

Corporations - Foreign Corporations Doing Business Without License - Contracts Made within State

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Repository Citation

William Ketterer, *Corporations - Foreign Corporations Doing Business Without License - Contracts Made within State*, 21 Marq. L. Rev. 94 (1937).

Available at: <http://scholarship.law.marquette.edu/mulr/vol21/iss2/7>

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is free to hire whom he chooses. The Wisconsin court feels that the field of public accounting is a matter in which the public can be interested. The business has become technical and the demand for skilled accountants is great particularly by reason of the current legislative restrictions on business practices.

JOSEPH E. DEAN.

CORPORATIONS—FOREIGN CORPORATIONS DOING BUSINESS WITHOUT LICENSE—CONTRACTS MADE WITHIN STATE.—A Louisville liquor concern had shipped a consignment of liquor to itself in Wisconsin. The shipment was placed in the defendant's warehouse with a notation to notify the New Era Products Co. The latter paid a draft attached to the freight receipt from the proceeds of a loan from the Badger State Bank. As partial security for the loan, the New Era Products Co. turned over the warehouse receipts for the liquor; and whenever the New Era Products Co. paid on the loan, the bank released some of the warehouse receipts. Subsequently the plaintiff took an assignment of the liquor by paying to the New Era Co. whatever amount it had actually put out for the liquor exclusive of the loan from the bank. It was then the custom of the plaintiff to pay part of the balance to the New Era Co. who in turn would transfer such amount to the bank, which would release a corresponding number of warehouse receipts. In this manner the plaintiff obtained the liquor. The final balance on the loan was paid directly by the plaintiff to the bank which released to the plaintiff all of the remaining warehouse receipts. The defendant warehouse released all but ten cases of the liquor to the plaintiff. The latter sued for the alleged conversion of the liquor. The civil court in which the case was tried dismissed the complaint. On appeal to the circuit court judgment was entered for the plaintiff for the value of the liquor. On appeal to the supreme court, *held*, judgment reversed and the circuit court directed to enter judgment dismissing the complaint. The plaintiff was a foreign corporation doing business without a license and had acquired title to the property through a contract entered into in Wisconsin. *Holleb Liquor Distributors, Inc., v. Lincoln Fireproof Warehouse Co.*, (Wis. 1936) 270 N.W. 545.

Foreign corporations doing business within the state must comply with the local statutes. WIS. STAT. (1935) § 226.02. The sanction behind the statute is set out in Subsection 9: "Foreign corporations and the officers and agents thereof doing business in this state shall be subjected to all the liabilities and restrictions that are imposed upon domestic corporations of like character and shall have no other or greater powers. Every contract made by or on behalf of any such foreign corporations, affecting its liability or relating to property within this state, before it shall have complied with the provisions of this section, shall be void on its behalf and on behalf of its assigns, but shall be enforceable against it or them." Subsection 10 of the same statute provides for a forfeiture of \$500 on failure to comply with the provisions. The sanction of the statute declares a contract made by an unlicensed foreign corporation relating to property in this state to be absolutely void, and not merely voidable at the option of the other party. *Ashland Lumber Co. v. Detroit Salt Co.*, 114 Wis. 66, 89 N.W. 984 (1902). This, however, does not give the foreign corporation the right to rescind such contract. The contract is void only at the election of the party dealing with the corporation. Neither the corporation nor its assigns could enforce it against the other party. But such party may affirm or disaffirm the contract at his election. *Lanz-Owen and Co. v. Garage Equipment Mfg. Co.*, 151 Wis. 555, 139 N.W. 393 (1913). Neither can a corporation, by complying with the statute in

question, validate contracts which before such compliance were void. *Allen v. City of Milwaukee*, 128 Wis. 678, 106 N.W. 1099, 5 L.R.A. (N.S.) 680 (1906). Even though a resident defendant escapes the burdens of an onerous contract and although there is due and owing to the foreign unlicensed corporation money, services or property on the contract, yet the sanction of the statute permits the Wisconsin resident to invoke the statutory remedy. *Street Railway Adv. Co. v. Lavo Co.*, 184 Wis. 395, 198 N.W. 595 (1924). However, one cannot always retain the full benefits of a contract without responsibility because the words "affecting the personal liability" exclude all unilateral contracts, like bills and notes, all contracts fully executed outside of this state upon which there remains as obligation only payment, or payment and delivery, to be made in this state, and all contracts not by their stipulations imposing duties or liabilities on such foreign corporation. *Catlin and Powell Co. v. Schuppert*, 130 Wis. 642, 110 N.W. 818 (1907). And the statute does provide that: "Any foreign corporation may without being licensed to do business in this state * * * take, acquire, hold and enforce notes, bonds, mortgages or trust deeds given to represent or secure money so loaned or for other lawful consideration, and all such notes, bonds, mortgages or trust deeds which shall be taken, acquired or held by any such foreign corporation shall be as enforceable as though it were an individual, including the right to acquire the mortgaged property on foreclosure, or in virtue of the provisions of the mortgage or trust deed, and to dispose of the same." The statute does not affect a foreign corporation which is doing interstate business. When an article is brought into this state for the purposes of demonstration, and is then sold in this state, such a transaction is not intrastate and consequently does not come under the provision of the statute. *American S. M. Co. v. Jaworski*, 179 Wis. 634, 192 N.W. 50 (1923). But when an article is taken from the care and custody of a carrier and received by a consignee, and removed by him to the place where he intends to use it, it ceases to be an object of interstate commerce. *Indiana Road Machine Co. v. Lake*, 149 Wis. 541, 136 N.W. 178 (1912). And even where property is sold after it has reached its destination and has been delivered to the consignee, it is no longer a subject of interstate commerce. *Greek-American S. Co. v. Richardson D. Co.*, 124 Wis. 469, 102 N.W. 888 (1905).

WILLIAM KETTERER.

GIFTS—DISPOSITION MADE IN CONTEMPLATION OF DEATH—DELIVERY OF A CHECK TO DONEE.—The petitioner, Mary Hartwig, had in her possession the checking account passbook of her sister, Hattie Schreihart, with Hattie's permission. Mrs. Schreihart, becoming seriously ill and fearing death, signed a blank check and gave it to the petitioner as a gift of the funds in the account, with the intention that the petitioner fill in the check and withdraw the funds in full. Several days later, Mrs. Schreihart in the presence of her banker, business adviser, the petitioner and another sister said that she wished it understood that the petitioner was to have the funds in the checking account (among other things) as a gift. Mrs. Schreihart died shortly thereafter. Petitioner never filled in or cashed the check, which, along with the account book, was turned over by mistake to the administrator with the will annexed of Mrs. Schreihart's estate. The administrator refused to redeliver the same or the proceeds thereof to the petitioner. She then filed a claim against the estate for the funds in the checking account and the rest of the property allegedly given to her. The court below ordered judgment that the petition and claim be denied. On appeal, *held*, judg-