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Article 8

Criminal Law: Homicide: Common Law Limitation Abolished

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holder shall not pass until some future time, it is to be construed as an executory contract of purchase and sale.

Can the employe in the instant case be called a stockholder where it does not appear that he has been in a position to exercise any of the privileges of a stockholder? Here the agent to whom the board of directors authorized the issuance of shares which were to be ultimately transferred to the employe does not appear to have been treated as the agent of the employe but rather as the agent of the corporation. Exercise of corporate privileges by the agent could no tbe construed as the act of this employe. It is a universally accepted proposition that when stockholders are indebted to a corporation on account of their stock and the corporation becomes insolvent, they may be compelled to pay the amount due for the benefit of its creditors insofar as such judgment may be necessary to satisfy their claims. See, *Fletcher Cyclopedia Corporation,* (1933), Perm. Ed., §§ 6051-6059. But it does not seem in the instant case that the employe has received any of the rights of a stockholder upon which might be predicated his liability to respond for unpaid stock subscriptions which might be called in by the receiver for the benefit of creditors of the corporation. Also, it is at least open to doubt that the agent of the corporation could still legally transfer the stock to the "subscriber" where the corporation is insolvent. That is to say, the corporation is no longer in a position to perform. See in this regard *Stern* v. *Mayer,* supra. In view of these considerations a decision of the Court declaring that the employe-purchaser had assumed the status of a stockholder appears somewhat arbitrary.

CLIFFORD A. RANDALL.

CRIMINAL LAW—HOMICIDE—COMMON LAW LIMITATION ABOLISHED.—The deceased was shot in July, 1928, and died July, 1932. The defendant was subsequently indicted and found guilty of murder in the first degree. The defense was that an indictment for murder will not lie when the death occurs more than a year and a day after the assault. On appeal from the conviction, *Held,* affirmed. The common law limitation that death must follow within a year and a day of the wound is not effective in New York. *People* v. *Brengard,* 265 N.Y. 100, 191 N.E. 850 (1934).

At common law the death must have occurred within a year and a day after the infliction of the fatal injury. 1 Wharton, Criminal Law, (12th Ed. 1932), sec. 437. If the death happened after that time it was conclusively presumed that it occurred from some other cause. *State* v. *Orrell,* 12 N.C. 139, 17 Am. Dec. 563 (1826). The common law requirement has been adopted in some states and disregarded in others but the numerical weight of authority clearly follows the common law rule. Note, 20 A.L.R. 1006. In Indiana the court reasons that the legislature, by its silence on the subject of time between the inflicting of the wound and the death, intended that the common law rule should govern. *State* v. *Dailey, et al.,* 191 Ind. 678, 134 N.E. 481, 20 A.L.R. 1004 (1922). Some states have incorporated the common law rule into the statutes. Montana is one of these. Rev. Code of Mont., (1921) sec. 10961.

In the instant case the court goes back to the intention of the commissioners who revised the Penal Code (Consol. Laws, c. 40) for a basis on which to make its holding. The commissioners, in a preliminary note, expressed the desire to render each definition complete in itself and mentioned the uncertainties which result from following the definitions and conflicting authorities of the common law. *People* v. *Brengard,* 191 N.E. 850, 852. The court, relying on this language

of the commissioners, held that it would be "plain defiance" of the Penal Code to inject the common law limitation as to time. Section 241 of the Penal Code of New York is essentially like Section 340.01 of the Wisconsin Statutes (1933); neither prescribes any limiting period of time between the inflicting of the fatal wound and the resulting death.

A situation similar to the instant case has never been presented to the Supreme Court of Wisconsin. It is submitted that Wisconsin may follow the New York ruling. The common law rule was a safeguard in the past which is no longer necessary. The certainty with which modern medical science can trace the efficient cause of the death removes the reason for the common law rule.

HUGH F. GWIN.

LABOR UNIONS—WISCONSIN LABOR CODE—EMPLOYER RESTRAINED FROM INTERFERING WITH UNIONIZATION ACTIVITIES.—Plaintiff, a Wisconsin labor union, alleging that several hundred of its members are employees of the defendant company and that it is actively engaged in an attempt to procure additional members among the employees of the defendant, sought to restrain the defendant from further interfering with the exercise of asserted rights of its employees. The alleged rights were: full freedom of association, self-organization, and the designation of representatives of their own choosing, to negotiate the terms and conditions of their employment free from the interference, restraint or coercion of the employer or its agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. Wis. Stats. (1933) § 268.18. The alleged interference was that the defendant refused to deal with the outside representative of the union, informed its employees that it would not recognize the union or deal with outside parties and threatened a shut-down if the employees persisted in their union demands. The National Industrial Recovery Act, 48 Stat. 198 (1933), 15 U.S.C.A. 707 (a) (famed section 7a), the President's Reemployment Agreement and the Wisconsin Statutes, Wis. Stats. (1933) § 133.07 (1) and § 268.18 et. seq. (Wisconsin Labor Code) were alleged to have been violated. The lower court overruled a demurrer and after a hearing granted a temporary injunction, basing its decision on the N.I.R.A. and P.R.A. (1934) 32 Mich. L. Rev. 270. On Appeal. *Held,* that the complaint states a cause of action under the Wisconsin Statutes, Wis. Stats. (1933) § 133.07 and § 268.18, and the findings are sufficient under the Wisconsin Labor Code, Wis. Stats. (1933) § 268.19 et seq. to sustain the injunction. *Trustees of Wisconsin State Federation of Labor* v. *Simplex Shoe Mfg. Co.,* (Wis., 1934) 256 N.W. 56.

The court stated that Section 268.18, Wis. Stat., supra was a deliberate declaration of labor's rights. It compared this section with the Norris-La Guardia Act, 47 Stat. 70 (1932), 29 U.S.C.A. 102, and found them to be strikingly similar. The Norris-La Guardia Act, however, does not attempt to broaden, limit or define the rights of either employer or employee. Its sole purpose seems to be to regulate, define and limit the power of Federal Courts in labor disputes. See, *Cinderella Theatre Co.* v. *Sign Writers Local Union,* 6 F. Supp. 164, 166 (E.D. Mich., 1934). In cases involving the Norris-LaGuardia Act, either Section 7. of N.I.R.A., supra, or the Railway Labor Act, 44 Stat. 577 (1926), 45 U.S.C.A. 152 (3), have been relied upon as defining labor's rights. *Myers et al.* v. *Louisiana & A. Ry. Co.,* 7 F. Supp. 92 (W.D. Louisiana, 1933) (invoking Railway Labor Act); *International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators Local* v. *Rex Theatre Corp.,* (C.C.A. 7th. Oct. 24,