New Jersey Court of Errors and Appeals

CHARLES LASK,
Complainant-Respondent,
against
BEDELL, INC., a Corporation,
Defendant-Appellant.

BRIEF FOR COMPLAINANT-RESPONDENT.

POINT I.

The Court of Chancery had jurisdiction to make complete disposition of the matter in suit.

Doubtless, appellant's objection to the jurisdiction of the Court is based upon the theory that complainant could have had a remedy at law. He might, it is true, have recovered a worthless judgment against Corcoran, an embezzler and an absconder, as for money loaned. But having received an assignment of the stock of the defendant, issued to Corcoran, though not physically delivered to him, as security for the moneys loaned to Corcoran, and by him turned over to the appellant, who admitted receiving it (answer of defendant, Par. 3, Case, p. 4, Complainant's Exhibit 2 p. 30) in payment of said stock, complainant has properly invoked the aid of a Court of Equity to enforce his lien on said stock. Admittedly at

the time of the receipt of this money by Bedell, Inc., March 4th, 1918, and the making of the first assignment (Complainant's Exhibit 4, p. 13) Corcoran had not embezzled defendant's funds, and no other lien existed against his stock.

If Mr. Myers, the attorney for the corporation be considered simply as a depositary of the stock, then Corcoran was the absolute owner of the stock issued in his name, even if the physical delivery had not been made to him, and the assignment to complainant became effective at once. That this is so is evident from the view taken by the appellant, for Friedberg, one of the directors, testified, in answer to a question put by the Court (Case, p. 26, fols. 10-20, Conclusions, p. 50, fol. 10) that "if the defalcation had not occurred he judged that the stock would have been delivered to Corcoran." "The stock was not put in escrow. The delay in delivering was due to the absence of the parties" (Case, p. 53, fol. 10).

Under those circumstances the Court had ample jurisdiction to determine all of the issues involved. Besides no objection to the jurisdiction was raised by the pleadings nor at the trial.

> "An action strictly *in personam* for the recovery of corporate stock, the situs of which is in the State may be brought in the Chancery Court."
>
> Soheger *v.* Singer Mfg. Co., 73 Equity 567.

> "In the absence of objection *in limine* that the remedy at law is adequate, equity will exercise its jurisdiction, unless on its motion it seems fit to remand the parties to a Court of Law."
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> Knikel *v.* Stutz, 74 Eq., 581;
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> Lehigh Zinc etc., Co. *v.* Stotter, 43 Eq., 185.

See also

> Roe *v.* Jersey City, 80 Eq., 35.

"If the defendant answers a bill without objection to the jurisdiction and contests the merits of the case, the Court will entertain the bill if the matter be fit for equitable cognizance."

Seymour *v.* Long Dock Co., 20 Eq., 396;
Polhemus *v.* Holland Trust Co., 61 Eq., 654.

POINT II.

Complainant's rights were superior to those of the appellant, to the possession of the stock in question.

The defendant claims that under the by-laws of the corporation, a bond was required to be given by Corcoran as its general manager, and that his stock was held by the corporation in lieu of the bond.

The answer to this contention is found in the Vice Chancellor's opinion at p. 51 of the case:

"There is no evidence that any arrangement was made whereby the stock was to be held by the corporation in lieu of the bond. No agreement on Corcoran's part that it should be so held was shown. Both he and Friedberg were witnesses and no attempt was made to prove an agreement either that the stock should be held by the corporation in lieu of the bond, or that the stock should be held to answer any claims the corporation might have against Corcoran."

To which forceful argument might be added the further fact that the corporation had no inherent right to waive the provision of its by-laws requiring the furnishing of a bond, and the contention attempted to be made was clearly an afterthought.

The appellant had no lien upon Corcoran's stock, in the absence of any agreement, by-laws or statute, for any indebtedness due it by, or claimed against, Corcoran by it.

(Opinion Vice Chancellor, Case, p. 53, and cases cited).

It is contended also by the appellant that because Corcoran did not have possession of his certificates, the respondent was put upon notice and consequently cannot be said to be a *bona fide* purchaser for value.

The section of the Corporation Act cited by the appellant (C. S. Vol. 2, p. 1610) does not sustain this contention. Neither do any of the cases cited apply. The Court below disposed of these points quite fully (Conclusions, p. 51, Case, fol. 40 pp. 52 53):

> "It is the recognized law of this State that the certificate of stock is merely evidence of ownership, and that there need not be a certificate issued and delivered to vest a person with the rights of a stockholder."
>
> Storage Co. v. Assessors, 56 N. J. L., 389;
> Warren *v.* Pim, 66 N. J. Eq., 381;
> Citing Downing *v.* Potts, 5 Zab., 66, 79;
> Bijur *v.* Standard Dist. etc., Co., 74 N. J. Eq., at p. 556, aff'd 78 N. J. Eq., 582;
> N. Y. & East. Tel. Co., *v.* Great Eastern Tel. Co., 74 N. J. E., at p. 232, aff'd 75 N. J. E., 297;
> Fidelity Trust Co. *v.* Federal Trust Co., 100 Atl., at p. 619.

The appellant claims a lien upon the stock issued to Corcoran and an equitable set off to the extent of his defalcation, and in his points has cited a number of statutes and cases, a casual examination of which will show do not support his contentions.

Sections 19 and 20 of the Corporation Act make no provision for the benefit of the appellant. That a certificate was issued to Corcoran, specifying the number of shares owned by him, is admitted. The Act does not say that the certificate must be actually delivered to and held by him at or after its issuance, nor does the provision for the transfer of said stock on the company's books affect the right to the assignment by a stockholder of his shares.

Neither do the provisions of 2 Comp. Stat. N. J., p. 1965, Sec. 38, relative to defenses to assigned claims sued in the District Court, nor 3 Comp. St. N. J., p. 5056 Sec. 19, Practice Act, relative to defenses to assigned claims, have any application to the case at bar.

Downing *v.* Potts, 23 Law 66, 79, holds that a subscriber to stock of an incorporated company, whose subscription is received by the Directors and regular certificates issued to him, is a *bona fide* stock holder, entitled to transfer his stock and to vote at elections, even if he has paid nothing for the stock.

Hayes *v.* Hayes, 45 Eq., 461—dealt with a bequest of a debt due decedent, which had not been assigned. The Court said "He [the legatee] is now, by force of the Will, the owner of the debt in equity, and is entitled to an assignment of it. This being so, his right to have the payment of the debt enforced by a suit at law in the name of the Executrix, but for his use, would seem to be beyond question." Clearly not within the questions raised in this appeal and not applicable. No action at law against Bedell, Inc., for Corcoran's debt would lie, in the absence of any express contract to assume or guarantee it.

Prall *v.* Tilt, 28 Eq., 479—deals with the principle that one holding stock in a fiduciary capacity

has, *prima facie*, no right to pledge it to secure a debt growing out an independent transaction unconnected with the trust. There is no contention here that the stock issued to Corcoran was held by him in any such capacity.

Rogers *v.* N. J. Insce. Co., 8 Eq., 167, is really in support of respondent's position.

Also

> Broadway Bank *v.* McElrath, 13 Eq., 24;
> Hunterdon Co. Bank *v.* Nassau Bank, 17 Eq., 496.

The case of Mt. Holly Trust Co. *v.* Ferree, 17 Eq., 117 is presumably cited on the theory that appellant is a holder for value. The record does not establish any such fact. The stock was issued to Corcoran. No agreement for its retention by the company was ever made and no arrangement for any holding in escrow existed. The appellant was without power to hold it as security in place of the bond required by the by-laws, and no action to such end was ever taken by its Directors.

Wolcott *v.* Waldstein, 86 Eq., 63, refers to the nonconsummation of a stock issue, by reason of the deposit of the certificates in escrow; a situation non-existent in this case.

POINT III.

Respondent being awarded no greater relief than he is entitled to, to wit, the repayment of the amount advanced by him with lawful interest and costs and allowances, appellant has no just cause for complaint.

Appellant took no steps to protect itself against the very occurrence which forms the basis of its appeal, the defalcation by Corcoran. There is no proof in the case that the respondent *knew* at the time he loaned the money to Corcoran that the latter was indebted to the appellant, and in fact there was neither debt nor defalcation at that time.

The case of Ardmore State Bank *v.* Mason, 39 L. R. A. p. 292, cited by appellant at pages 9-10 of its brief, therefore has no application. Whether respondent might have brought suit for conversion and damage is beside the question, and need not be discussed.

POINT IV.

The decree rendered is right and should be affirmed.

WILLIAM HAUSER,
Solicitor and of Counsel
for Respondent.

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APPEAL PRINTING CO., 22 THAMES ST.

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