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Corporations

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has not as yet been answered. For instance, would a creditor, who agreed to extend the time of payment, or to receive the payments in instalments, or to accept a lesser sum in full satisfaction be estopped if he changed his mind the following day? The case does not answer these questions. An outright repudiation of the orthodox rule, which would make an accord binding from the time of execution, would be preferable in the interest of certainty and finality of commercial transactions.

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CORPORATIONS

Assumption of Obligations of Purchased Business—Prima Facie Presumption. If a partnership sells all of its assets to a corporation, does the corporation thereby become liable for the obligations of the partnership? This question was one of several arising in *Mill & Logging Supply Co. v. West Tenino Lumber Co.*[1] There the plaintiff brought an action, in part, for payment of debts incurred by a partnership which sold all of its assets to the defendant corporation. The court relied on the rule that a corporation is not liable for the partnership obligations where no showing is made that it either expressly or impliedly assumed them. Because of plaintiff's failure to make such an allegation, defendant's demurrer to this particular part of the complaint was sustained.

By way of dictum the court indicated the same rule would apply had the defendant corporation been shown to be a mere change in the partnership business structure. The dictum, it seems, overlooks the fact that such a showing would in and of itself imply that the corporation had assumed the partnership debts. This was brought out in *Jones v. Francis*,[2] *Northwest Perfection Tire Co. v. Perfection Tire Corp.*[3] and *Seattle Investors' Syndicate v. West Dependable Stores.*[4] In each case a new corporation, in substance merely the continuation of an old corporation, was held liable for the latter's debts. In *Bowyer v. Boss Tweed-Clipper Gold Mines*[5] the court quoted Fletcher, *Cyclopedia of Corporations*, with approval, as follows:

> The general rule, which is well settled is that where one company sells or otherwise transfers all its assets to another company, the latter is not

[1] 44 Wn.2d 102, 265 P.2d 807 (1954). See also *Contracts* at page 93.
[2] 70 Wash. 676, 127 Pac. 307 (1912).
[3] 125 Wash. 84, 215 P.2d 360 (1925).
[4] 177 Wash. 125, 30 P.2d 956 (1934).
[5] 195 Wash. 25, 79 P.2d 713 (1938).

liable for the debts and liabilities of the transferor. . . . To render it liable there must be an agreement, express or implied, to assume the other company's debts and obligations; or the circumstances must warrant a finding that . . . the purchasing company was a mere continuation of the selling company.[6]

While these cases do not concern corporations created to succeed to the assets and business of a partnership, the situation is analogous, and it would seem that liability should follow to the new corporation whether its predecessor was a partnership or a corporation. In Fletcher, *Cyclopedia of Corporations*,[7] the better rule is said to be that a corporation is presumed to have assumed the partnership debts and is prima facie liable therefor where no consideration has been paid for the partnership assets, other than issuance of stock in the corporation, and where the corporation has no other property or assets than those so acquired. The case of *Stowell v. Garden City News Corp.*[8] exemplifies the rule. There a corporation was formed by and consisted of members of a partnership whose business and property were conveyed and transferred to the corporation in return for capital stock of the latter. The corporation, which continued the business of the partnership, was presumed to have assumed the partnership debts and was prima facie liable therefore.

As recognized by the court in the *West Tenino* case, a corporation may be held to have impliedly assumed the obligations of its predecessor. The question, then, becomes one as to the sufficiency of the established facts and circumstances to raise the implication or presumption that the corporation assumed the partnership debts and obligations. A few decisions seemingly can be construed to state that a corporation, which upon its organization succeeds to the business and property of a partnership, is presumed to be a mere continuation of the latter and thereby chargeable with its liabilities.[9] The dictum in the *West Tenino* case seems to indicate a willingness to go to the opposite extreme. That is, the court seems reluctant to allow an inference of liability for the debts of a partnership where the defendant corporation is shown to be a mere change in the partnership business structure. The court would not be alone if it so held.[10] One view is that since the consideration for

[6] 15 FLETCHER, CYCLOPEDIA OF CORPORATIONS 139, § 7122 (1938).
[7] 15 *Id.* 406, § 4014.
[8] 143 Kan. 840, 57 P.2d 12 (1936).
[9] Reed Bros. Co. v. First National Bank of Weeping Water, 46 Neb. 168, 64 N.W. 701 (1895); Austin v. Tecumseh National Bank, 49 Neb. 412, 68 N.W. 628 (1896).
[10] *See* Taylor Lumber Co. v. Clark Lumber Co., 33 Ga. App. 815, 127 S.E. 905 (1925) ("A corporation which lawfully acquires all the property of a partnership does

the transfer of the partnership business is stock in the new corporation, the transaction is not one in fraud of creditors, because the partners continue liable as before, and with presumably as much property as before. In effect, the shares of stock represent the property put into the corporation and are available to the partnership creditors.[11]

This latter view does not follow what, as set forth herein, is deemed to be the better rule. Neither is it analogous to the view taken in the Washington cases concerning assumption of liabilities when a corporation succeeds to the business and assets of another corporation. However, as indicated by the small number of Washington cases on the subject of assumption of liabilities of a purchased business, the question remains open, and the *West Tenino* dictum should not preclude a future adoption of the rule creating an inference of liability in the new corporation for the old partnership debts when the former is merely a change in the latter's business structure.

Power of President to Call Meeting of Stockholders. *State Bank of Wilbur v. Wilbur Mission Church*[12] was an interpleader action by a bank to determine title to church funds deposited with the clerk of court. In determining which of two groups was entitled to certain corporate offices, and thus who was entitled to the corporate funds, the Supreme Court held that the president of a corporation generally has no power to call a meeting of the stockholders or members, unless bylaws or a resolution of the board of directors or trustees make it his duty to do so. Such a rule was said to be as equally applicable to religious organizations as to corporations organized for profit.

This rule is so generally accepted that few cases raise the issue.[13] Both *Knoll v. Levert*[14] and *Dusenbury v. Looker*,[15] cited by the court

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not thereby become responsible for the partnership debts, though the corporation has the same name as the partnership, and the persons who constituted the partnership own the entire capital stock of the corporation, and the business of the partnership has been merged into that of the corporation"). Universal Pictures Corporation v. Ray Davidge's Film Laboratory, 7 Cal. App.2d 366, 45 P.2d 1028 (1935); Dickson-Carroll Co. v. U.S. Fidelity & G. Co., 58 Ga. 540, 199 S.E. 322 (1938) ("The debts have to be assumed in a manner recognized by law").

[11] McLellan v. Detroit File Works, 56 Mich. 579, 23 N.W. 321 (1885); Nat'l Bank v. Hollingsworth, 135 N.C. 566, 47 S.E. 618 (1904).

[12] 44 Wn.2d 80, 265 P.2d 821 (1954). See also *Equity* at page 142.

[13] 5 FLETCHER, CYCLOPEDIA OF CORPORATIONS 7, § 1997 (1938) ("The power and duty of calling meetings is, in the absence of any statute or bylaw, in the directors." At page 8: "Meetings of religious corporations are called according to their constitutions and bylaws, if there is no statute upon the matter, the Stock Corporation Laws being not generally applicable"). *See* Uzzell v. McClelland, 65 Colo. 324, 176 Pac. 304 (1918).

[14] 136 La. 241, 66 So. 949 (1914).

[15] 110 Mich. 58, 67 N.W. 986 (1896).

as authority for the rule, avoid the issue, since, according to the terms of the corporate charters in those proceedings, the power to call a meeting of the stockholders was expressly vested in the board of directors. However, the president and secretary of a church were held to be without authority to issue a call in a Louisiana case[16] preceding the *Knoll* decision.

The *Wilbur* case illustrates the hazard of incorporating under RCW 24.08.010 *et seq.*, a short, inadequate, and antiquated chapter relating to educational, religious, benevolent, or charitable societies. If the Wilbur Mission Church had been incorporated under RCW 24.04.010 *et seq.*, relating to nonprofit, nonstock corporations, the conflict would probably have been averted by the requirement that the members of the corporation must meet and adopt bylaws before transacting any business. The time, place, and manner of calling and conducting meetings heads the list of suggested bylaw provisions under RCW 24.04.070. Also, RCW 24.16.010 *et seq.*, relating to associations for mutual benefit and educational, charitable, etc., purposes, would have been a better choice under which to incorporate than the one employed. Among other provisions the statute provides for adoption of bylaws and delineates the authority of trustees. Both RCW 24.04 and 24.16 are broad in scope, and yet lend a degree of guidance to incorporators and a partial framework from which the corporation may function. This cannot be said of RCW 24.08.

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Corporations May Do Business Under Assumed Names. *Seattle Association of Credit Men v. Green,* 145 Wash. Dec. 128, 273 P.2d 513 (1954), was an action by the assignee for benefit of all creditors of an insolvent corporation against certain specific creditors of the corporation to recover a preferential payment. The Supreme Court held the Uniform Business Corporation Act, (adopted 1933, RCW Title 23), does not preclude a corporation from doing business under an assumed name. Funds of the insolvent corporation, paid within four months of the corporation's assignment for benefit of creditors by means of a check drawn under an assumed name used in transacting business with a creditor, could be recovered by the assignee under RCW 23.48.030.

CREDITORS' RIGHTS

Mechanics' Liens—Time for Filing of Claim. The filing of mechanics' liens is governed in Washington by a statute which, in the part pertinent to this inquiry, reads as follows:

No lien created by this chapter shall exist and no action to enforce the

[16] State *ex rel.* Bellamore v. Rombotis, 120 La. 150, 45 So. 43 (1907).