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Corporations—Disregard of the Corporate Entity—Personal Corporations

R. C. L. 218; *People v. Ringe* (1910) 197 N. Y. 143, 90 N. E. 451; *Ex parte Whitwell* (1893) 98 Cal. 73, 32 Pac. 870; *Toledo, Wabash & Western Railway Co. v. The City of Jacksonville* (1873) 87 Ill. 37; *State v. State Board of Medical Examiners* (1923) 209 Ala. 9, 95 So. 295; *Ex parte Hall* (1920) 50 Cal. App. 786, 195 Pac. 975. From this it may be concluded that while the power of the courts over attorneys is continuous, the legislature may regulate them only when a necessity for such regulation exists. In the principal case it might well have been argued that since the court had taken the particular case under its special consideration there was no necessity, in that case, for application of the legislative enactment. The court placed its decision on the ground that the board of bar examiners was a preliminary fact-finding body whose decision was in no way binding in a subsequent hearing by the court, which has plenary power to admit. Either mode of reasoning leads to the same result.

Aside from the police power, it may be argued that the legislature may control bar admissions consistently with its general legislative power exemplified in the enactment of rules of evidence and procedure. This consistency, however, is more apparent than real, since the legislative power over such elements of the judicial process as evidential and procedural rules has never been questioned and is imbedded in our constitutional system, while its powers over bar admissions has always been clouded in doubt. In any event, decisions rely rather on the police power theory; and it is now settled beyond doubt that the courts and not the legislature have fundamental rights of control over attorneys. See (1929) 15 ST. LOUIS L. REV. 96.

The decision in the principal case is open to one serious objection; as a practical matter it would be unwise to allow the courts to be burdened by appeals of disappointed applicants. This consideration seems to have influenced the decision in *In re Bowers*, above. But all difficulty may easily be eliminated by adopting as rules of court all regulations over the bar which the courts deem advisable. This has already been done by the Supreme Court of the United States and by those of a few states. Indeed, if the courts wish to preserve their inherent power over attorneys, this step seems essential. A complete set of court rules regulating bar admissions would make all statutes on the subject unnecessary, and it would seem to follow logically that the legislature would lose all control over the legal profession until a positive necessity arose for further regulation. J. A. G., '31.

CORPORATIONS—DISREGARD OF THE CORPORATE ENTITY—PERSONAL CORPORATIONS.—In the case of *Fidelity Trust Co. v. Service Laundry Co.* (Tenn. 1929) 22 S. W. (2d) 6, the will of the testatrix provided that any indebtedness upon the part of any of her nephews owing to her should be cancelled. One of the nephews was the sole owner of the stock of the Service Laundry Co., which corporation was indebted to the testatrix on a promissory note executed by the nephew, L. E. Williams, as president of the company. *Held*, that the bequest of the testatrix cancelled the debt owing from the corporation to the estate. This case raises the perplexing problem

which almost daily harasses the courts of when, if at all, the corporate fiction should be disregarded.

The accepted doctrine is that the corporate entity only exists for purposes incident to the conduct of the business and that its separate existence from that of its stockholders should be disregarded where it will work an injustice or defeat the obvious intention of the parties. *J. J. McCaskill Co. v. U. S.* (1910) 216 U. S. 504; *U. S. v. United Shoe Mach. Co.* (D. C. E. D. Mo. 1916) 234 F. 127. "All fictions of law are introduced for the purpose of convenience and to subserve the ends of justice. . . But when they are urged to an intent and purpose not within the reason and policy of the fiction they have been disregarded by the courts." See Wormser, DISREGARD OF CORPORATE FICTION AND ALLIED CORPORATE PROBLEMS (1929). Also *State v. Standard Oil Co.* (1892) 49 Ohio St. 137, 30 N. E. 279.

A case often cited to support the above principle is *United States v. Milwaukee Refrigerator Transit Co.* (C. C. E. D. Wis. 1905) 142 F. 247, in which a brewery corporation organized and controlled a refrigerator transit corporation which ostensibly rented its cars to the railroad company transporting the brewery corporation's products, the railroad company being enabled to pay, through the device of the transit corporation, what was essentially a rebate to the brewery corporation. It was held that the refrigerator corporation was organized to evade the Elkins Act which forbade rebates, and that its separate corporate existence was to be disregarded in such a case. In *United States v. Barwin* (D. C. E. D. N. Y. 1928) 25 F. 1003, the defendant corporation was organized by holders of real estate who held all its stock, the property being transferred to the corporation, and the corporation paying its stockholders interest on mortgages. An attempted deduction of this amount in computing its income tax was held invalid, the court disregarding the defendant's corporate and separate existence from its stockholders where it was interposed to evade the income tax law. The same result was reached in *Luckenbach Steamship Co. v. Grace Co.* (C. C. A. 4, 1920) 267 F. 676, in which the Luckenbach Co., a corporation, leased its steamship to the Luckenbach Steamship Co., another corporation with the same stockholders and the same board of directors, and under the control of the former corporation. The court held the former corporation liable on contracts of the latter, disregarding the separate corporate entities of the two companies.

It is true that sole ownership of all the stock of a corporation does not operate in itself to terminate the corporate existence, or to merge the identity of the corporation and the sole stockholder. *Parker v. Bethel Hotel Co.* (1896) 96 Tenn. 252, 34 S. W. 209; *Baldwin v. Canfield* (1879) 26 Minn. 43, 1 N. W. 261. But, as indicated in the above cases, the principle of separate identity cannot be applied to defeat the obvious justice of the situation, whether the corporate entity is interposed to defeat a clear statutory policy or to evade a personal liability.

Thus the court in the instant case holds that the testatrix clearly intended that the note which the corporation owed her should be cancelled as a gift to the nephew. However, if the corporation is to be regarded as having a

separate existence from that of the sole owner of all its stock, then the debt is still owing to the estate of the testatrix. If on the other hand, the corporate fiction is to be disregarded, then the corporation and the nephew are one and the same and the debt is no longer owing.

The decision of the court seems well founded both on logic and authority. In its words: "The value of the capital stock of the Service Laundry Company as an asset of L. E. Williams at the date of the death of the testatrix was directly and proportionately affected by the amount of the note held by Mrs. Henson, and if the effect of the will is to release the corporation from the obligation to pay the note, the value of the capital stock owned by L. E. Williams will be directly and proportionately enhanced in value thereby. The personal wealth of L. E. Williams will be increased to the same extent, by the cancellation of this note as if it had been a note executed by him individually and constituting his personal obligation."

M. E. S., '31.

DECLARATORY JUDGMENTS—DECLARATION OF QUALIFICATIONS OF CANDIDATES FOR OFFICE.—In a recent Kentucky decision applicants seeking a declaration of disqualification of certain candidates for city offices for corrupt practices, were refused a declaratory judgment, the court holding that they were not entitled to it under the provisions of the Declaratory Judgment Act (Civ. Code Prac. sec. 639a—1, 2) which authorized a declaration of the rights and duties of a person or persons in certain situations, though no consequential or other relief were asked for, provided that an actual controversy existed. The decision was based on the lack of such controversy. *Dietz et al. v. Zimmer et al.* (Ky. 1929) 21 S. W. (2d) 999.

There can be no doubt that the declaratory judgment fills a long-felt need in American jurisprudence. The great economic burden involved in the determination of legal relations arises not only from the slowness of movement of the machinery of the courts once a controversy has been submitted to them, but also, and more directly, from the necessity for the commission of a wrong and the invasion of a right, with consequent damage, before the courts have jurisdiction over the situation. The efficacy of the declaratory judgment as a means of preventive justice, its usefulness in removing uncertainty from legal relationships, forces daily its more widespread recognition and application. It has been used, pursuant to statutes, in connection with the construction and validity of wills, contracts, leases, and insurance policies; to declare the marital status of individuals; to decide title to real and personal property, and to adjudicate existence or non-existence of easements. However, it is not applied to moot cases, in which no existing rights are concerned; nor is it used in a merely advisory capacity as an expression of the law and applied to certain facts not necessarily in dispute. *Hoard v. Jordan* (1919) 23 Ga. App. 656, 99 S. E. 144; *Kelly v. Jackson* (1925) 206 Ky. 815, 268 S. W. 815; *Yates v. Beaseley* (1923) 133 Miss. 30, 97 So. 676.

It is apparent that the present case presented no such controversy. The plaintiffs were voters, seeking merely to have certain of the defendants disqualified as candidates and certain other defendants given the right to ap-