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CORPORATIONS—SHAREHOLDERS—RIGHT TO BRING PERSONAL ACTION AFTER DISSOLUTION OF CORPORATION—Plaintiff stockholder brought a personal action against the president and majority stockholder for fraudulent conversion of money and property of a corporation dissolved prior to the start of plaintiff's suit. A statute provided that a dissolved corporation could sue to recover on a corporate right of action.[1] Defendant's demurrer was sustained. On appeal, *held,* affirmed. An action to enforce corporate injuries cannot be maintained by a stockholder in his own name, even though the corporation has been dissolved. *Ruplinger v. Ruplinger,* (Neb. 1951) 48 N.W. (2d) 73.

A shareholder has no direct, individual right of action for wrongs to a corporation merely because his investment has been impaired. Rather, the wrong is said to be primarily against the corporation and incidentally against the owners.[2] Such a suit must instead be brought by the corporation or by the shareholder as a derivative suit in the corporation's name.[3] This rule has been defended on the grounds that a personal action would subject the courts to a multiplicity of suits and confused damage problems, in addition to endangering the rights of creditors and extending the duty of management beyond that owed the corporate entity.[4] There are at least three situations which raise possible exceptions to this rule, however, namely: (1) When the wrong resulted in the loss of plaintiff's ownership in the corporation so that he was thereafter barred from bringing a stockholder's suit;[5] (2) when the defendants, by their mismanagement, have breached a separate fiduciary duty owed to the plaintiff individually;[6] and (3) when the plaintiffs are the only stockholders injured, the rights of creditors are not involved, and the wrongdoers are still in control. In the latter case it is felt manifestly unfair to place within the control of the wrongdoers the fruits of a judgment arising out of their own wrongs.[7] The facts of the principal case argue for this exception, viz., the plaintiff was the

[1] Neb. Comp. Stat. (1929) §24-112.

[2] Brodsky v. Frank, 342 Ill. 110, 173 N.E. 775 (1930), affd. 253 Ill. App. 491; and Lockart v. Moore, 25 Tenn. App. 456, 159 S.W. (2d) 438 (1941) (complete ownership of stock by plaintiff); L. J. Sigl, Inc. v. Bresnahan, 216 App. Div. 634, 215 N.Y.S. 735 (1926) (98% ownership by plaintiff); Paramount Famous Lasky Corp. v. Stinnett, (Tex. Civ. App. 1929) 17 S.W. (2d) 125, affd. 37 S.W. (2d) 145 (all but one share held by the plaintiff).

[3] Smith v. Hurd, 12 Metc. (53 Mass.) 371, 46 Am. Dec. 690 (1847); Cullum v. General Motors Acceptance Corp., (Tex. Civ. App. 1938) 115 S.W. (2d) 1196.

[4] BALLANTINE, CORPORATIONS, rev. ed., 333-334 (1946).

[5] Von Au v. Magenheimer, 126 App. Div. 257, 110 N.Y.S. 629 (1908), affd. 196 N.Y. 510, 89 N.E. 1114; Hammer v. Werner, 239 App. Div. 38, 265 N.Y.S. 172 (1933).

[6] Administrator: Matter of Auditore, 249 N.Y. 335, 164 N.E. 242 (1928); director of a parent corporation with guilty knowledge of mismanagement in a subsidiary: General Rubber Co. v. Benedict, 215 N.Y. 18, 109 N.E. 96 (1915); breach of personal contract: Boatright v. Steinite Radio Corp., (10th Cir. 1931) 46 F. (2d) 385 (dismissed on other grounds); pledgee of stock depreciated in value: Kono v. Roeth, 237 App. Div. 252, 260 N.Y.S. 662 (1932); pledgor of stock depreciated in value: Ritchie v. McMullen, (6th Cir. 1897) 79 F. 522, 47 U.S. App. 470.

[7] Eaton v. Robinson, 19 R.I. 146, 31 A. 1058 (1895). Decree should be so framed as to benefit innocent stockholders only, Brown v. DeYoung, 167 Ill. 549, 47 N.E. 863 (1897); Matthews v. Headley Chocolate Co., 130 Md. 523, 100 A. 645 (1917).

only owner wronged, and hence there was no danger of multiple suits; there appeared to be no intervening creditors with rights to be considered; and the defendant was the majority stockholder. Furthermore, the damage question was simplified by the presence of only two or three ownership equities and a single non-assenting plaintiff. More precisely, there is authority to the effect that a wronged shareholder need not go to the unnecessary expense and procedure of a derivative suit if the corporation has been dissolved.[8] It has been argued that since the entity has virtually vanished by the dissolution, except for purposes of distribution, the stockholder may bring a personal action against the wrongdoer for his proportionate part of the money owed the defunct corporation.[9] The mere fact that a statute permits a dissolved corporation to bring actions in its own name has been held, by at least one court, to be no bar to the personal action[10] It is submitted that the mechanical requirement of a derivative suit in circumstances like the principal case gains little but consistency with the general rule, while surrendering much in time, expense and unnecessary procedures.[11]

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[8] Dill v. Johnson, 72 Okla. 149, 179 P. 608 (1919); O'Brien v. O'Brien, 238 Mass. 403, 131 N.E. 177 (1921); Gardiner v. Automatic Arms Co., (D.C. N.Y. 1921) 275 F. 697; McClean v. Bradley, (D.C. Ohio 1922) 282 F. 1011, affd. 299 F. 379; Word v. Union Bank & Trust Co., 111 Mont. 279, 107 P. (2d) 1083 (1940); Weinert v. Kinkel, 296 N.Y. 151, 71 N.E. (2d) 445 (1947). But cf. Watts v. Vanderbilt, (2d Cir. 1930) 45 F. (2d) 968.

[9] Word v. Union Bank & Trust Co., 111 Mont. 279 at 282, 107 P. (2d) 1083 (1940).

[10] Gardiner v. Automatic Arms Co., supra note 8, involving N.J. Comp. Stat. (1910) §53. However, the New Jersey statute here involved is more restrictive (both in scope and number) of the actions allowed the corporation after dissolution than the Nebraska statute. Note 1 supra.

[11] For criticism of the stockholders' derivative suit, see: Berlack, "Stockholders' Suits: A Possible Substitute," 35 MICH. L. REV. 597 (1937); Glenn, "The Stockholder's Suit—Corporate and Individual Grievances," 33 YALE L.J. 580 (1924); McLaughlin, "The Mystery of The Representative Suit," 26 GEORGETOWN L.J. 878 (1938); and Hornstein, "Legal Controls For Intercorporate Abuse—Present and Future," 41 COL. L. REV. 405 (1941).