Thomas Vs. Matthiessen

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Court : US Supreme Court

Decided On : Feb-02-1914

Appeal No. : 232 U.S. 221

Appellant : Thomas

Respondent : Matthiessen

Judgement :

Thomas v. Matthiessen - 232 U.S. 221 (1914)
U.S. Supreme Court Thomas v. Matthiessen, 232 U.S. 221 (1914)

Thomas v. Matthiessen

No. 171

Argued January 19, 1914

Decided February 2, 1914

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CERTIORARI TO THE CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT

SYLLABUS

While a corporation cannot, without authority from the stockholders, make them answerable in a way not contemplated by the charter, a provision in the charter of a corporation organized in one state authorizing it to do business in another state may subject the stockholders

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to the liability imposed in the latter state, notwithstanding there are other provisions in the charter exempting stockholders from liability for debts of the corporation.

Stockholders of a corporation organized in one state under a charter expressly authorizing it to do business in another state create the corporation their agent for the making of contracts within the latter state in accordance with its laws.

Stockholders of a corporation organized in Arizona under a charter which expressly authorized the corporation to do business in California *held,* in this case, subject to the liability imposed by 322, Civil Code of the latter state.

Under the laws of California, a stockholder is liable for his proportion of the debts of the corporation as a principal, and not as a surety; nor in this case was he relieved of liability on notes held by a bank which had deposits to the credit of the corporation and did not apply the same to payment of the notes.

192 F. 495 reversed.

The facts, which involve the liability under the laws of California of a stockholder of a corporation organized in Arizona for the purpose of carrying on business in California, are stated in the opinion.

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MR. JUSTICE HOLMES delivered the opinion of the Court.

This is a suit by a citizen of California, the holder of two notes made in California by the Wentworth Hotel Company, to recover from a stockholder in that corporation, a citizen of New York, a proportionate share of the sums due upon the same. The facts, as agreed and found, are as follows: the corporation was formed under the laws of the Territory of Arizona, among many other things, to buy and sell real estate, "to build, maintain, operate, and carry on, in all its branches, the business of hotel keeping," and to build or purchase gas or electric works in Arizona or California, "both for its use in the hotel business and for the purpose of selling and disposing of the same." The principal place of business in Arizona was Tucson, and that outside of it was Los Angeles, California, with power to change to Pasadena, in that state. Before the incorporation, the defendant, residing

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in New York, signed a writing reciting the intent of the subscribers to form a corporation in Arizona for the purpose of acquiring a portion of the Oak Knoll, and building a first-class hotel thereon, and he thereby subscribed for a certain number of shares. Later he took and paid for one thousand shares. The Oak Knoll is near Pasadena, in California, and the defendant and his associates intended the corporation to have the power to build and manage a hotel in that neighborhood, and expected that it would do so, but intended their liability to be controlled by the laws of Arizona.

The corporation complied with the laws of California, bought the land, built the hotel, went into business, and finally was adjudged insolvent. The notes in question were given for loans to the company. At the time of subscribing, the defendant agreed with the company that he should be exempt from personal liability, and that neither the corporation nor its officers should have power to subject him or the other stockholders to it. Such exemption was expressed also in the certificate of incorporation. But, by the statutes of California, each stockholder of a corporation is personally liable for such proportion of the debts contracted while he is such as the amount of his stock bears to the whole subscribed, and the liability of each stockholder of a corporation formed under the laws of any other state or territory of the United States, but doing business in California, is the same.

Civil Code, 322. The courts below ruled that the defendant could not be held, the circuit court of appeals citing *Risdon Iron & Locomotive Works v. Furness* (1906), 1 K.B. 49, in which it was held that the law of California could not impose liability upon an English shareholder in an English corporation without his assent. 192 F. 495.

We agree that, without authority from the stockholder, a corporation cannot make him answerable in a way not

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contemplated by the charter. We will assume for purposes of decision, although we express no opinion upon the point, that a provision for doing business in other states without any express reference to the possible difference in their laws would not be enough to change the rule. But a provision exempting the stockholder alongside of one authorizing the doing of business elsewhere cannot be taken to limit the latter authority to those states that grant a like exemption, or be deemed an attempt to override the law of the place where the business is to be done. That law may fail to operate for want of power over the person sought to be affected; but the charter leaves it open to that person to come in under it by assent. If the law of California forbade a foreign corporation to do business there unless all the stockholders filed a written assent to its conditions, the Arizona charter would not make such an agreement void. If this be true, then a particular stockholder may give such assent outside of the instrument of incorporation, and be bound by it.

In this case, the defendant expressed in writing his wish the corporation should set up a hotel in California. It is true that he also desired and stipulated that he should be free from personal charge. But that is merely the not infrequent occurrence of a party bringing about the facts and attempting to prohibit their legal consequence to which we lately had occasion to advert in *National City Bank v. Hotchkiss,* 231 U. S. 50 , 231 U. S. 56 . *See also Butler v. Farnsworth,* 4 Wash C.C. 101, 103, 104. This, of course, he cannot do. In such cases, the only question is which of two inconsistent orders is the dominant command. Here, the usual prevalence of the specific over the general is fortified by the consideration that the building and

carrying on of the California hotel was the main object for which the parties came together. When the defendant authorized that, he could not avoid the consequences by saying that he did not foresee or intend, or that he forbade

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them. He knew that California had laws, and he took his risk of what they might be, when, as we must hold, he gave his assent to doing business there. We cannot interpret his words as giving merely a conditional assent. We follow the language of *Pinney v. Nelson,* 183 U. S. 144 , so far as it sanctions the views that we have expressed. *See also Thomas v. Wentworth Hotel Co.,* 158 Cal. 275, 280.

There remains only the question whether the liability is of a kind that will be enforced outside of the California courts. Analysis on this point often is blurred by the vague statement that the liability is "contractual." An obligation to pay money generally is enforced by an action of assumpsit, and to that extent is referred to a contract, even though it be one existing only by fiction of law. But such obligations, when imposed upon the members of a corporation, may very very largely. The incorporation may create a chartered partnership the members of which are primary contractors, or it may go no farther than to impose a penalty; or again it may create a secondary remedy for a debt treated as that of the corporation alone, like the right to attach the corporation's real estate; or the liability may be inseparable from the local procedure; or the law may be so ambiguous as to leave it doubtful whether the liability is matter of remedy, and local, or creates a contract on the part of the members that will go with them wherever they are found. *McClaine v. Rankin,* 197 U. S. 154 , 197 U. S. 161 . *Christopher v. Norvell,* 201 U. S. 216 , 201 U. S. 225 -226. In the present case, we think that there can be no doubt of the meaning of the California statute. It reads: "Each stockholder of a corporation is individually and personally liable for such proportion of its debts and liabilities," etc., as we have stated, and supposes the action against him to be brought "upon such debt." Civil Code, 322. This means that, by force of the statute, if the corporation incurs a debt within the jurisdiction,

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the stockholder is a party to it, and joins in the contract in the proportion of his shares. And while the statutes of California cannot force an agent upon a foreign principal, still, if he has created such an agency in advance, he has come within the jurisdiction by his agent, as in other cases of contract made within a state from outside, and will be bound. *Flash v. Conn,* 109 U. S. 371 ; *Whitman v. Oxford National Bank,* 176 U. S. 559 .

The defendant was a principal debtor. *Hyman v. Coleman,* 82 Cal. 650. The fact that the corporation had deposits in the banks that held the notes did not discharge the notes *pro tanto. Strong v. Foster,* 17 C. B. 201; *National Mahaiwe Bank v. Peck,* 127 Mass. 298. The judgment must be reversed, and judgment entered for the plaintiff on the agreed facts.

Judgment reversed

THE CHIEF JUSTICE dissents.

MR. JUSTICE HUGHES took no part in the decision.