Notre Dame Law Review

Volume 2 | Issue 1 Article 6

11-1-1926

Notes on Recent Cases

William L. Travis

NOTES ON RECENT CASES

CHATTEL MORTGAGES.—Growing Crops: "Fruit Buds"

Plaintiff sought foreclosure of a chattel mortgage given to her by the defendant, her husband, to secure an indebtedness to her. The mortgage was executed on July 3, 1924, and covered the fruit crop which was to be harvested in the same year. On November 2, 1923, the defendant had executed a chattel mortgage to one Kopp, on the same crop. Kopp intervened in the suit claiming a superior right to the proceeds of the crop by virtue of prior mortgage. Plaintiff contended that Kopp's purported mortgage was void under the chattel mortgage statute of Washington which reads: "Mortgages may be made . . . . upon growing crops and upon crops before the seeds thereof shall have been sown or planted: Provided, that the mortgaging of crops before the seed thereof shall have been sown or planted, for more than one year in advance is hereby forbidden." Sec. 3779 Rm. Comp. Stat. Kopp offered expert testimony to show that "fruit buds", from which the crop of the following fall would develop, had formed on the trees before the time of the execution of the mortgage in November, thus attempting to bring his chattel mortgage within the "growing crop" clause of the chattel mortgage statute. However, the court held the mortgage void. *Stuhlmiller v. Stuhmiller, C. M. Kopp, intervener* (Sup. Ct. Wash. 1926) 248 P. 393. The court said, "The alleged maturing of the so-called "fruit buds" to the extent of being then possible to differentiate from other growths upon the trees during the summer or early fall of the year preceding the year of maturing fruit is, to our minds, only an attempted differentiating in degree of that growth upon the trees from the other growths then going forward upon the trees which may make for the fruit crop of the following year. Such refinement of distinction would carry us back indefinitely and render the statutory authorization of the mortgaging of growing crops impractical of determination as to its operation . . . . We think that it cannot be held that the commencement of the formation of the "fruit buds" in a given year constitutes a portion of the growing of the crop of the succeeding year any more than it can be held that the growth of the tree in other respects during the prior years of its

life constitutes a part of the period of the growing of the crop of the succeeding years."

The court further intimated that fruit on trees cannot become "growing crops" prior to the dormant period of winter, but it did not hazard any opinion as to when that state of growth, designated as "growing crops" in contemplation of law, would actually commence. The controlling case cited in support of the conclusion reached in the principal case, is *Kennewick Co. v. Fry*, 133 Wash. 341, 236 P. 808.

"A crop is to be considered as growing from the time the seed is put in the ground, at which time the seed is no longer a chattel, but becomes part of the reality, and passes with a sale of it. The distinction has been made that growing crops of grain and annual productions raised by cultivation and the industry of man are personal chattels; while trees, fruit, or grass and other natural products of the earth are parcel of the land. But matured apples are held to be personalty." Bouvier, L. Dict. "Growing crops" include only those which require an annual planting or sowing, or an annual harvesting. According to the modern view "crops" include fruit grown on trees but not the trees themselves. *Cottle v. Spitzer*, 65 Calif. 456, 4 Pac. 435, 5 Am. Rep. 305. There is suprisingly little authority to enlighten us on the time when fruit becomes growing crops, but the importance of judicial determination and defination in regard thereto is evident. Although the instant case failed to fix any definite time when fruit may be regarded as a growing crop yet it did restrict that time until after the dormant period of winter, and that conclusion is obviously sound. W. L. T.

CONTRACTS—Conflicts of Law.—A resident of Mexico brought suit in Arizona against a citizen in that state on a contract of sale of intoxicating liquors. The transaction was consummated in Mexico and neither of the parties at that time contemplated the violation of any law in the United States. Defendant sought to evade payment of the purchase price for the alleged reason that compulsion to do so would be against the public policy of the state and nation as evidenced by the Eighteenth Amendment and the state constitution and statutes relating to intoxicating liquors. The supreme court of Arizona after an exhaustive study of the authorities, as disclosed by the

reported opinion, held that such a contract, valid where made, is by comity, valid and enforceable in that state because it is *not* "inherently vicious, wicked, immoral, or so pernicious and detestable as to shock the prevailing moral sense" justifying a refusal to extend comity for contravention of the public policy. "The British, French or Italian merchant", said the court, "could scarcely appreciate a public policy that would enable an American tourist to plead that his purchase of wines and liquors while enjoying the pleasures and protection of the foreign country, were so inherently wicked and vicious that he should not be ordered to pay therefor". *Veytia v. Alvarez.* (Sup. Ct. Ariz. 1926) 247 Pac. 117.

The validity of a contract is governed by the *lex loci contractus,* and generally if valid there, it is valid everywhere, even though, had it been made in the state of the *forum,* it would have been invalid, subject, however, to several exceptions. *Carpenter Baggott Co. v. Hanes,* 167 N. C. 551, 83 S. E. 577. If a contract is valid in one state it will, in general, not be enforced by the courts of another state, where it is contrary to the statutes, morals, or public policy of the latter. *Bartlett v. Collins,* 109 Wis. 477, 85 N. W. 703, 83 Am. St. Rep. 928; *Corbin v. Houlehan* 100 Me. 246, 61 Atl. 131, 70 L. R. A. 568; *Parker v. Moore* 115 Fed. 799 (U. S. C. C. A. S. C.); *Nonotuck Silk Co. v. Adams Express* 256 Ill. 76, 99 N. E. 897; *Grossman v. Union Trust Co.* 228 F. 610, Ann. Cas. 1917 B. 613; *Atwater v. Edwards Co.* 147 Mo. App. 436, 126 S.W. 823. A contract, as to its nature, obligation, and validity, is governed by the law of the place where made, unless it is to be performed in another state, in which case it will be governed by the law of the place of performance. *Southern Express Co. v. Gibbs,* 155 Ala. 303, 46 So. 465, 18 L. R. A. (N. S.) 874, 130 Am. St. Rep. 24. *Zenatello v. Hammerstein,* 231 Pa. 56, 79 Atl. 922; *Fish v. Delaware, L. & W. R. Co.* 211 N. Y. 374, N. E. 661. A contract valid at place of *performance* will be enforced in the state of the *forum,* although, the same contract made and to be performed in the latter state would not be upheld. *R. S. Oglesby Co. v. Bank of New York,* 114 Va. 663, 77 S. E. 468. The courts of Wisconsin have recently qualified the rule to the effect that a foreign contract is not necessarily unenforceable there because contrary to public policy; but to be such as to not be recognized in the *forum* it must be pernicious and injurious to the public welfare in the judgment of the court. *International Harvester Co. v. McAdam,*

142 Wis. 114, 124 N. W. 1042, 26 L. R. A. (N. S.) 774, 20 Ann. Cas. 614. The later Wisconsin decision states the sound rule as well as the modern tendency of the courts relative to recognition of rights acquired in a foreign state, which tendency is aptly illustrated by the opinion of Justice Cardozo in *Loucks v. Standard Oil Co.* 224 N. Y. 99, 120 N. E. 198, referred to in the principal case.

The instant case is authority for the proposition that an action to recover payment for a consummated sale of intoxicating liquors is enforceable in the *lex fori,* even though prohibited there, if said transaction was valid in the *lex loci contractus.* Supporting this conclusion is the case of *Klein v. Keller* 42 Okl. 592, 141 Pac. 1117, Ann. Cas. 1916 D, 1070;—about the only identical case reported in the books. W. L. T.

CORPORATIONS.—De Facto Corporations.—The Westlake Investment Company in an attempt to organize under the laws of California failed to conform to the constitution of that state in so far as it forbids the creation of corporations having in their articles of incorporation a provision for stock structure of differing par values. Such a violation of the constitution would justify a refusal by the secretary of state to isue a certificate of incorporation. The petitioner, however, had conformed in all ways with all the remaining requirements of law, had been doing business in the state, had paid a corporation license tax, and had received from the secretary of state a license to transact business in the state for two years prior to the commencement of this suit. When the Company applied for a license to carry on business for the current year, the secretary of state refused to accept the tax and issue a license, whereupon the corporation petitioned for a writ of mandamus to compel the secretary of state to do so. The court *held* that the company became a de facto corporation by virtue of the fact that it had attempted to organize under a valid law, under which it might have been lawfully organized, and had in good faith functioned as a corporation. A writ was directed, as prayed for, to the secretary of state who had no authority to question the legal existence of a de facto corporation. *Westlake Inv. Co. v. Jordan,* (Calif. 1926) 246 P 807.

Where there was an existing law under which an organization might have lawfully incorporated and the organization made use of and claimed rights thereunder, and made a *bona-fide* attempt

to organize but failed to record articles of incorporation in registry of deeds and file a certified copy it was held in the recent case of *Baker v. Bates Shirt Co.* 6 Fed. (2nd) 854, not to be such a *colorable* compliance with the essential requirements as to establish a de facto corporation.

Three things necessary to establish a de facto corporation, according to the general modern rule are, (1) a valid law under which such a corporation might be incorporated, (2) a bona-fide attempt and colorable compliance with such law, and (3) an actual exercise of corporate rights and powers. *Paragon Dist. Corp. v. Paragon Laboratories* 129 Atl. 404. The principle is too well settled to demand citation of authority that a de facto corporation cannot exist if there is no law authorising a de jure corporation of the character sought to be organized. The authorities are in conflict as to whether a de facto corporation can exist under an unconstitutional statute but the better rule, and the logical conclusion, is that it is impossible to conceive of an attempted compliance with and exercise of rights under an invalid law which is no law at all, and neither creates rights nor demands duties. *Clark v. American Cannel Coal Co.* 165 Ind. 213, 73 N. E. 1083, 112 Am. St. Rep. 217.

A long list of particular defects in incorporation which have been held not to preclude the formation of a corporation de facto are noted in 14 C. J. 221, N. 33, citing cases. Among these irregularities are: (1) Failure to state distinctly in the articles the place where business is to be transacted, (2) Failure to correctly state the objects of the corporation, (3) Failure to state the names of the incorporators in the certificate issued by the secretary of state, (4) Failure to state whether the stock was asessable or non-asessable, (5) Failure properly to execute, acknowledge, or record certificate or charter, (6) Insertion of an unauthorized provision for increase of capital stock in the articles, (7) Inclusion in articles of more than one of the purposes specified by statute, or of objects not covered by the statute, and (8) Inclusion in articles of unauthorized powers or privileges.

What constitutes a "bona-fide attempt" to organize and a "colorable compliance" with the statutory requirements is a perplexing question which, in the last analysis, must necessarily be left to judicial determination. W. L. T.