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-by-

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C O N T E N T S .

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The Statutory Liability of

Stockholders for Corporate Debts.

"The stockholders exemption from liability for the corporation debt is the essential feature of modern corporations". If this liability were taken away corporations would fall with it, for it is the limitation of possible loss that renders the corporation a favorite mode of doing business. Under the general law a stockholder is no longer liable for the debts of the corporation after his stock has once been fully paid up. In some classes of corporations this limited liability has been found dangerous and unjust. It is now conceded that stockholders in banks should be liable doubly on their stock, once on the subscription, and once on the amount of the stock, in case the bank becomes insolvent. "United States Revised Statutes, R. 5151. Stockholders are liable for corporate debts to an amount equal and in addition

to the subscription of their capital stock." Such is the liability of stockholders in national banks, and in the banks of most of the states. This has been brought about on motives of good business policy. It has seemed reasonable that unprotected depositors who have received no interest upon their deposits, should not fear the losses of an insolvent bank, but that the stockholders who have had the benefit of these deposits should take the risk of the busines.

The object of the corporation being thus to escape from individual liability, the amount invested may be lost, but the private fortune of the stockholder can not be reached. Many states have increased the liability of stockholders by statutory provisions, and provisions in their constitutions, but this liability, however, is considered as generally fatal to the growth of corporations which by their nature are essential to the carrying on of vast enterprises, The corporation is capable of collecting great capital, and by having a few men as directors the machinery of its government is less cumbersome than that of a partnership. It is a convenient mode of investment as the stock may be pledged, or sold intelligibly by the latest stock quotations. Another advan-

tage that a person may easily buy or retire from the business, and the dissolution of the corporation is not brought about by the death of withdrawal of the stockholder, for upon the death of the stockholder his executor votes his stock, and has a voice in the continuance of the business. Hence an increased liability beyond the unpaid subscription retards the growth of the corporation.

The first theory of a corporation was, that upon its dissolution ~~that~~ both the debts due to it and from it are extinguished; after the analogy of municipal corporations, but this theory is now thoroughly exploded. (2 Kent's Comm., 307 note.) "The rule of the common law has in fact become obsolete and odious. It never has been applied to insolvent or dissolved money corporations in England. The sound doctrine now is, as shown by statute and judicial decisions, that the capital and debts of banking and other money corporations constitute a trust fund for the benefit of creditors and stockholders; and a court of equity will lay hold of the fund and see that it is duly collected and applied. The death of a corporation no more impairs the obligation of its contracts than the death of a person. The obligation

of those contracts, survives, except such as, in the nature of the case, are incapable of specific performance; and the creditors may still enforce their demands against any property belonging to the corporations, which has not passed into the hands of a bona fide purchaser. It follows that a Legislative act, dissolving a corporation does not impair the obligation of its contract with its creditors but gives validity to them hence, is conatitutional. (Mumma v. Potomac Co., 8 Peters, 281). On the other hand a law distributing the property of an insolvent trading or banking corporation among its stockholders, or giving it to strangers, or seizing it to the use of the state, would clearly impair the obligation of contracts.

The corporation is created as a person, by sovereign authority, independent of members, and it is alone liable for its debts, and there is absolutely no liability for debts except as provided by statute. That is, by convenient fiction of the law the corporation is deemed to be one person, or while the stockholders--even the whole of them taken collectively-- are other persons. This fiction has been resorted to, I believe for the convenient administration of justice.

Strictly speaking stockholders are not liable for debts of a corporation but either (a) their liability for their debts to corporation which the corporation itself might have enforced: (b) their liability to creditors by reason of the appearance of a liability to the corporation, which does not actually exist to the corporation and which the corporation could not enforce, but which the creditors can enforce because of a quasi-estoppel to deny appearance, but still not a liability for debts of the corporation, and this liability of creditors to enforce unpaid subscriptions courts of equity took cognizance at common law. It has been deemed wise however, by the state legislatures, in many instances to increase the liability of stockholders to corporate creditors; accordingly, statutes are passed expressly declaring the stockholder should be liable for a specific sum, in addition to the unpaid subscription. This is called the statutory liability, and it rather exists as regards stockholders in railroad corporations, but frequently in the case of manufacturing and various other corporations, the additional liability may be imposed by state constitution, charter and general statute. The statutory liability for convenience may be divided into five classes:

Constitutional and Statutory

Provisions of the Several States.

I. Those statutes that merely affirm the common law rule of limited liability, stockholders being liable for the amount unpaid on their stock or subscription. Alabama Constitution, Article 14, P. 8 (1875); Georgia Miscellaneous Corporations Code 1882, P. 1676; Maryland General Laws 1888, page 301; Michigan General Statutes 2365; Minnesota General Statutes 1888, page 395, stockholder liable for unpaid stocks and as partners if incorporation is irregular, Miscellaneous Corporations only. Mississippi Code 1880, sec. 1037, stockholders are liable for unpaid subscriptions such liability to continue one year after transfer; Montana Statute 1886, P. 457, stockholders liable for unpaid subscriptions; Nebraska Constitution 1875, Article 11, P. 4 Provides that stockholders are liable on unpaid subscriptions; But if there are any irregularities then liable for all debts. Oregon Constitution stockholders shall be liable on subscriptions but no further; South Dakota Compilled Law 1887, P. 2933; Texas Revised Statutes 1887, P. 610; Washington Con-

stitution Article 12, R..4, 1889 stockholders, except in banks and insurance companies, are liable only on unpaid subscriptions; West Virgina Constitution 1872, Article 11, R. 2; Louisiana Revised Laws second edition, Stockholders are not liable beyond unpaid subscription, nor do informalities in incorporation render them otherwise liable.

The Interpretation of these Provisions. (Walker v. Lewis, 49 Texas, 123). "A stockholder in a corporation is not personal liable to creditors thereof, unless it be by virtue of some provision of the charter or of the general statutory law. If he has not paid for the stock subscribed, the sum remaining unpaid may be reached by creditors of the corporation."

II. Those which impose an additional liability upon the contingency of the stock not having been paid in. Delaware Manufacturing Corporations. If capital stock is not all apaid in stockholders are liable to corporate creditors for the deficiency. Chapter 147, Laws 1883. New Hampshire stockholders in all corporations except banks and railroads, are liable for all corporate debts until the capital stock is paid in and a certificate to that effect

filed. General Statutes p. 350. New Jersey General Provision Revision of 1877, p. 178. When stock is not all paid in, stockholders are liable ratably for the unpaid part.

Rhode Island Miscellaneous Corporations. Public Statutes 1882, p. 386. The stockholders are jointly and severally liable for all debts until the capital stock is fully paid up and a certificate to that effect filed with the town Clerk. Vermont stockholders are liable to corporate creditos to the amount of their stock until the capital stock is paid up. Miscellaneous Corporation Revised Statutes, 1880, 3292.

III. Imposing anabsolute personal liability to certain classes of creditors, ~~ofcreditors~~ such as servants, employees and material men. Indiana Revised Statutes, 1887, 3869. Stockholders are liable for debts due to laborers. Also Railroad Corporations, 3934.

Massachuesetts:- All stockholders are liable for debts to operatives for service demanding pay within six months after the labor. Revised Statutes, 1882 p. 581.

Michigan Conetitution, Article XVI. 1850. The stockholders of all corporations and joint stock associations shall be individually liable for all labor performaned for

such corporation. Also railroads are liable . . . 3385, General Statutes.

New York: Stockholders are liable for debts to laborers. Laws of 1848, Ch. 40, 18. Railroad Laws 1850 Ch. 140, P. 10, 12. Stockholders are liable to laborers for thirty days services, with certain restrictions on the right of collection. Amended by N.Y. Laws of 1875, Ch. 392-8.

North Carolina: Stockholders are liable to laborers for thirty days wages, Code Railroads 1940.

Pennsylvania: Stockholders are liable "to the amount of stock held by each of them" for work or labor done for the corporation. Brightley Purden's Digest, p. 345.

Tennessee: Code 1884, P 1858. Stockholders are liable for debts to laborers etc., upon the insolvency of the incorporation.

Wisconsin: Except in railroads, the stockholders are liable to clerks, laborers etc., for six months service or less to an amount equal to the stock held by each. 1878 Revised Statutes P. 1869.

IV. Imposing an absolute liability for all the debts of the corporation, limited however, to an additional amount equal

to the par value of the shares held by each; or limited to such a proportional amount of the corporate as the share held by each bear to the whole subscribed stock. Ohio Constitution, Art. XIII. Sec. 3. In all cases, each stockholder shall be liable, over and above the stock by him or her owned, and any amount unpaid thereon. to a further sum, at least equal in amount to such stock. Kansas Constitution Art. XII. Sec. 2., excepting railroad corporations also Florida p. 2. California Constitution Art. XII. Sec. 3. Stockholders in all corporations are individually and personally liable for such proportion of all its debts and liabilities contracted or incurred during the time he was stockholder, as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock or shares of the corporation or association.

Florida Digest Law 1881, p. 232. If upon dissolution, corporate debts are unpaid, stockholders are liable to the extent of the par value of their stock in addition to subscription liability execution against the corporation may be levied on stockholders property on motion in court and due notice, p. 236. Imposing the liability of an additional amount equal to the par value of the shares held by each in the banks.----

New York Const. Art. VIII. Sec. 7: Stockholders in state banks which issue money are liable to creditors to the extent of the par value of their stock in addition to the subscription liability. West Virginia (1872) Art. XI. Sec. 6. Indiana Constitution Art. XI. Sec. 6 (1870): Stockholders in banks are liable to amount of stock to corporate creditors for liabilities "accruing while he or she remains such stockholder." Iowa Consti. Art.8, Sec. 9 (1857); and Nebraska Consti. Art. XI. Sec. 5; Minnesota Consti. 1857, Art. IX, Sec. 13; to double the amount of their stock. Michigan Consti. 1850, Art. XV. Sec. 3: Stockholders in bank issuing money are liable for all debts of the bank contracted while they are officers or stockholders each for his proportion according to the amount of stock owned by him.. In Nevada Consti. 1864, Art VIII, Sec. 3; it is enacted that stockholders shall not be individually liable for the debts are liabilities of the corporation. Minnesota Consti. (1857) Art. 10-3; and Mississippi Consti. (1869) Art. XII R. 17, each stockholder is by the Constitution liable for the amount of stock held or owned by him.

The following states have constitutional guaranties

against the enactment of personal liability above unpaid subscription. Alabama, Nebraska, Oregon, West Virginia, Washington, Missouri (1875) Art. XII. Sec. 9. Stockholders shall not be liable on stock, "in any amount over and above the amount of stock owned by him or her.

Proportional Liability. Interpretation of Statutes. 64 California 383, Morrow v. Superior Court. "In an action by a creditor against stockholder to recover a proportional amount of a debt created by the corporation, it is only necessary to determine the whole amount of the capital stock of the company (2) the amount of stock owned by the defendant (3) the amount of indebtedness of the company to the creditor. These questions are not of equitable cognizance and may be tried and determined in an action at law." It is expressly provided by this statute that each stockholder shall be individually and personally liable for a proportion of all the debts and he is necessarily liable for the same proportion of each debt. All the debts mean every debt of the company; and it seems that any creditor is entitled to sue any stockholder for such proportion of the indebtedness of the company to such creditor as the stock of such stockholder bears

to the whole capital stock of the company."

"There is nothing in the act which postpones creditors right of action against a stockholder until after he has exhausted his remedies or any part of them against the company for the recovery of his debt. The liability of the stockholder is in our opinion as distinct and separate from that of the corporation as it would be if the act made no provision for any other liability than that of the stockholders for the debts of the company."

Cases Interpretating Statutes, "To the amount of their stock." Root v. Sinnock, 120 Ill., 350. Under the Constitution of Illinois, the charter of a private bank contains the provision:- "Provided also, that the stockholders in this corporation shall be individually liable to the amount of their stock for all debts of the corporation; and such liability shall continue for three months after the transfer of any stock on the books of the corporation." "Held that the stockholders were each individually liable to pay to the creditors of the bank, not merely the balance unpaid upon subscription for stock, but to the whole extent of the nominal or face value upon the stock held by them, for debts of the

bank."

But since the words, "to the amount of their stock" in no view mean the thing which is itself to be paid to the creditor; but are, in every view, simply used to express the measure by which the sum of money of which the creditors may enforce payment is ascertained, liable to the amount of their stock is but stating but elliptically what is fully stated by the words, liable in a sum equal to the amount of their stock.

To Double the Amount of Stock. Appeal of Parish (1890) 19 Atlantic Rep., 569, holding that Pa. Act of April 10, 1873, incorporating the Miner's Bank of Summit Hill, which provides that; "the stockholders of said bank shall be individually responsible and for all contracts, debts, engagements of said bank to the extent of double the amount of stock subscribed for or held by them" creates a liability in favor of creditors against the stockholders in twice the amount of stock held by them respectively without regard to the question whether or not the stock has been paid for in full to the corporation. The liability to the corporation for the amount of subscription unpaid exists without this personal

liability clause in the charter. Hence it would follow where the liability is double, he is liable not only to the corporation for any balance, if any unpaid upon the stock, but also to the creditors to double the amount of said stock.

The individual liability due to laborers, etc., The principal difficulty lies, in the interpretation of these statutes, that of ascertaining who are employees, etc. In Jackson v. Meek, 89 Tenn., 69, it was held that an employee is not estopped to proceed against stockholder of an insolvent corporation for his wages--when the charter provides for their individual liability by taking note and obtaining judgment against the corporation for such wages, and by receiving pro-rata on his claim out of the corporate assets." The individual liability of stockholder was designed merely to supply any deficiency of the corporate assets. Also stockholders are not relieved, by transfer of their stock, from their individual liability to employees of the corporation for wages previously earned." *

The general rule of the common law holds the shareholders of a corporation liable for the debts of the association only so far as he may have agreed to contribute to

the capital stock of the company; his liability is in his corporate capacity, and is deemed the primary source for the payment of the company's debts; but in this case as in the constitutions of other states there has been superadded to this common law liability in corporate capacity and individual liability upon the stockholders in favor of journeymen. servants, and employees wages. This is regarded as a secondary source for the payment of the debts provided for. First the corporate assets, and second the individual stockholders. This individual liability when accepted by the laborers becomes a binding contract and cannot be released by the officers or directors; none but those for whose benefit the provision was made can release the contract. To hold differently would practically destroy the provision for the wage earners benefit.

Held in Layle v. Brown, 40 Fed.Rep., 8, that the liability was penal and therefore not enforcible outside of the state. The corporation arose in Rhode Island and the liability was attempted to be enforced in Maryland.

Statutes that create liability because of failure on the part of the corporate authorities to give certain

specific notices, or to make certain reports, or because forbidden contracts are entered into by the corporation are essentially penal in their nature and cannot be enforced out of the state.

Huntington v. Altrill, 146 U.S., 657. "Wherever, by either the common law or the statute, law of the state, a right of action has become fixed and a legal liability incurred, that liability may be enforced and the right of action pursued in any court which has jurisdiction of such matters and can obtain jurisdiction of the parties. 103 U.S., 17-18."

The question whether a statute of one state which in some aspects may be called penal, is a penal law in the international sense, so that it cannot be enforced in the co courts of another state, depends upon the question whether its purpose is to punish an offense against the policy of the state or to afford a private remedy to a person injuried by the wrongful act.

A statute making an officer of a corporation, who signs and records a forged certificate of the amount of its capital stock, liable for all its debts, is not a penal law in the international sense. To maintain such a suit is not to administer a punishment imposed upon an offender against

the state, but simply to enforce a private right secured under its laws to an individual. The court "saw no just grounds on principle for holding such a statute to be a penal law, in the sense that it cannot be enforced in a foreign state or country." It follows that the courts of some state including Maryland, have declined to enforce a similar liability imposed by the statute of another state. But in each of those cases it appears to have been assumed to be a sufficient ground for that conclusion that the liability was not founded in contract but was in the nature of a penalty imposed by statute; and no reason was given for considering the statute penal in the strict primary sense.

Does the liability survive death of stockholder and is there contribution by those not paying to those paying?

If the Statutory liability accrued before death of stockholder, that is if the corporation became insolvent, or there was a contingent liability arising from the fact that the capital stock had not all been paid the estate of the deceased becomes liable for the debt, the same as any other claim against an estate. If it is an action ex contractu it will survive, but if penal it abates with death of stockholder. 119 N.Y., 117, Carr v. Richer, It seems an action against a director of a corporation organized under General Manufacturing Act (Chapter 40, Laws 1848), to recover debt due from the company because of failure of defendant to make and file an annual report as required by the act, (2) is a penal action and abates upon the death of either party before verdict. But when judgment is rendered, the original wrong is merged

therein and the judgment becomes property with all the attributes of a judgment in an action ex-contractu. The action therefore does not abate absolutely upon the death of the defendant after judgment.

Is the recovery of judgment and execution nulla bona against corporation condition on holding stockholders?

A judgment duly obtained against a corporation and an execution thereon returned nulla bona is, in a majority of the cases and in the absence of different statutory provisions held to be a pre-requisite to the right to proceed against the stockholder on his statutory liability. Carne v. Brigham, 39 Maine, 35. "The stockholder of a corporation, for an unsatisfied judgment against it, are liable to such judgment creditor, although he is an assignee of the debt against it."

In a case in 108 Mass., 543, Thayer v. New England Lithographic Co., the question arose whether the officer's liability should be met by the stockholder. But much depends upon the meaning of the statute, as some statutes impose upon stockholders an immediate and direct liability for the debts of the corporation which may be enforced by the creditor directly without his having first proceeded against the corpor-

ation, and in other cases they are framed upon what seems to be the more equitable principle that corporate creditors should resort to the corporate assets for the satisfaction of their debts before proceeding against the individual property of shareholder. In an action against the stockholder of a corporation by a judgment creditor of the corporation who has had execution against ereturned unsatisfied, to enforce the amount due upon unpaid subscription for stock proof that a creditor has exhausted his legal remedy against corporation is shown by the judgment and execution thereon returned unsatisfied. (30 Paige, 776).

May a Stockholder Counter-claim Indebtedness of Corporation when? (Agate v. Sands, 73 N.Y., 620).

It seems that a loan of money by a manufacturing corporation by one of its stockholders, in the absence of evidence to the contrary, justifies an inference that the money was applied to the payment of the obligation of the corporation in the usual course of business. In an action therefore, by a creditor of the corporation against a stockholder to enforce the liability imposed by the general manufacturing act (R. 18 Chap. 40, Laws of 1848) upon a stockholder who has paid for his stock

evidence of a loan to the corporation to the amount equal to his stock constitutes a defense. Finch J. in Wheeler v. Milliar, 90 N.Y., 354, The statutory liability arises whenever the whole capital stock has not been paid in. The stockholder may have paid in full, but that does not relieve him if others are in default in Laws of 1848 Chap. 40 P. 10. He is still liable to an amount equaling his stock, so long as the whole capital is not fully paid. But this liability constitutes a fund which any creditor of the company may reach. If now the stockholder sued is himself such creditor to an amount equaling his statutory liability he has quite as good a right to the fund which is pursued as the pursuer, Indeed he has the better right because it is already in his possession, and it would be inequitable to take it from him, for the benefit of another creditor who has no superior equity. But the stockholder must be really a creditor of the company but it is claimed here that such is not the defendant's position and that he is not in reality a creditor of the company at all, because he owed the corporation on his unpaid subscription as much or more than the company owed him, and against the creditor seeking the statutory fund in his hands

he cannot set up an equitable claim upon it while his own debt to the company remains unpaid and is more than enough to balance and extinguish his demand as creditor.

The law as to many other statutes which I have not attempted to classify must be interpreted according to the constitutions, charters and special provisions of the respective states; and the remedy for enforcing the same is provided by the constitutions of these states. A detailed survey is impossible. Nothing like an exhaustive study can be made, and only a general classification is possible of this vast subject.

In the superficial view I have given of the statutory liability of stockholders, the general tendency seems to be the reduction of the personal liability, as tending to defeat the ends for which the corporation was formed, namely the exemption from personal liability and the protection of those dealing with the corporation.