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RECEIVERS - SITUS OF PLEDGED STOCK FOR JURISDICTIONAL PURPOSES

RECEIVERS — SITUS OF PLEDGED STOCK FOR JURISDICTIONAL PURPOSES — The assets of Insull Utility Investments, Inc., an Illinois corporation, consisted of stock in other Illinois corporations. This stock was pledged to New York banks by the president of Insull Utility in his representative capacity. Upon receivership of Insull Utility in the federal court in Illinois it was found that the equity of redemption in this stock comprised virtually the corporation's entire assets. The stock having depreciated below the amount of the loan secured, the pledgees took action to foreclose their collateral. Since otherwise the unsecured creditors would take nothing, the receiver sought to enjoin the sale until a better market would insure an equity of redemption. *Held*, injunction granted. *Cherry v. Insull Utility Investments, Inc.*, (D. C. N. D. Ill. 1932) 58 F. (2d) 1022. Reversed, *Guaranty Trust Co. v. Fentress*, (C. C. A. 7th, 1932) 61 F. (2d) 329.

The decision of the Circuit Court of Appeals proceeded upon the double

ground of lack of power to enjoin and of impropriety of interfering with the rights of secured creditors. Since there was no jurisdiction *in personam* over the pledgees, the court had power to issue the injunction only if the *res*, the pledged shares, were within its control.[1] The cases show three possibilities as to the situs of corporate stock: (a) the domicil of the corporation, (b) the domicil of the owner, (c) the physical location of the certificate.[2] Determination of the question may depend to some degree upon the way in which it arises. Thus, recent decisions of the Supreme Court indicate that for purposes of taxation the situs of the share is the domicil of the owner,[3] with the possible exception that if it is in another jurisdiction for business purposes it may be taxed there.[4] When the question arises in connection with the administration of trust or decedents' estates, the general rule is that the share is located at the domicil of the corporation.[5] Of these situations, the winding up of a decedent's estate furnishes the closest analogy to the receivership of an insolvent corporation. However, under the impetus of the Uniform Stock Transfer Act[6] the trend seems to be toward regarding the certificate as the share itself,[7] in accordance with mercantile custom. The instant case must have gone on this theory, since both the domicil of the owner[8] and of the corporations whose stocks were pledged were within the jurisdiction. In reality, an intangible like a share of stock has no situs; and it is submitted that, rather than necessitating ancillary receivership or defeating a meritor-

[1] 1 CLARK, RECEIVERS, 2d ed., sec. 294 (1929); Weber Showcase & Fixture Co. v. Waugh, (D. C. W. D. Wash. 1930) 42 F. (2d) 515; Lucey Mfg. Corp. v. Morlan, (C. C. A. 9th, 1926) 14 F. (2d) 920; Primos Chemical Co. v. Fulton Steel Corp., (D. C. N. D. N. Y. 1918) 254 Fed. 454.

[2] *Cf.* 26 MICH. L. REV. 101 (1927); 25 MICH. L. REV. 447 (1927); 39 HARV. L. REV. 485 (1926); Goodrich, "Problems of Foreign Administration," 39 HARV. L. REV. 797 at 805 (1926); 24 MICH. L. REV. 411 (1926).

[3] First Nat. Bank v. Maine, 284 U. S. 312, 52 Sup. Ct. 174, 76 L. ed. 313 (1932).

[4] In First Nat. Bank v. Maine, 284 U. S. 312, 52 Sup. Ct. 174, 76 L. ed. 313 (1932), it was recognized that perhaps stock could be so used that it could acquire a situs different from the domicil of the owner; but the question was reserved until it should arise.

[5] Baker v. Baker, Eccles & Co., 242 U. S. 394, 37 Sup. Ct. 152, 61 L. ed. 386 (1917); Martin v. Central Trust Co., 327 Ill. 622, 159 N. E. 312 (1927); Martel v. Block, 154 La. 863, 98 So. 398 (1923); Harvey v. Harvey, (C. C. A. 7th, 1923) 290 Fed. 653. *Accord*, Sohege v. Singer Mfg. Co., 73 N. J. Eq. 567, 68 Atl. 64 (1907) (attachment); Hamil v. Flowers, 133 Ga. 216, 65 S. E. 961 (1909) (bill to quiet title in shares).

[6] The whole tenor of this Act is to regard the certificate as the share itself. E.g., *cf.* sec. 1: "Title to a certificate and to the shares represented thereby can be transferred only (a) By delivery of the certificate. . . . "

[7] Norrie v. Lohman, (C. C. A. 2d, 1926) 16 F. (2d) 355; Direction der Disconto-Gesellschaft v. United States Steel Corp., 267 U. S. 22, 45 Sup. Ct. 207, 69 L. ed. 495 (1925); Griswold v. Kelly-Springfield Tire Co., 94 N. J. Eq. 308, 120 Atl. 324 (1916); Lockwood v. United States Steel Corp., 209 N. Y. 375, 103 N. E. 697 (1913).

[8] It is generally held that the pledgor has title to the pledged stock, the pledgee having only a lien. Payne v. Kendall, 221 Ala. 478, 129 So. 40 (1930); In re Hallenbeck's Estate, 231 N. Y. 409, 132 N. E. 131 (1921).

ious cause for jurisdictional technicalities, a corporate share should (in other than taxation cases)[9] be deemed to have a "situs" in any or all of the above suggested alternative locations.[10] However, in the instant case the objection is of lessened importance, since the court indicated that even if there had been jurisdiction over the *res* it would be improper to interfere with the pledgee's realization on his security. A more comprehensive treatment of the subject of judicial moratoria on security foreclosures, in a later issue of the Review, is contemplated, and therefore no comment is made here as to the propriety of refusing to delay the secured creditor's remedy; but it is suggested that on the issue of jurisdictional *power* to enjoin, as opposed to the *propriety* of injunction, the decision of the lower court is more liberal and reaches a better result than that of the Circuit Court of Appeals.

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[9] Recent cases of the Supreme Court indicate a sharp break away from multiple taxation of intangibles. Safe Deposit & Trust Co. v. Virginia, 280 U. S. 83, 50 Sup. Ct. 59, 74 L. ed. 180, 67 A. L. R. 386 (1929); Farmers Loan & Trust Co. v. Minnesota, 280 U. S. 204, 50 Sup. Ct. 98, 74 L. ed. 371, 65 A. L. R. 1000 (1930); Baldwin v. Missouri, 281 U. S. 586, 50 Sup. Ct. 436, 74 L. ed. 1056 (1930); Beidler v. South Carolina Tax Comm., 282 U. S. 1, 51 Sup. Ct. 54, 75 L. ed. 131 (1930). In accord with such principles a share of stock can, for taxation purposes, have situs in one State only. First Nat. Bank v. Maine, 284 U. S. 312, 52 Sup. Ct. 174, 76 L. ed. 313 (1932).

[10] The cases recognize that the same share may have a situs in more than one jurisdiction. *Cf.* Norrie v. Lohman, (C. C. A. 2d, 1926) 16 F. (2d) 355; Griswold v. Kelly-Springfield Tire Co., 94 N. J. Eq. 308, 120 Atl. 324 (1916). Since a court having within the jurisdiction either the corporation, the owner, or the certificate has the power of efficiently controlling the share, no reason suggests itself why any such court should not be deemed to have jurisdiction over the share. *Cf.* In re San Antonio Land & Irrigation Co., (D. C. S. D. N. Y. 1916) 228 Fed. 984.