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Corporate Shares: Attachment and Execution: Conflicting Policies of Negotiability and Collection of Judgments

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not a municipal criminal ordinance to enforce it. It would thus seem that the precise issue has never been passed on in California and will remain an area of uncertainty until the courts squarely decide the issue.

The state criminal law is applied in *In re Groves* by a statutory interpretation which defines the meaning of the word "law" as used in the state statute as including municipal law. This statutory interpretation is supported by prior California decisions.²⁷

Groves' other objections were that he had been denied equal protection of the laws and that the city had failed to properly inform him of the charge against him. However, these objections were also overruled.

The ultimate result of *In re Groves* may well be sound. It seems just and fair to apply a blanket state criminal law provision to enforce municipal revenue raising measures.²⁸ However, in one respect, it is believed that Judge Traynor's opinion may be questioned. He reasons that even though the complaint charged Groves with a violation of the Palm Springs, California, Ordinance Code, and the state law was not made a part of that charge; still the defendant was fully informed of the alleged crime and was not prejudiced by a failure of the complaint to cite the state law. Is this not an infringement on Groves' constitutional right to be fairly informed of the charge against him? It is believed that better procedure would have required the complaint to cite the provision of the state law under which Groves was convicted.

Conclusion

The complete significance of the decision in *In re Groves* is yet to be seen. The application of the criminal sanctions of section 16240 of the California Business and Professions Code certainly puts more teeth into the municipal licensing provisions. Also, the dicta to the effect that municipal revenue raising ordinances can be enforced by municipal criminal law sanctions may well become settled law. By clarifying possible confusion in the field of business regulation, *In re Groves* may have as great an impact on California law as the *Agnew* cases.

Terence A. Pierson*

²⁷ *Teachout v. Bogy*, 175 Cal. 481, 484-85, 166 Pac. 319, 320-21 (1917); *Ex parte Bagshaw*, 152 Cal. 701, 703, 93 Pac. 864, 865 (1908); *In re Johnson*, 47 Cal. App. 465, 467, 190 Pac. 852, 853 (1920).

²⁸ CAL. BUS. & PROF. CODE § 16240.

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CORPORATE SHARES: Attachment and Execution; Conflicting Policies of Negotiability and Collection of Judgments

One aspect of the present California law on attachment and execution of corporate shares is unsatisfactory. Two conflicting policies are involved. One is to facilitate the rapid transfer of shares of stock. The other is to facilitate the collection of money judgments. Neither is accomplished.

This condition came about when the California legislature adopted a modified version of the Uniform Stock Transfer Act in 1931.¹ The purpose of this act is to make shares of stock as negotiable as practicable by making

¹ See 6 U.L.A. §§ 1-26; CAL. CORP. CODE §§ 2450-86.

the stock certificate the indicia of ownership rather than the record of ownership on the corporation's books.² Accordingly, it provides that a bona fide purchaser who has obtained the certificate for value without notice will obtain a good title in the following cases: a) where another transferee took under an assignment not written on the certificate;³ b) where the indorsed certificate was delivered by one having no right to possession and no authority from the owner thereof;⁴ c) where the indorsement on the certificate or delivery was induced by fraud, duress or mistake;⁵ d) where the transferor has revoked the delivery of the certificate or the authority of the indorsement or delivery of the certificate;⁶ e) where the transferor has died or become legally incapacitated after the indorsement or delivery;⁷ f) where the transferor has received no consideration;⁸ g) where a prior transfer has been rescinded.⁹

One important protection given in the uniform act to a bona fide purchaser for value without notice is not provided for in the California version. Section 13 of the Uniform Stock Transfer Act requires control of the stock certificate before levy of attachment or execution¹⁰ in order to protect a bona fide purchaser for value without notice.

At the insistence of creditors' organizations¹¹ this provision was omitted by California and the old method of attachment and execution by way of notice to the corporation without seizure of the certificate was retained.¹² The obvious purpose in doing so was to facilitate the collection of money judgments by making a judgment debtor's stock amenable to the attachment and execution process when the certificates of stock are not accessible.

The consequence of this modification was a reduction of the negotiable character of the certificate. It has been said: "The omission greatly weakens the effect of the Act by making the title of the holder of a certificate subject

² See BALLANTINE & STERLING, CALIFORNIA CORPORATION LAWS § 220 (1949).

³ 6 U.L.A. § 4; CAL. CORP. CODE § 2467.

⁴ 6 U.L.A. § 5; CAL. CORP. CODE § 2468; *East Coalinga Oil Fields Corp. v. Robinson*, 86 Cal. App. 2d 153, 194 P.2d 554 (1948).

⁵ 6 U.L.A. § 7; CAL. CORP. CODE § 2470.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

⁹ 6 U.L.A. § 8; CAL. CORP. CODE § 2471.

¹⁰ 6 U.L.A. § 13 provides: "No attachment or levy upon shares of stock . . . shall be valid until such certificate be actually seized by the officer making the attachment or levy, or be surrendered to the corporation which issued it, or its transfer by the holder be enjoined. . . ."

¹¹ Ballantine, *Major Changes in California Corporation Law*, 6 CAL. S. BAR J. 159, 161 (1931).

¹² CAL. CODE CIV. PROC. § 542 para. 4, provides: "Stocks or shares or an interest in stocks or shares, of any corporation or company must be attached by leaving with the president, vice president or other head of the same, or the secretary, assistant secretary, cashier, assistant cashier, or any managing agent, thereof, a copy of the writ, and a notice stating that the stock or interest of the defendant is attached, in pursuance of such writ." CAL. CODE CIV. PROC. § 688 provides that all property under attachment is liable to execution. CAL. CODE CIV. PROC. § 699 provides that a certificate of sale from the officer making an execution sale of property not capable of manual delivery conveys all the right which the debtor had on the day when attachment or execution was levied.

to the liens of such attachment or execution creditors, provided, of course, that the liens are *prior in time* to the interest of the holder."¹³ This means that a prudent buyer should investigate the corporation's books before completing the transaction to insure that he is obtaining a good title. To require the buyer to look beyond the certificate is to create an imposition which is incompatible with negotiability.

Whether it is better policy to sacrifice this element of negotiability for the benefit of the judgment creditor is arguable. But if this is to be the law it would seem that there should be provided an effective means of transferring the valuable incidents of the stock ownership to the creditor or other purchaser on execution sale. Otherwise the reduction of negotiability could not be justified.

Unfortunately, such a procedure is not provided for under the California law. This is demonstrated by the recent case of *Reynolds v. Reynolds*¹⁴ which held that a corporation cannot be compelled to issue a new duplicate certificate of stock when a purchaser on execution sale has acquired the stock at a sheriff's sale by following California Code of Civil Procedure sections 542, 688 and 699 and the certificate evidencing it has not been seized by the officer conducting the sale because the judgment debtor and the certificates were not within California. Plaintiff had taken a default judgment in a divorce action. Defendant, a California resident, was in Colorado. Plaintiff and her attorney subsequently levied execution on defendant's stock in a California corporation. Presumably, the certificates had been taken to Colorado by defendant. Plaintiff and her attorney purchased defendant's stock at execution and were given certificates of sale from the sheriff in place of the certificates of stock.¹⁵ They presented these to the corporation and requested new certificates.

The corporation refused, but was ordered by the superior court to comply. The district court of appeal affirmed, but the supreme court reversed, ruling that the purchaser on execution sale obtained only that right, title and interest of the judgment debtor, at the time of the attachment or execution, which is in the control of the corporation. Consequently, all the purchaser on execution sale could obtain was the right to dividends,¹⁶ to inspect the books¹⁷ and to vote at stockholders' meetings.¹⁸ But the incident of ownership of paramount value, *viz.*, the power to transfer the stock to another for a valuable consideration, was inaccessible.

The court arrived at its decision by a literal construction of the Act. Section 2466 gives the only three ways in which stock can be transferred and each requires delivery of the certificate. Section 2477 states that a corporation cannot be compelled to issue a new certificate when the original is still outstanding unless the original is lost, destroyed or the shares evidenced by a certificate have been sold for delinquent assessment or non-payment

¹³ 3 WITKIN, *SUMMARY OF CALIFORNIA LAW Corporations* § 80, p. 2373 (1960); also see BALLANTINE & STERLING, *CALIFORNIA CORPORATION LAWS* § 244 (1949).

¹⁴ 54 Cal. 2d —, 355 P.2d 481, 7 Cal. Rptr. 737 (1960).

¹⁵ Plaintiff also had the ownership in some of the stock decreed in her favor in a quiet title action based on the community property.

¹⁶ See CAL. CORP. CODE § 2465.

¹⁷ See CAL. CORP. CODE § 3003.

¹⁸ See CAL. CORP. CODE §§ 2214-15.

of the subscription price. None of these existed; therefore the corporation could not be compelled to issue new certificates.

In light of the modification of section 13 of the Uniform Stock Transfer Act discussed above¹⁹ it would seem that the court could have found an additional exception to section 2477 implied; namely that a corporation can be compelled to issue a new certificate when the share has been sold at execution. Indeed, the right to dividends, inspection of books, and voting is of slight significance to a judgment creditor and the absence of the power to sell the stock renders the stock practically valueless to any purchaser on execution sale. Section 2466 applies only to transfer by act of the parties. It does not preclude a transfer without delivery by operation of law.²⁰ The fact that the first sentence of section 13 of the Uniform Stock Transfer Act was omitted²¹ and California Code of Civil Procedure section 542 retained²² would justify this exception to section 2477 by implication since the legislature thereby demonstrated its intention to aid the collection of money judgments.

However, the court seems to be more concerned with promoting negotiability by protecting a possible bona fide purchaser for value prior to the attachment or execution. The court says, "The vice of the situation is that neither the court nor the parties know whether *any* title to the shares could have passed by the sheriff's sale. If . . . [defendant] had already sold the shares, or had pledged or assigned them, the sheriff's sale could not possibly have transferred any ownership to . . . [plaintiff's], because . . . [defendant] would have had none to seize."²³ (Emphasis of the court.)

To cancel the outstanding certificate when it has been duly negotiated to a bona fide purchaser for value prior to attachment or execution would greatly hamper negotiability. But the fact that a certificate has been transferred to an innocent third party would not in itself make it impossible to levy on that share so long as it remains in the name of the judgment debtor. It could be reasoned that under these circumstances the ownership of the share is evidenced by the books of the corporation rather than the certificate. Thus, it would not be a case of seizing something which does not belong to the judgment debtor. Until the ownership has been transferred on the corporation's books the judgment debtor remains the owner for purposes of attachment or execution.

It should also be noted that the power to cancel the outstanding certificate would be comparable to that involved in situations of lost or destroyed certificates.²⁴ Where a certificate is believed to be lost or destroyed, the owner can compel the corporation to issue a new certificate in spite of the possibility that a finder may have negotiated it to a bona fide purchaser for value without notice who would obtain a good title under Corporation Code section 2468. If there is such a purchaser, he can sue the corporation for conversion under Corporation Code section 2486 but the corporation can require indemnity from the original owner under section 2485 to cover

¹⁹ See discussion in text at notes 10 and 11 *supra*.

²⁰ BALLANTINE & STERLING, CALIFORNIA CORPORATION LAWS § 237 (1949).

²¹ See note 10 *supra*.

²² See note 12 *supra*.

²³ 54 Cal. 2d —, 355 P.2d 481, 488, 7 Cal. Rptr. 737, 744.

²⁴ See CAL. CORP. CODE § 2482.

this risk.²⁵ Also, the regular statute of limitation applies to this cause of action.

In any event, as the law now stands, the purchaser at execution is not entitled to the indicia of ownership until the old certificate has been surrendered. As we have seen, this does little toward satisfying his judgment.

Next to this we see that the policy of negotiability is hampered in spite of the *Reynolds* case because the bona fide purchaser for value without notice is inferior to the attachment or execution purchaser when he is not prior in time. The purchaser must still investigate the corporation's books to see if there has been a prior attachment or execution. It would seem that the most this decision does is to relieve the purchaser from the necessity of having the transfer noted on the corporation's books immediately after its execution. Such a notation would protect him from subsequent attachments or executions on his transferor. Since this occurs after the sale it neither adds to nor subtracts from negotiability.

Thus, the unavoidable question arises, why not compel the corporation to issue new certificates to the execution purchaser unless a prior transfer by the judgment debtor to an innocent third party has been noted on the corporation's books? This would give effect to one of these conflicting policies instead of allowing them to cancel each other out, which, it seems, is the result of the present law.

In conclusion, two possible remedies to this ineffectual state of the law are presented. One is for the legislature to adopt all of section 13 of the uniform act²⁶ with section 14²⁷ to supplement it, and modify California Code of Civil Procedure section 542 accordingly. This would remove the present necessity of looking beyond the certificate for attachment or execution creditors, a requirement which appears to be unrealistic where stock values are widely fluctuating and time is of the essence in the transfer of ownership. The other remedy is for the legislature to add the exception to Corporation Code section 2477 which the court refused to imply.²⁸ This would give meaning to the present procedure for levying execution on stock when the certificate is inaccessible.

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²⁵ Note that the frequency of return of certificates cancelled because of execution proceedings probably would be higher than those cancelled because allegedly lost or destroyed.

²⁶ See note 10 *supra*.

²⁷ "A creditor whose debtor is the owner of a certificate, shall be entitled to such aid from the courts of appropriate jurisdiction, by injunction and otherwise, in attaching such certificate or in satisfying the claim by means thereof as is allowed at law or equity in regard to property which cannot readily be attached or levied upon by ordinary legal process."

²⁸ See discussion in text at notes 10 and 11 *supra*.

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