of the corporation or the minority stockholders. At this point the author goes on to pose hypothetical cases on the proposition just stated and the views that some courts have taken on the subject.

In the second part of this treatise, the author speaks of the rights of minority stockholders in dissolution cases generally. Although the coverage of the various jurisdictions is not complete in the sense that all of the various states are not represented, a greater majority of the states are covered and the cases cited are the law and many of the citations are to fairly recent decisions. The jurisdictions covered are as follows: Alabama, California, Delaware, Illinois, Iowa, Kansas, Kentucky, Louisiana, Missouri, New Hampshire, New Jersey, New York, North Carolina, Texas, and Washington.

The final part of the article is what is labeled by the author as the conclusion. He concludes from the vast materials cited, that the courts *will* permit majority stockholders to dissolve profitable corporations according to statute and that the prevention of such dissolutions by minority stockholders is limited to but four situations, namely: (1) Where there is fraud, (2) where there is a "freezing out" of minority holders for the purpose of continuing the business for the benefit of the majority holders, (3) where the dissolution is, in effect a consolidation of two or more corporations, with such consolidation being contrary to law, and (4) where there is a sale of assets to the majority holders for an inadequate price. In view of this conclusion the author has pointed out a situation where the minority holders do have recourse to legal proceedings to prevent the dissolution of a profitable enterprise and this article may well be considered very timely in view of the fact that at the present time there may be many corporations which are profitable which may wish to dissolve in view of the fact that they will no longer be going concerns when their government contracts expire with the successful completion of the war.

Norbert S. Wleklinski.

TORT LIABILITY OF A SOLDIER—By J. D. Mann. Indiana Law Journal, January, 1945.—The ever present although the rather hypothetical dilemma that confronts members of our armed forces as to tort liability when acting in obedience to orders is the subject of Lt. Mann's article appearing in the January edition of the Indiana Law Journal. Mann, a lieutenant in the Army, treats the subject not only from the American viewpoint but also briefly touches upon the English view. The prevailing authoritative view in England is that a soldier does not lose his civil rights or discard his civil liability by becoming a member of the armed forces. By so doing he not only becomes subject to the regular civil law but also to a code of military law contained in the Army Act, the King's Regulation and Army Orders. Lt. Mann points out that the rule is similar in the United States.

Although the majority rule in this country aligns itself with the rule propounded by the English lawmakers there is a conflict of authority in this country. One line of reasoning takes the rule and modifies it to cover the soldier acting in obedience to orders from civil liability unless such orders are manifestly illegal. The other school would cover the soldier or subordinate officer with absolute non-liability unless the actor