LIABILITY OF A CORPORATION ON A LEASE AFTER THE TERMINATION OF THE CORPORATE LIFE

Under present economic conditions there is an increasing tendency to attempt to reduce the burden of all fixed charges. These expenses may be in the form of interest on debts or they may be rentals due on leased property. Naturally the persons to whom these sums are due are strongly opposed to any such reduction. During the boom period culminating in 1929, many corporations took long term leases on real estate at fixed, or periodically increasing, rentals. The stipulated rent now appears almost fantastic considering the present market value of similar property. Many of these corporations are now being forced into receivership or bankruptcy. In many cases the corporation is being dissolved, either voluntarily in an effort to salvage something out of the wreck, or involuntarily for failure to pay franchise taxes or other sums due the state. Similarly, some corporations whose corporate existence was limited by its charter to a definite span of years had made leases which extended for a period beyond the authorized period of corporate life. The expiration of the charter is now at hand, but it is obviously undesirable that the successor corporation be burdened with such high fixed charges, where similar quarters can now be obtained for a lesser sum. Under such conditions it becomes vital to know exactly what are the rights of the lessor and lessee. Unfortunately, the manuals of corporation law do not give a clear and satisfactory answer.[1] An attempt will be made in the following pages to analyse critically the various cases which have passed on this problem.

The simplest situation is where the lease was originally for a period less than the stated corporate existence of the lessee corporation. If the lessee corporation had continued in existence, no difficulty would have arisen. The landlord could simply have collected the rent as it fell due; or, if it were not paid, the usual rules of landlord and tenant would apply. But the lessee corporation has been dissolved before the expiration of its allotted life span.

If the trustees of the dissolved corporation so desire, they may retain the leasehold estate by continuing to pay the rent.[2] Their

[1] 8 Thompson on Corporations (3rd ed.) 702; 7 Fletcher, Cyclopedia of the Law of Corporations (per. ed.) 40-41; 3 Cook on Corporations (8th ed.) sec. 642.

[2] Capital Garage Co. v. Powell (1922) 96 Vt. 145, 118 Atl. 883; Cf. Brown v. Schleier (C. C. A. 8, 1902) 118 F. 981; Weeks v. International Trust Co. (C. C. A. 1, 1903) 125 F. 370; Lancaster County v. Lincoln Auditorium Ass'n (1910) 87 Neb. 87, 127 N. W. 226.

purpose in doing this would obviously be to put themselves in a position where they may assign the lease either to the successor corporation or to some other party. Such a course would be advantageous in cases in which it was planned to organize a successor corporation and the attempt was to retain the good-will of the former corporation. If the business was continued in the same location the customers would probably never realize that there had been any change in the corporation with which they were dealing. It would also be wise to exercise this privilege in cases where the rental was less than the prevailing rental price of similar accommodations. The courts seem to consider this as an instance of an ordinary assignment, but realistically it is far different. In the ordinary case of the assignment of a lease, the original lessee is still liable for the rent, while in the present situation the original lessee's assets will have been distributed and there will be no effective means of imposing any such liability in case the assignee does not pay the stipulated rent. To guard against such contingencies, some leases are drawn so that they automatically terminate on the dissolution of the corporate lessee.[3]

Where the trustees of the dissolved corporation do not desire to continue to pay the rent, they can vacate the premises and refuse to pay further rent. Obviously, the landlord has an enforcible claim for rent which has accrued up to that time.[4] The great weight of authority gives him a similar claim for damages for breach of the lessee.[5] Under such a view it is his duty to enter the premises and either re-rent them or use them himself in an effort to minimize the damages. Whether he has made a reasonable effort to do so is a jury question.[6] There are a few cases which refuse to allow any recovery for rent accruing after the dissolution of the corporation.[7] The reasoning of these latter deci-

[3] Clifford v. Androscoggin Railroad Co. (Me. 1921) 115 Atl. 511.

[4] Brown v. Schleier (1904) 194 U. S. 18. It obviously occupies the same status as any other claim for liquidated damages.

[5] Weeks v. International Trust Co. (1906) 203 U. S. 364; Chemical National Bank v. Hartford Deposit Co. (1895) 161 U. S. 1; In re Mullins Clothing Co. (C. C. A. 2, 1916) 238 F. 58; Kalkhoff v. Nelson (1895) 60 Minn. 285, 62 N. W. 284; Boston Box Co. v. Rosen (1926) 254 Mass. 331, 150 N. E. 177; People v. St. Nicholas Bank (1897) 151 N. Y. 592, 45 N. E. 1129.

[6] Weeks v. International Trust Co. (1906) 203 U. S. 364.

[7] Stockton v. Mechanics Bank (1880) 32 N. J. Eq. 163; Cf. Brown v. Schleier (C. C. A. 8, 1902) 118 F. 981; Lorillard v. Clyde (1894) 142 N. Y. 456, 37 N. E. 489 (neither of which are entitled to much weight since there are later United States and New York decisions contrary to the position taken by them in dicta). Cook announces that Massachusetts follows a similar rule. 3 Cook on Corporations (8th ed.) 2393. This is no longer true. Boston Box Co. v. Rosen, supra.

sions is not at all satisfactory. In substance they merely announce that it is a rule of law, but the authorities cited for this alleged rule do not support the point for which they are cited.

Where the lease originally was made for a period extending beyond the corporate life of the lessee corporation, the whole problem is complicated by the necessity of deciding the issue of whether or not the corporation might make such a contract. No case can be found which has upheld such a lease when an attempt was made under it to recover rent for a period after the expiration of the charter of the corporation. There are, however, dicta in certain cases upholding in general terms the contract when the suit was brought within the stated life of the corporation. The basic reasoning of this class of cases is well shown by the opinion of the Circuit Court of Appeals for the Eighth Circuit in *Brown v. Schleier.*[8]

> If the corporation is empowered to acquire real estate by purchase or lease for the transaction of its business, it matters not that it acquires an estate or interest which will not expire until after the death of the corporation, provided the estate or interest so acquired is vendible. . . If the rule were otherwise, no corporation, unless it had a perpetual existence, could acquire land in fee, and in that event the objection made to the lease, based on the length of the term thereby created, would apply equally well if the grant had been in fee. . . A corporation like a natural person should be allowed to hold and enjoy a leasehold estate that will outlast its own existence, provided it can be alienated at or prior to its dissolution.

However, the force of this language is much weakened by two circumstances. Other statements in the opinion show that the learned judge was under the impression that the corporation was not subject to any liability for rent or damages after its dissolution, which we have seen is not true. Furthermore, the case was carried on appeal to the Supreme Court of the United States which upheld the judgment on the ground that with respect to the rent accruing before dissolution it was unnecessary to decide whether or not the lease was ultra vires.[9] Two other cases have upheld the general validity of such leases upon substantially similar grounds.[10] The assumption of all these opinions that

[8] (C. C. A. 8, 1902) 118 F. 981.

[9] Brown v. Schleier (1904) 194 U. S. 18.

[10] Weeks v. International Trust Co. (C. C. A. 1, 1903); aff'd (1906) 203 U. S. 264 (but opinion while affirming the result on another point refused to pass on the validity of such leases); Lancaster County v. Lincoln Auditorium Ass'n (1910) 87 Neb. 87, 127 N. W. 226 (in this case the possibility of extend-

such a leasehold interest is vendible in a manner similar to the sale of a fee simple appears to be without sufficient foundation. The leasehold can only be sold if the rent to be paid annually is less than the current rental value of similar property. This may be true if real estate values have increased since the lease was made; but it will not be true if there has been a sharp decline, such as there has been since 1929.

Other cases refuse to decide the issue of the general validity of such leases but content themselves with determining the points at issue by upholding the leases during the corporate existence of the lessee and for the term, if any, for which this corporate existence may be extended.[11]

However, helpful analogies may be drawn from the treatment which the courts have accorded to other contracts which extended beyond the period of the corporate existence. The most common instance in which it has been essential to consider the validity of such contracts has arisen in connection with franchises granted to public utilities permitting them to occupy the streets and allowing them to charge certain stipulated fares or rates. Later an assault is made on the franchise in the hopes of securing lower rates on the ground that since the franchise obligations extended beyond the corporate life of the public utility corporation, it had no authority to make such a contract and hence the contract was not binding on the city for want of consideration because of the invalidity of the return promise of the company. In such franchise contracts the consideration agreed to be paid by the company is dual in its nature. The company agrees to pay an annual sum (in the nature of rent), but it usually also agrees to do certain specified things at once or within a fixed time. Thus, the contract is not severable, as would be true of a lease where each year's rent is considered as compensation for that year's occupancy. Nevertheless in upholding such franchise contracts the courts have considered them analogous to leasehold contracts. Thus, the Missouri Supreme Court upheld the Laclede Gaslight Company's franchise on the dual grounds that a corporation like an individual can acquire a leasehold interest extending beyond

---

ing the corporate existence, made a semi-automatic process by Nebraska statutes, was also considered). Adelman v. Carson, Pirie Scott & Co. (1928) 247 Ill. App. 575 merely announces that the decisions are contrary to the claim that such contracts are ultra vires. It cites no authority for this statement.

[11] Hill v. Railroad (1906) 143 N. C. 539, 55 S. E. 854 (here the lease was beyond the corporate life of the lessor corporation, but the discussion is on the basis that this is to be decided as though it were beyond the corporate life of the lessee); Woodward v. Fox West Coast Theaters Co. (1930) 36 Ariz. 251, 284 P. 350 (decided by a mere quotation from Hill v. Railroad).

its own life and that the franchise in question expressly referred to "successors and assigns".[12] The Supreme Court of the United States upheld a similar franchise in the case of *Detroit v. Detroit Citizens' Street Railway Co.*[13] This decision was placed upon the sole ground that the corporation could acquire such an "interest" (apparently in the nature of an easement to use the city streets) for a term extending beyond its corporate existence provided the interest was of such a nature that it could be sold along with the other assets of the company when the company was wound up.

There are a group of cases in which a corporation has been held to have power to contract debts which were not payable until after the termination of the corporate existence of the debtor corporation.[14] These cases have little persuasive force in determining how the problem of the corporate lease should be handled for in all of them the corporation had already received the money and the clearest principles of justice, if not those of technical estoppel, required the corporation to repay the sums loaned to it.

It would seem that the courts are fairly well committed by dicta and analogy to the view that a corporation may become the lessee of land for a period extending beyond its corporate life. If this be so, it would seem that the same rules apply to determining liability under such a lease as those which apply when the corporation is dissolved within the period of a lease which was originally for a period less than the stated existence of a corporation.

---

[12] State ex rel. City of St. Louis v. Laclede Gaslight Co. (1890) 102 Mo. 472, 14 S. W. 974.

[13] (1902) 184 U. S. 368. The same result, based on the same reasoning, had been reached in an earlier case before the Circuit Court of Appeals, from which no appeal was taken, but which was not plead so as to be available as res adjudicata in the present suit. Detroit Citizens' Street Railway Co. v. Detroit (C. C. A. 6, 1894) 64 F. 628. In Owensboro v. Cumberland Telephone and Telegraph Co. (1913) 230 U. S. 56 the Supreme Court disposed of the case by merely quoting and following its previous decision in the Detroit case. Somewhat analogous to these cases, although private corporations are involved are the cases where two railroad corporations make arrangements for reciprocal use of each other's tracks. Such a contract was upheld even though it lasted beyond the corporate life of one of the parties. Union Pacific Railway Co. v. Chicago, Rock Island & Pacific Railway Co. (1896) 163 U. S. 564 (the decision relies heavily on the fact that the contract bound the parties and their successors and bound them to arrange for successors; also the court considered it as inconceivable that a major railroad corporation would go out of existence without a successor of some kind).

[14] Burnes v. Burnes (C. C. W. D. Mo. 1904) 132 F. 485; Citrus Growers' Development Ass'n Inc. v. Water Users' Ass'n (1928) 34 Ariz. 105, 268 Pac. 773; Gere v. New York Central Railroad Co. (N. Y. 1885) 19 Abb. N. C. 193.

The rules of liability in cases where the corporation is dissolved before the expiration of its stated chartered existence seem fair and logical. However, there seems no real reason for allowing a corporation to make a lease which must extend beyond the period of its corporate existence. Such a lease is sure to cause complications when the charter expires. If it is not assigned to a successor corporation, there will surely be a dispute over the correct determination of the amount of the damages, since this involves the prior determination of the highly speculative problem of the amount for which the premises can be rented to some other tenant for the balance of the term. If the leasehold interest is assigned, the landlord may find that he now has an irresponsible tenant in place of the thoroughly solvent corporation with which he originally contracted. Moreover, it would seem that such leases are contrary to the fundamental public policy expressed in the requirement that the corporation have a definitely limited life span.

GEORGE W. SIMPKINS, '33.

AIRPLANES AS COMMON CARRIERS

The mechanics of air carriage are of very recent origin. Its present efficiency, more quickly developed than that of other carriers, has been greatly aided by the modern tendency towards encouragement of new inventions and industries. In the ordinary development of new instruments of general public usage, the creation of new mechanical problems usually results in new legal thought. In connection with carriage by air, new legal thought has scarcely begun to develop. The advent of the airplane as a mode of conveyance has not caused a departure or modification of the principles of the law of carriers as heretofore established and applied by the courts. The airplane is regarded as merely a modern method of transportation to which the settled rules can extend.[1] These rules have classified carriers into two types: the private or ordinary carrier; and the public or common carrier. They have their origin in an early period of English history when conditions of traveling were undeveloped and when public need

[1] In Law v. Transcontinental Air Transport, Inc. (D. C. Pa. 1931) 1931 U. S. Av. Rep. 205, the trial judge said "These rules were laid down before airplanes were known, and were intended originally to apply to railroad transportation and transportation even earlier than that by stage coach, so when you come to determine what is the highest degree of practicable care and diligence you will have to remember that in dealing with travel by airplane you are dealing with a new kind of transportation which is now navigating a new element. There are many more factors which are unknown, unforeseeable, and not preventable arising in connection with an airplane journey than with a railroad journey."