



UNC
SCHOOL OF LAW

NORTH CAROLINA LAW REVIEW

Volume 8 | Number 1

Article 17

12-1-1929

Title to Corporate Property Upon Dissolution

Walter Hoyle

Follow this and additional works at: <http://scholarship.law.unc.edu/nclr>



Part of the [Law Commons](#)

Recommended Citation

Walter Hoyle, *Title to Corporate Property Upon Dissolution*, 8 N.C. L. REV. 66 (1929).

Available at: <http://scholarship.law.unc.edu/nclr/vol8/iss1/17>

This Note is brought to you for free and open access by Carolina Law Scholarship Repository. It has been accepted for inclusion in North Carolina Law Review by an authorized editor of Carolina Law Scholarship Repository. For more information, please contact law_repository@unc.edu.

court was unconsciously influenced by the fact that the District Court had expressly found that no discrimination of the sort alleged actually existed.

If discrimination between the assessment of real and personal property was enough in the Ohio case, is not the alleged discrimination between assessments of properties in the same class more deserving of equitable relief?³¹ Moreover, the exception in the North Carolina statute, in favor of injunctive relief against illegal taxes, creates no greater right to that relief than exists in jurisdictions without any such statute.³² The view that this statute, by virtue of that exception, operates to increase the remedies available in the Federal Equity Court and must therefore be ignored, is perhaps derived from the court's willingness to make the same statute, insofar as it authorizes suits to recover taxes paid under protest, the affirmative basis of a proceeding on the law side of the same tribunal.

Finally, even if a recovery at law of the difference between the tax on a legal assessment and the actual amount of the tax paid under protest, with interest, will theoretically make the complainant whole, and even if this decision would be *res judicata* as to subsequent levies pending the next quadrennial assessment (which might be doubted in view of the technical change in the issues and subject matter from year to year) the relief to be awarded at law can take no notice of the jeopardizing of the complainant's financial structure incident to the loss of those funds during the period of suit. A jury could not deal intelligently with the issue to be presented at law; a judge sitting alone will have to handle the task that a court consisting of three judges in the instant case refused to attempt. It is not believed that the remedy at law is adequate.

The North Carolina case is now before the Supreme Court of the United States on a writ of *certiorari*.

THOMAS W. SPRINKLE.

TITLE TO CORPORATE PROPERTY UPON DISSOLUTION

*Smith v. Dicks*¹ presents a question as to property rights of stockholders where, without knowledge on the part of the corporate mem-

³¹ See *Western Union Tel. Co. v. Tax. Com.*, *supra* note 30.

³² See notes 1 to 5 *supra*. The court examined the state supreme court's construction of the statute and found it difficult to determine precisely when injunction against illegal taxes would be granted. It assumed, however, that the state court would have granted that relief in the case at bar. *Herietta Mills Co. v. Rutherford County*, *supra* note 26, at p. 573.

¹ 197 N. C. 355, 148 S. E. 463 (1929).

bers, the charter had expired by limitation and operations had been continued thereafter for seven years, without any move for winding up as provided for by statute. It was held that upon expiration of the charter, the only outstanding indebtedness being a mortgage, the members became tenants in common of an undivided interest in fee, subject to the mortgage indebtedness, with power of conveyance accordingly on the part of any member.

Upon the expiration or revocation of a corporate charter with resultant dissolution, all jurisdictions in dealing with the assets, in the final analysis, reach the same practical result—payment of corporate debts with distribution of any residue among the stockholders. But in the matter of defining stockholders' rights, and the situs of title, in the corporate assets during the period of dissolution, opinions are both confusing and conflicting.² Decisions may be roughly grouped under three heads.

Under the so-called "trust-fund" doctrine³ the assets of a dissolved corporation constitute a trust fund for the primary benefit of creditors, with distribution of the residue among the stockholders. Legal title to the property vests in the trustees⁴ who are provided for by statute⁵ or appointed by the court,⁶ the shareholders having only an equitable interest.⁷ An invention of the courts of equity whereby to defeat the old common law rules of reverter and escheat,⁸ the "trust-fund" doctrine has been continued in modern times by decis-

² See 8 THOMPSON, CORPORATIONS (3rd ed.), §§6505-6523; BALLANTINE, CORPORATIONS (1927), §267; note (1927) 47 A. L. R. 1288.

³ *McWilliams v. Excelsior Coal Co.*, 298 Fed. 884 (C. C. A. 8th. 1924); *Burke v. Wall*, 29 La. Anno. 38, 29 Am. Rep. 316 (1877); *Roman Catholic Church v. Texas & P. R. Co.*, 41 Fed. 564 (C. C. E. D. La. 1890); *New York B. & E. R. Co. v. Motil*, 81 Conn. 466, 71 Atl. 563 (1908); note (1927) 47 A. L. R. 1288; (1921) 35 HARV. L. REV. 58; (1916) 29 HARV. L. REV. 780.

⁴ *Aalwyns Law Institute v. Martin*, 173 Cal. 21, 159 Pac. 158 (1916); *Roseboom v. Warner*, 132 Ill. 81, 23 N. E. 339 (1890); *Neptune Fire Engine & Hose Co. v. Board of Education*, 166 Ky. 1, 178 S. W. 1138 (1915); *Thomas v. Rogers*, 191 N. C. 736, 133 S. E. 18 (1926); *In re Friedman*, 164 N. Y. Supp. 892, 177 App. Div. 755 (1917).

⁵ *Young v. Fitch*, 182 Ky. 29, 206 S. W. 29 (1918); N. C. Con. Stat. Ann. (1919), §1194.

⁶ *Bacon v. Robertson*, *supra* note 3; N. C. Con. Stat. Ann. (1919), §1194.

⁷ *Morman Church v. United States*, 136 U. S. 1, 34 L. Ed. 478 (1889); *Richards v. Attleboro Nat. Bank*, 148 Mass. 187, 19 N. E. 353, 1 L. R. A. 781 (1889); *Muir v. Citizens Nat. Bank*, 39 Wash. 57, 80 Pac. 1007 (1905), holding that an assignment or transfer of stock by a stockholder after the dissolution of a corporation is merely an equitable assignment of his interests in the assets of the concern as it may appear upon the settlement.

⁸ For cases dealing with the doctrines of reverter and escheat see: *Neptune Fire Engine & Hose Co. v. Board of Education*, *supra* note 4; *Wilson v. Leary*, 120 N. C. 90, 26 S. E. 30 (1897); Note (1927) 47 A. L. R. 1288, 1334.

ions and statutes. Under the statutes in many states provision is made for a period in which to wind up the corporate affairs,⁹ with stipulations for the corporate officers to act as trustees,¹⁰ or for appointment of receivers,¹¹ or for the corporation itself to act as trustee.¹²

Another view, although protecting the rights of creditors under a trust, presents a hybrid situation so far as the interests of the stockholders are concerned, wherein the interests of stockholders are equitable, and legal title is in the trustees until debts are paid; legal title in the residue thereafter vesting in the stockholders as tenants in common.¹³ North Carolina comes under this grouping by virtue of construction of statutes and decisions; statutes provide for a three year period of dissolution during which in the absence of court action, the directors are trustees;¹⁴ decisions hold that the assets of a dead corporation constitute a trust fund;¹⁵ and the principal case¹⁶ holds that in the absence of corporate debts and active dissolution proceedings, the stockholders become tenants in common.

Still other decisions bring forward the doctrine that when the corporate existence ceases the stockholders become vested with a legal title to its property as tenants in common, subject, of course, to

⁹ Refer to statutes of particular states. For North Carolina see N. C. Con. Stat. Ann. (1919), §1193, providing a 3 year period; *Buckley v. Anderson et al*, 137 Ala. 325, 34 So. 238 (1903); *Sullivan Timber Co. v. Black*, 159 Ala. 570, 48 So. 870 (1909); *Boston Towboat Co. v. Medford Nat. Bank*, 228 Mass. 484, 117 N. E. 928 (1917); *Knott v. Evening Post Co.*, 124 Fed. 342 (C. C. W. D. Ky. 1903); (1928) 17 Ky. L. J. 54, pointing out that property held by corporation before dissolution vests in stockholders subject to corporate liabilities; and in interpreting the Kentucky statute authorizing a corporation to close up its affairs on expiration of charter, it was held that no specific mode was described, nor was one at all desirable.

¹⁰ *Thomas v. Rogers*, 191 N. C. 736, 133 S. E. 18 (1926); *In re Friedman*, *supra* note 4; *Loudermilk v. Butlert*, 182 N. C. 502, 109 S. E. 571 (1921). Refer to statutes of particular states: *Bucklet v. Anderson*, *supra* note 9; *Sullivan Timber Co. v. Black*, *supra* note 9.

¹¹ Refer to statutes of particular states: *State v. New Orleans Debenture Redemption Co.*, 107 La. 562, 32 So. 102 (1902).

¹² *McBride v. Murphy*, 124 Atl. 198 (Del. Ch. 1924); also refer to statutes of particular states.

¹³ *Baldwin v. Johnson*, 95 Tex. 85, 65 S. W. 181 (1901); *Capuccio v. Caire*, 189 Cal. 154, 209 Pac. 367 (1922).

¹⁴ N. C. Con. Stat. Ann. (1919), §1194.

¹⁵ *Heggie v. Bldg. & Loan Ass'n.*, 107 N. C. 581, 12 S. E. 275 (1890); *Merchants Nat. Bank of Richmond v. Newton Cotton Mills*, 115 N. C. 507, 20 S. E. 765 (1894); *Holshouser v. Copper Co.*, 138 N. C. 248, 50 S. E. 650 (1905); *Hill v. Lumber Co.*, 113 N. C. 174, 18 S. E. 107 (1893); *Loudermilk v. Butlert*, 182 N. C. 502, 109 S. E. 571 (1921).

¹⁶ *Smith v. Dicks*, *supra* note 1.

corporate debts.¹⁷ In accepting this view some courts lay down varying limitations in that the title is held to vest in the stockholders as tenants in common on conditions that no receiver is appointed,¹⁸ or there is no insolvency,¹⁹ or creditors,²⁰ or that the property will be subject to a "trust" for the benefit of creditors.²¹ Still another holds that, even though the debts have already been extinguished, title vests in the stockholders only at the end of the statutory period for winding up.²² A few courts hold that title vests in the stockholders as a partnership,²³ while others use the terms "tenants in common" and "partnership" interchangeably.²⁴

By drawing an analogy to the situation upon the death intestate of a natural person, one court²⁵ holds that even though a trustee be appointed he would not hold the legal title to the property, but would only be the custodian of the court with power of disposition, for the purpose of paying debts and of distribution, his right being similar to that of an administrator, legal title having "descended" to the stockholders. On the other hand, even courts firmly adhering to the "trust-fund" doctrine, or to the tenancy in common theory, draw an analogy to the situation where a natural person has died intestate.²⁶

In contradistinction to the holdings of decisions previously discussed, it is submitted that in those states providing for a winding-up

¹⁷ *Capital Garage Co. v. Powell*, 98 Vt. 145, 118 Atl. 524 (1922); *Meredith v. Washington Loan & Trust Co.*, 151 Md. 274, 134 Atl. 206 (1926); *Shadoin v. Sellars*, 237 Ky. 751, 4 S. W. (2d) 717 (1928); *Young v. Fitch*, 181 Ky. 20, 206 S. W. 29 (1918); *Taylor v. Interstate Investment Co.*, 75 Wash. 490, 135 Pac. 240 (1913); *Montgomery v. Heath*, 283 S. W. 324 (Tex. Civ. App. 1926).

¹⁸ *Cumington Realty Ass'n. v. Whitten*, 238 Mass. 313, 132 N. E. 53 (1921); *Baldwin v. Johnson*, *supra* note 13; *Stone v. Edwards*, 32 Ga. 479, 124 S. E. 54 (1924).

¹⁹ *Baldwin v. Johnson*, *supra* note 13.

²⁰ *Service & Wright Lumber Co. v. Sumpter Valley Ry. Co.*, 81 Ore. 32, 158 Pac. 175 (1916); *Stone v. Edwards*, *supra* note 18.

²¹ *Stearns Coal & Lumber Co. v. Van Winkle et al.*, 221 Fed. 590 (E. D. Ky. 1915); *Pioneer Coal Co. v. Asher*, 210 Ky. 498, 276 S. W. 487 (1925).

²² *Stearns Coal & Lumber Co. v. Van Winkle*, *supra* note 21; *Ewald Iron Co. v. Commonwealth*, 140 Ky. 692, 131 S. W. 774 (1910).

²³ *Ewald Iron Co. v. Commonwealth*, *supra* note 22.

²⁴ *Mason v. Pewabic Mining Co.*, 133 U. S. 50, 33 L. ed. 524 (1890).

²⁵ *Stone v. Edwards*, *supra* note 18; see *Service & Wright Lumber Co. v. Sumter Valley Ry. Co.*, *supra* note 20.

²⁶ *Stearns Coal & Lumber Co. v. Van Winkle*, *supra* note 21; *Stone v. Edwards*, 32 Ga. 479, 124 S. E. 54, 56, the court observing, "Oddly enough, but more specifically, the relation of the stockholders to the assets of the dissolved corporation is still more similar to the relation of a surviving husband or wife to the real estate of a spouse who died intestate, leaving no lineal descendants"; *Von Glahn v. DeRosset*, 81 N. C. 472 (1879); *Dobson v. Simonton*, 86 N. C. 495 (1882); *Wilson v. Leary*, 120 N. C. 90, 26 S. E. 30 (1897).

period no actual change of title takes place upon the expiration or annulment of the corporate charter. The dying process is extended for a fixed or reasonable period, wherein the corporation, though nominally dead, still lives for the purpose of liquidation. Title to property remains in the corporation,²⁷ the same as before its partial legal death, subject to the winding-up proceedings. During this period the stockholders are not tenants in common of the corporate property, but have the same equitable interests as existed before the charter's expiration. At the end of the period of extended existence, in the absence of court action creating a receivership or trust, legal title descends to the stockholders as tenants in common, in exactly the same manner as title to realty vests in heirs upon death of a natural person; and concurrence of each individual stockholder would be necessary to convey his interest.²⁸ If debts still existed after such "descent" of title, the property of the former corporation, now vested in the stockholders as tenants in common, would be liable.

Regardless of which theory is adopted as to the place of title during dissolution, the practical results will be the same in that creditors will always be protected, and a distribution made of any residue. But it is submitted that the exigencies of modern business demand uniformity in the decisions, and the adoption of the simplest and most practicable theory in order that disposition of interests in dead corporations may be facilitated, and procedural difficulties avoided.

WALTER HOYLE.

²⁷ See *Duchutes Co. v. Lara*, 127 Ore. 57, 270 Pac. 913 (1928), that corporation is capable of serving as repository of title during winding up period. In *Rossi v. Caire*, 186 Cal. 544, 199 Pac. 1042 (1921), the court squarely faces the question of "where is the title?" but refuses to answer, being content with the statement that whether the interests of the stockholders be legal or equitable, it is a vested right which becomes absolute when the statutory trust of the former directors or trustee of the dead corporation have been fulfilled, there being no further claim necessitating the right of disposition of corporate property in the trustees in order to insure satisfaction of creditors.

²⁸ See *Capuccio v. Caire*, 189 Cal. 514, 209 Pac. 367 (1922), that a revived corporation could become vested with property of former dissolved corporation only by means of conveyances from all of stockholders of former corporation.