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Recent Decisions

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CORPORATIONS—CRIMINAL RESPONSIBILITY. Defendant corporation, indicted for the crime of conspiracy, demurred upon the ground that it was incapable of the specific intent necessary for that crime. HELD, that the demurrer should be overruled. (*People v. Dunbar Contracting Co.*, 151 N. Y. Supp., 164.)

By the earlier common law, it was generally held that a corporation was incapable of committing a crime. (Anonymous, 12 Modern 559; Blackstone's Commentaries, Chap. 12, Sec. 18.) But by a sound process of reasoning, supported by grounds of public policy, this doctrine has been overthrown and it is now the well settled law that a corporation as such may be held criminally liable and subjected to punishment. (*New York Central and Hudson River R. R. v. United States*, 212 U. S., 481, and cases collected, Canfield and Wormser's cases on corporations, p. 22, n 7.)

Both courts and text writers are agreed that a corporation may commit a crime, liability for which depends upon the mere commission or omission of a particular act, involving no element of intent as a necessary factor. (*People v. Woodbury Dermatological Institute*, 192 N. Y., 454; *People v. Rochester R. R.*, 195 N. Y., 102; Morawetz, Sec. 733.) Exception to the rule has been made in offenses against the person (*People v. Illinois Central R. R.*, 153 S. W., 459.) Yet such distinction seems unsound. A corporation is not criminally liable in New York for manslaughter, because the

statute defines homicide as "the killing of one human being by another," and a corporation, though a legal person, is not a human being. (*People v. Rochester R. R.*, supra.) But the court recognized that a corporation could commit an offense against the person and held in what is submitted to be a sound dictum, that under a differently worded statute, the corporation might be held criminally liable. And if a corporation is responsible in a civil action for assault and battery, it requires no difficult process of reasoning to hold it liable in a criminal action as well.

It has been suggested that there are many crimes so personal and so clearly *ultra vires* as to be clearly incapable of commission by a corporation. (*People v. Rochester R. R.*, supra; *N. Y. and H. R. R. R. v. U. S.*, supra.) Yet in view of the part taken by corporations in current affairs of to-day, it requires no over-fanciful mind, no too great stretch of the imagination to set up circumstances under which a corporation could commit practically every crime.

When, as in the principal case, intent becomes a necessary element, a new and different question presents itself, upon which authorities split. The minority take the position that a corporation is incapable of committing a crime, involving malice or the intention of the offender. (Morawetz, Sec. 732; 10 Cyc. 1231; Prof. Canfield, 14; Columbia Law Review, 469.)

Yet it is submitted that such position is unsound. The weight of authority is clearly to the contrary. In civil actions involving malice, it is everywhere held that a corporation can be held liable. So, also, a corporation is liable for criminal libel (*People v. Star Co.*, 135 A. D., 517) or for criminal contempt of court (*Telegram Newspaper Co. v. Commonwealth*, 172 Mass., 294) or for knowingly or fraudulently concealing assets in bankruptcy (*Cohen v. United States*, 157 Fed. 651) or for conspiracy, both criminal (*U. S. v. McAndrew-Forbes Co.*, 149 Fed., 823; *State v. Eastern Coal Co.*, 29 R. I., 254) and civil (*Buffalo Oil Co. v. Standard Oil Co.*, 106 N. Y., 669), or for knowingly depositing in the mail unmailable matter (*U. S. v. N. Y. Herald Co.*, 159 Fed,, 296).

On principle also, a corporation should be held criminally liable, though specific intent be a necessary element to the crime. A corporation acts through its agents and through them alone. Acting within the scope of their authority, such agents bind the corporation and their acts, their motives are imputed to the corporation. If a corporation reaps the profits of an agent's lawful acts, why should

it not pay the penalty of unlawful acts. There is no greater difficulty in imputing to a corporation a specific intent in a criminal than in a civil proceeding. (*Telegram Co. v. Commonwealth,* supra.) And there is no greater difficulty in imputing an evil intent than a virtuous one. Hence, it is submitted that the decision is sound.

CRIME—MURDER IN FIRST DEGREE—FELONIOUS ASSAULT OPERATIVE AS CAUSE OF DEATH—CASUAL CO-OPERATION OF ERRONEOUS MEDICAL TREATMENT. Defendant shot a pregnant woman, causing a miscarriage, which, accompanied by blood poisoning, resulted in her death. HELD: Judgment of conviction of murder in first degree affirmed. Liability for homicide does not depend upon death being the immediate consequence of the injury. (*People v. Kane,* Court of Appeals, January 5, 1915.)

Th decision is in full accord with the New York rule, in *Cox v. People,* 80 N. Y., 500, that liability for homicide does not depend upon death being the immediate result of the injury. Such, too, was the old English rule (*Rew's case,* Kelyng's Reports, 26) and we find it in Hawkin's Pleas of the Crown, Bk. 1, ch. 31, § 10. It is still followed to-day (9 *Halsbury's Law of England,* 572; *Reg. v. Holland,* 2 Moody & R., 351). It is submitted that good reasoning and sound public policy support this view. It should make no difference whether the wound was in its nature instantly mortal or whether it became the cause of death by reason of neglect or improper treatment: the real question is, in all these cases, whether or not, in the end, the wound was the cause of the death. The textbook writers are in accord (2 *Bishop on Criminal Law,* § 637 et seq.; *Wharton on Homicide,* 3rd Ed., p. 41.) The American jurisdictions are in general accord (*Com. v. Hackett,* 2 Allen 136; *State v. Bantley,* 44 Conn., 537; *Com. v. Eisenhower,* 181 Pa. St., 470; *State v. Wood,* 112 Iowa, 411; *State v. Strong,* 153 Mo., 548; *People v. Cook,* 39 Mich., 236; *Kelley v. State,* 53 Ind., 311; *Downing v. State,* 114 Ga., 39; *Daughdrill v. State,* 113 Ala., 7, 34; *State v. Foote,* 58 S. C., 218; *Clark v. Com.,* 90 Va., 360; and *Coffman v. Com.,* 10 Bush, Ky., 495.) So inthe principal case, where the felonious assault was operative as a cause of death, the defendant is properly not relieved from responsibility because of the casual co-

operation of erroneous medical or sugical treatment. Its intervention is only a defense where the death is *solely* attributable to the secondary agency and not at all induced by the primary one, according to not only the overwhelming weight of authority, but also the dictates of precise legal reasoning and the demands of good public policy.

NEGLIGENCE — COMMON CARRIER — LIABILITY FOR DEATH OF PASSENGER. The defendant operates an underground railroad in the City of New York. The plaintiff's intestate entered the easterly and uptown station of defendant's railway at Twenty-third Street. There was a block on the road and no uptown train had passed for half an hour. The passengers walked to and fro on the platform and occasionally looked down the track in the direction from which a northbound train would come. Among the passengers who looked down the track was the deceased; and while looking downtown, a train coming from the north running at a fast rate, without giving warning of any kind of its approach, struck the deceased and killed her. It was HELD that it was error for the trial judge to dismiss the complaint, which presented the foregoing facts, on the ground that deceased was guilty of negligence as matter of law. (*D'Arcy v. Interborough Rapid Transit Co.*, N. Y. Law Journal, January 28, 1915.)

It would seem that under these rather unique circumstances the question was one for the jury. It is common knowledge that it is a natural habit for passengers waiting for a delayed train to peer along the track in the direction from which the train is expected to come. There seems to have been no reason for deceased to have anticipated and guarded against the unusual circumstance of a fast moving train, coming from the reverse direction without warning. (*Greany v. L. I. R. R. Co.*, 101 N. Y., 419.) A greater degree of care would have been required of the deceased in the case of a street railroad, where cars approach from both directions. (*Knapp v. Metropolitan Street R. C.*, 103 A. D., 252.) A pedestrian at a railroad crossing would be obliged to look both ways; and if a clear unobstructed vision of the tracks was presented in both directions, and moving trains in such positions that they must be seen, an attempt to cross ahead of them, would be deemed negligence as mat-

ter of law. (*Paige v. New York Central & H. R. R. R. Co.*, 111 A. D., 128; *Woodard v. N. Y., L. E. & W. R. R. Co.*, 106 N. Y., 369.) But in the principal case there was no reason to believe that cars would come from any direction but the south. If in leaning over the edge of the platform the deceased had been struck by a northbound car a different case might be presented.

RECEIVER—DOMESTIC CORPORATION—SUPPLEMENTARY PROCEEDINGS. A. was appointed the receiver of a domestic corporation in supplementary proceedings. Thereafter, he made an application to have his accounts, as receiver, approved by the court. Motion denied, it being HELD, that there is no authority for the appointment of a receiver in supplementary proceedings of a domestic corporation. *In re City of N. Y. v. 694 B'way Co.*, Sup. Ct., Sp. T., Pt. I, New York Law Journal, January 8, 1915 (per Davis, J.)

The jurisdiction of equity to appoint a receiver of the property of a judgment debtor, where the remedy at law of the judgment creditor to procure the satisfaction of his judgment has proved inadequate, is of ancient origin (*Alderson on Receivers*, 506). But in New York, a judgment creditor may obtain the appointment of a receiver by a summary application therefor in supplementary proceedings (see *Code Civ. Proc.* § 2464). A receiver in supplementary proceedings is vested with the title to the debtor's realty, only from the time that the order of his appointment, or a certified copy thereof, is filed with the clerk of the county wherein such realty is situated (*Id.*, §2468, subd. 1.) Such a receiver succeeds to the title of such personalty as the debtor owned, at the time of the receiver's appointment (*Gilroy v. Everson Co.*, 118 App. Div., 733, 103 N. Y. Supp., 620; and see, also, *Code Civ. Proc.*, § 2469, as to how the receiver's title to personal property extends back by relation), except that "when the judgment debtor, at the time when the order is filed, resides in another county of the State, this personal property is vested in the receiver, only from the time when a copy of the order, certified by the clerk in whose office it is received, is filed with the clerk of the county where he resides" (*Code Civ. Proc.*, § 2468, subd. 2).

While the object of the appointment of a receiver in supple-

mentary proceedings is to compel the application of the property of the judgment debtor to the payment of his debts, which have been reduced to judgment (*Hunter v. Hunter,* 67 App. Div., 470, 73 N. Y. Supp., 886), it is not incumbent upon the judgment creditor, in order to secure the appointment of the receiver, to establish that the judgment debtor owns, or is entitled to, any property, which can be devoted to the discharge of the judgment (*Ryan v. Wagner,* 143 App. Div., 176).

Under the old Code, a receiver could not be appointed of a corporation in supplementary proceedings, because natural persons only could then be examined in supplementary proceedings (*Sherwood v. Buffalo, etc., Co.,* 12 How., 136). Under the present Code, "the only limitation upon the right to take proceedings supplementary to execution against any class of debtors is contained in section 2463" (*Logan v. McCall Publish. Co.,* 140 N. Y., 447). Prior to 1908, domestic corporations, as well as certain foreign corporations (see *Code Civ. Proc.,* § 1812), were exempt from examination in supplementary proceedings by any litigant, except the State (*Code Civ. Proc.,* § 2463). This limitation was repealed in 1908 (L. 1908, c. 278). There is, therefore, no reason why any corporation may not now be made a party to supplementary proceedings (*Raabe v. Astor Trust Co.,* 61 Misc., 650, 114 N. Y. Supp., 131). Nor is there under such circumstances any valid obligation to extending the provisions of *Code Civ. Proc.,* § 2464 to all persons, whether natural or juristic (*Raabe v. Astor Trust Co.,* supra). It is, therefore, submitted that the principal case, wherein a different result was reached, is unsound on principle.