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Article 14

Pleading - Corporations - Dissolution

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tion for the dissolution of a marriage, valid in its inception, and resting upon free consent, should be brought in behalf of an incompetent, who, if capable of expressing choice might prefer to hold even an unfaithful spouse, or who might indeed, in good conscience, regard the marriage bonds as in dissoluble."

In conclusion, the court holds that in the absence of a statute denying the right of the incompetent spouse to maintain an action for separation, such incompetent spouse can maintain such action through a guardian ad litem. Upon the question whether an action can be maintained for an absolute divorce the authorities are divided, but the general tendency is against allowing the insane to maintain such actions through a guardian ad litem.

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PLEADING — CORPORATIONS — DISSOLUTION. *Marshal* v. *Wittig*, 238 N.W. 390 (Wis.), illustrates a settled doctrine in corporation law. In this case, an action was brought to recover balance of principal and interest due on a note. The original payee of the note was a corporation now non-existant. The three years allowed by statute (Wis. Stats. 1929, 181.02)[1] to wind up the affairs of the corporation after its dissolution had also lapsed. The action is therefore prosecuted by the plaintiff as a stockholder of the dissolved corporation. Though the case was argued largely on matters of pleading, the opinion clearly implies that the plaintiff could recover on behalf of the remaining stockholders.

It is well settled, in the absence of a statute as above cited, the effect of the dissolution of the corporation pending an action commenced by it, whether the dissolution be by expiration of the charter, repeal by legislative act, valid decree of a court, or otherwise, is, to abate the action, for a corporation cannot, any more than dead person,

[1] All corporations whose term of existence shall expire by their own limitation, or which shall be dissolved, shall nevertheless continue to be bodies corporate for three years thereafter for the purpose of prosecuting and defending actions, and of enabling them to settle and close up their business, dispose of and convey their property and divide their assets and for no other purpose; and when any corporation shall become so dissolved the directors or managers of the affairs of the corporation at the time of its dissolution shall, subject to the power of the courts to make a different provision, continue to act as such during said term, and shall be deemed the legal administrators of such corporation with full power to settle its affairs, dispose of and convey all its property, collect the outstanding credits, pay the debts owed by such corporation and the costs of such administration, and divide the residue of the money and other property among the stockholders or members thereof.

prosecute an action after it has ceased to exist, and the same is true of a corporation pending an action against it.[2]

Under section 181.02, the last board of directors, unless a court of competent jurisdiction provides otherwise, are given three years of continued corporate existence for the purpose of winding up its affairs. What occurs at the end of the three year period is aptly expressed in State ex rel. Pabst v. Circuit Court, 184 Wis. 301, 199 N.W. 213. "When the three year period expired, the corporation ceased to exist. It had no function to perform; it could perform no function. During the three years the directors constituted the legal administrators for winding up its business. At the end of that time they ceased to be the legal administrators of the corporation. They had no further function to perform for the corporation; they could not represent the corporatin. The corporation being defunct and without legal existence, all actions against it abated."

There is ample authority for the doctrine, that when a corporation ceases to exist, the stockholders become vested with a legal title to its property as tenants in common.[3] This is founded upon the equitable doctrine, known as the "trust fund doctrine." "When a corporation instituted for purposes of gain or private interest, is dissolved, the modern doctrine is that its property, after payment of all its debts, equitably belongs to its stockholders."[4]

"Under the modern rule of equity jurisprudence, the severity of the common law in this respect is greatly mitigated, and it is held that it is the franchise, and not the property of the corporation, that is forfeited by a judgment of ouster, and that the property of the corporation is a trust fund for the payment of debts and distribution to stockholders."[5]

So, in State ex rel. Pabst v. Circuit Court, supra, "The cause of action does not survive against the defunct corporation. It survives, if at all, against those who possess the distributive shares of corporate assets."

In Lindemann v. Rusch, 125 Wis. 120, the contention was made that under section 181.02, after the three year period had elapsed, "that its personal property then undisposed of escheats to the state, and its real property reverts to its grantor or donors." In denying the validity of this contention, the court said, "The statute prescribes that the directors shall continue to act for the corporation as legal adminis-

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[2] 1C, J. 134; 8 Fletcher on Corp. 5613.

[3] 47 A.L.R. 360; 145 U.S. 349; 238 Mass 313.

[4] 136 U.S. 4.

[5] 99 Mass. 267, 47 A.L.R. 1356.

trators, with full power to settle its affairs subject to the power of the court of competent jurisdiction to make in any case a different provision. This provision is indicative of legislative intent not to limit or abrogate the powers vested in the courts to take in custody corporate property and assets for liquidation of its affairs and distribution of its property." * * * "Nor is there anything in the nature of the suit to prevent its continuance and an adjudication and enforcement of these rights. The action is founded in equity. * * * Even should it be held that the bank became extinct as a corporation after the action was commenced, and before judgment, this does not necessarily abate the action of interested persons, party thereto, though the corporation as such, might drop out of the proceeding. Under these conditions the suit should be construed and prosecuted to judgment in the name and right of the parties interested in the corporate estate, which is in the custody of the court and held as a trust fund to be administered for their benefit.

Clearly, then, the lapse of the three year period provided for in section 181.02 of the statutes does not prevent a stockholder from maintaining an action to recover property or debt due the corporation. A stockholders right to corporate property continues after the corporation ceases to exist.

However, the stockholder, before suing to vindicate the rights of the corporation must first have exhausted all available means of redress within the corporation.[6] But since in this case (Marshal v. Wittig, supra) the three years had already elapsed before the action had been commenced, and the corporation was no longer in existence, the above condition precedent does not apply.

The plaintiff's action is based upon section 260.12 of the statutes, the court saying, "The allegations that the note belonged to and was held by stockholders, who were numerous; that the matters alleged were of common or general interest to all stockholders; that it was impracticable to bring all before the court; and that the plaintiff sued on behalf of all stockholders as a matter of convenience, brought the case within St. 1929, sec. 260.12, authorizing one or more to sue or defend for the benefit of the whole when question is one of a common or general interest of many persons, or when parties are very numerous and it may be impracticable to bring them all before the court."

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[6] 105 Wis. 359; 138 Wis. 112.