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Jurisdiction of a Justice of the Peace

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stock, especially in view of Rem. Comp. Stat., § 3805, as amended 1925 Sess. L. Ch. 87, P C., §4505.[40]

Washington, contrary to the weight of authority, has adopted the rule that when the board of directors of a corporation pay for property bought with shares of stock, the legality of such act can be attacked by the creditors if the true value of the property was less than the value of the stock.[41] The majority rule upholds the legality of the act, if the directors acted in good faith and the subscriber was *bona fide*. Under the Washington no-par stock statute, since it makes no difference to the creditor whether the property paid for in stock is represented by 100 or 1,000 shares, the creditor could not attack the legality of the act although the existing shareholders might. The recent case of *Connor v. Robinson*[42] lends color to the view that the "true value" theory is doomed, and that the "good faith" theory will be adopted.

Although there are no decisions on this question, the writer ventures the opinion as to the effect of this innovation upon the corporation law of this state, that: 1. The "trust fund" theory will stand in cases where there is a definite subscription for a definite sum—there remaining a balance unpaid on the subscription. 2. The "true value" rule will give way to the "good faith" rule, and where property is transferred for no-par value shares, relief will be granted creditors only in cases of actual fraud on the part of the directors in evaluating the property

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JURISDICTION OF A JUSTICE OF PEACE—The judgment of a court of record and of general jurisdiction, acting within the scope of its jurisdiction, is presumed to be valid in all particulars unless the contrary affirmatively appears on the face of the record.[1] But even such a judgment is subject to attack on the ground of lack of jurisdiction.[2] The judgment of a court of limited jurisdiction and not of record enjoys no such presumption, and the jurisdiction of such a court must be affirmatively shown.[3] In this state, a justice court is not, and cannot be made, a court of record,[4] and its jurisdiction is limited both as to subject matter[5] and as to territory.[6] Yet in a recent case[7] the Supreme Court upheld, against a direct attack, the validity of a default

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[40] "After the 'initial no-par capital' shall have been paid up, the liability of a subscriber to no-par value stock shall be such as shall be, or shall have been mutually agreed upon between the corporation and the subscriber of the stock."

[41] *Lantz v. Moeller* 76 Wash. 429, 136 Pac. 687 (1913).

[42] *Connor v. Robinson,* note 33, *supra.*

[1] *Ritchie v. Carpenter* 2 Wash. 512, 28 Pac. 380 (1891).

[2] *Kline Bros. & Co. v. North Coast Fire Ins. Co.,* 80 Wash 609, 142 Pac. 7 (1914).

[3] *Grignon v. Astor* 2 How. (U. S.) 319, 11 L. ed. 283 (1844).

[4] Const. Art. IV, § 11.

[5] Const., Art. IV, § 10; Rem. Comp. St., §§44-45; P C., §§ 9564-65.

[6] Rem. Comp. Stat., § 47 P C., § 9458; further restricted as to civil cases by Rem. Comp. Stat., §§ 1756-7, P C. §§ 9559-60.

[7] *Nichols v. National Association of Creditors, Inc.,* 137 Wash. 74, 241 Pac. 960 (1925).

judgment in a justice court against a defendant residing and served outside its territorial jurisdiction.

The action was commenced in the Precinct of Ruston, Pierce County, against a defendant living in Tacoma and service was made in Tacoma. After default judgment against him, the defendant started suit in the Superior Court and obtained an injunction restraining the enforcement of the judgment on the ground of lack of jurisdiction of the justice of the peace. The Supreme Court held that the justice obtained jurisdiction of the person of the defendant by service in Tacoma under the statute[8] authorizing the justice to issue process to any place in his county, and directed the Superior Court to sustain the demurrer to the complaint.

The one point in the case was: can a justice of the peace in a rural precinct obtain jurisdiction over a defendant residing in a city of more than three thousand inhabitants contrary to the provision of the Code?[9] After citing several other sections and discussing other matters, the Court said, "We think it cannot be successfully argued that, where an action is brought in the justice court against a defendant who resides in a city of more than three thousand inhabitants, in an adjacent precinct, that no jurisdiction can be acquired," thus deciding the real point in issue without giving a reason or citing an authority

The section upon which the Supreme Court held the justice of the peace had personal jurisdiction over the defendant, has come down unchanged from the territorial days when a justice had civil as well as criminal jurisdiction throughout the whole county and, in discussing this point, the Supreme Court ignored the change made in 1901[10] when jurisdiction of defendants residing in a city of more than 3,000 inhabitants was restricted to the justices of that precinct. The Court did mention this later section in the paragraph considering the question of jurisdiction of the subject matter of the suit, but as the suit was for a debt of less than $100.00, the subject matter was clearly within the justice's jurisdiction.

The Court distinguished the cases[11] denying to the Superior Court, a court of record and of general and unlimited jurisdiction,[12] any jurisdiction of suits against corporations, brought in the wrong county, upon the ground that in each of them the action was against a corporation and not an individual, and that under the particular statute[13] the court did not acquire jurisdiction for any purpose. And yet the Constitution[14] provides that the process of the superior courts "shall

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[8] Rem. Comp. Stat., § 48; P C., § 9561.
[9] Rem. Comp. Stat., §§ 1756-1, P. C., §§ 9559-60.
[10] See note 9, *supra.*
[11] *McMaster v. Advance Thresher Co.,* 10 Wash. 147, 38 Pac. 760 (1894), *State ex rel. Grays Harbor Commercial Co. v. Superior Court,* 118 Wash. 674, 204 Pac. 783 (1922).
[12] Const., Art. IV, § 6.
[13] Rem. Comp. Stat., § 206; P C., § 8543.
[14] See note 11, *supra.*

extend to all parts of the state", which is as inclusive a grant as that to the justice of the peace[15] upon which the Court relied.

The Court cites the section[16] allowing change of venue in justice court for the same causes as in the superior court[17] as authority for its decision, reasoning that since this allows a change of venue from a city justice to a rural justice, the latter must be held to have original jurisdiction. The second, third and fourth subdivisions of this latter section[18] would authorize a change of venue of a suit against a corporation to a county in which it had no office and thus the reasoning of the principal case, if strictly followed to its logical conclusion, would justify jurisdiction in the Superior Court of King County in a suit against a corporation which had its principal place of business in Tacoma and had never done any business outside of Pierce County, a result contrary to the decisions construing Rem. Comp. Stat., § 206, P C., § 8543.

The wording of the statute fixing venue in the superior court varies slightly in the different sections[19] which are followed by Rem. Comp. Stat., § 208, P C., § 8543, providing that an action, started in the wrong county, may be tried there unless the defendant moves for a change to the proper county Although the section as to venue of suits against corporations reads "may" and the sections as to individuals read "shall" or "must," the Supreme Court has held that the superior court gets no jurisdiction whatever in a suit against a corporation commenced in the wrong county[20] even though other defendants are residents of the county[21] and does not even have jurisdiction to transfer the case to the proper county upon the defendant corporation's own motion.[22] The latest amendment of the section[23] governing suits against corporations, enacted in 1909, is entitled "An Act relating to the venue of civil actions "[24] and the word "jurisdiction" does not appear either in the body of the Act or in its title. Yet the Supreme Court has recently stated that "Were § 206 purely a venue statute it might be possible But this court has consistently and persistently since first considering § 206, adhered to the interpretation that that section was one relating to *jurisdiction* and not to *venue.*"[25]

The wording of the statute is that "All civil actions against a defendant residing in a city or town of more than three thousand inhabitants shall be brought in the justice court of the precinct

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[15] See Note 12, *supra.*
[16] Rem. Comp. Stat., § 1775; P C., § 9650.
[17] Rem. Comp. Stat., § 209· P C., § 8545.
[18] See note 17, *supra.*
[19] Rem. Comp. Stat., §§ 204-7 P C., §§ 8541-44.
[20] *McMaster v. Advance Thresher Co.,* note 11, *supra.*
[21] *State ex rel. Seattle Nat. Bank v. Joiner* 38 Wash. Dec. 201, 244 Pac. 551 (1926).
[22] *State ex rel. Grays Harbor Commercial Co. v. Superior Court,* note 11, *supra.*
[23] Rem. Comp. Stat., § 206; P C., § 8543.
[24] Laws 1909, Ch. 42, p. 69.
[25] *State ex rel. Seattle National Bank v. Joiner* note 21, *supra.*

in which one or more of such defendants reside.[26] The jurisdiction of justices of the peace, in all civil actions, except as provided in the preceding section, shall be coextensive with the limits of the county " seems a much stronger limitation of jurisdiction than "An action against a corporation may be brought "[27] But the Supreme Court did not so interpret it.

It is submitted that an affirmance of the decision of the Superior Court, that a rural justice of the peace has no jurisdiction over an inhabitant of a city of more than three thousand inhabitants, would have been more in accord with the intent of the Legislature.

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CONTRACTS NOT TO BE PERFORMED WITHIN A YEAR UNDER STATUTE OF FRAUDS IN WASHINGTON—The statute of frauds in Washington,[1] states that in certain specified cases an agreement, contract and promise shall be void unless the same or some note or memorandum thereof be in writing and signed by the party to be charged therewith. By subdivision I this provision extends to every agreement that by its terms is not to be performed in one year from the making thereof. Two recent decisions of our Supreme Court have gone into an extended interpretation of this subdivision regarding two troublesome questions of law arising thereunder.

The first of these questions is: What is the test for determining whether the oral agreement by its terms is not to be performed within one year from the making thereof?

In the case of *Tonkoff v. Roche Fruit & Produce Co.*,[2] a contract was entered into on November 28, 1922, by the terms of which appellant was to dispose of respondent's 1923 crop of apples for the agreed compensation of fifteen cents per box. The respondent contended that the contract was void for the reason that it was not to be performed within one year from the making thereof. The case was reversed, and the Court answered respondent's contention by stating:

"The contract was made on November 28, 1922, and fixes no time for its performance, and the court cannot say that all its terms could not have been complied with prior to November 28, 1923. It is quite possible that the performance could be entirely made within that time, and it is of no consequence that the appellant and the respondent may have been of the opinion that the contract might extend beyond the year, or that, as a matter of fact, it did so extend.

"The true test is not what the parties expected or what actually happened, but whether the contract by its terms must endure longer than the year."

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[26] Rem. Comp. Stat., §§ 1756-7, P C., §§ 9559-60.
[27] Rem. Comp. Stat., § 206; P C., § 8543.
[1] Rem. Comp. Stat., § 5825; P C., § 7745.
[2] 137 Wash. 148, 242 Pac. 3 (1926).