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Recent Decisions

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RECENT DECISIONS.

CONSTITUTIONAL LAW—THE NEW YORK SALES IN BULK ACT. —Section 44 of the P. P. L., as amended by Chapter 507, Laws 1914, provides that, in case of a sale, transfer or assignment in bulk of part or all of one's merchandise other than in the ordinary course of business, an inventory be taken, that the cost of the goods to the Seller be listed and that notice to every creditor of the Seller be given by the Purchaser at least five days prior to the sale. Unless these conditions are complied with, the transfer is void with respect to creditors, and the Purchaser is accountable to them.

In *Klein* vs. *Maravelas,* 219 N. Y. 383, this statute was declared constitutional. The importance of this decision becomes manifest when we consider the uncertainty caused by the passage of a law similar to one which had been declared unconstitutional but a few years before (*Wright* vs. *Hart,* 182 N. Y. 330).

This case overrules *Wright* vs. *Hart* which *held* that the Sales in Bulk Act violated the Federal Constitution in that it discrimin-

ated against Merchants and that it was repugnant to the State and Federal Constitutions in imposing arbitrary restrictions on the liberty of contracts.

In a strong dissenting opinion, Vann J. maintained that a "statute which is uniform in its effect upon all persons to whom it applies is not invalid because it applies to a limited number." (*Barbier* vs. *Connolly,* 113 U. S. 27; *Missouri* vs. *Lewis,* 101 U. S. 22.) While classifications of persons and businesses for purposes of regulation is not prohibited by the requirement of equal protection of the law (14th Amendment to Federal Constitution) these classifications must in every case be reasonable ones. (*Gulf R'y Co.* vs. *Ellis,* 165 U. S. 150.) A reasonable regulation to prevent fraud is a valid exercise of police power. "A reasonable regulation to protect the rights of all does not deprive one of his property simply because it interferes with the use thereof to the extent necessary to protect the public from fraudulent practise" (*dictum*) *People* vs. *Luhr,* 195 N. Y. 377.

Since *Wright* vs. *Hart* the validity of like statutes in Connecticut and Michigan has been upheld in *Lemieux* vs. *Yound,* 211 U. S. 489, and in *Kidd, Dater & Price Co.* vs. *Musselman Grocery Co.,* 217 U. S. 461. The Michigan law is similar in every respect to that of New York. It is to be noted that in every State in the Union, with the exception of Utah, Sales in Bulk Acts have been passed upon favorably by the Courts.

CRIMINAL LAW—INDICTMENT—MURDER, FIRST DEGREE.—Death resulting in commission of Felony:

Defendant while operating an automobile, ran down and killed a man. He was chauffeur to the owner of the automobile and was using it without permission, despite previous instructions to the contrary. He was indicted for Murder in the First Degree for the killing of a human being while in the commission of a felony. The case proceeded to trial, when defendant pleaded guilty to the Crime of Manslaughter in the Second Degree.

Penal Law, Sec. 1044, subd. 2, 2nd clause: "The killing of a human being is murder in the first degree when committed 'without a design to affect death by a person engaged in the commission of or in an attempt to commit a felony either upon or affecting the person killed, or otherwise.'"

The felony in this case was the larceny of the car under Penal Law § 1293-a: "Any chauffeur or other person who without the

consent of the owner shall take, use or operate * * * an automobile or motor vehicle, and operate or drive or cause the same to be operated or driven for his own profit, use or purpose, steals the same and is guilty of larceny and shall be punished accordingly."

In order to indict for first degree murder under the section first quoted it is necessary that the homicide take place while the felony is being actually attempted or committed. (*People* v. *Lingley,* 207 N. Y. 396; *Peo.* v. *Schermerhorn,* 203 N. Y. 57; *Peo.* v. *Patini,* 208 N. Y. 176; *Peo.* v. *Johnson,* 110 N. Y. 134.)

"The elements constituting the felony must be distinct from the homicide and not be an ingredient of the homicide and indictable therewith and convictable thereunder." (*People* v. *Jacob Huter,* 184 N. Y. 237.)

The above section on larceny is a radical departure from the common law theory, and makes the larceny of the car under these conditions a continuing crime. Under the common law theory the larceny was complete after there was a complete asportation. "If thief has absolute control of thing for an instant larceny is complete". Bishop's New Crim. Law, Vol. II, § 795, subd. 1; "Lifting bag from its place on coach box and endeavoring to pull it out, but being prevented by guard". *Held* larceny. (Walsh's Case, Moody's Crown Cases, 14.) "Ear-ring torn from woman's ear and later found caught in the hair". *Held* larceny. Lapier's Case, 1 Leach Crown Cases, 320.) "Lifting pocketbook from coat pocket about three inches". *Held* sufficient asportavit. (*Harrison* v. *Peo.,* 40 N. Y. 518.) "Lifting pocketbook from pocket is a taking and carrying away". (*State* v. *Chambers,* 22 W. Va. 779.)

It would seem under above the sections that a homicide committed by a thief operating the car at any time after the theft of the car is sufficient to increase the gravamen of the offense from manslaughter to murder.

GUARANTY—CONSTRUCTION—INTENTION OF PARTIES.—The defendants' intestate procured from the plaintiff a loan to a corporation in which he was a stockholder, upon its promissory note, and also a loan to an individual on his promissory note. In order to secure the repayment of the loans the defendants' intestate executed his certain contract wherein among other things he agreed to guarantee "the full, prompt and ultimate payment of the said notes". Subsequently defendants' intestate died and the notes after

several renewals finally became due and were unpaid. This action was then brought against the defendants as executrix and executor to recover upon the guaranty, which was in the following form:

> "Now, therefore, I hereby covenant and agree with said bank to guarantee, and I do hereby guarantee the full, prompt, and ultimate payment of all of said notes, aggregating twenty thousand dollars ($20,000) and of any and all renewals thereof or of either of them when the same shall become due and payable, until all of the said loans and notes and any and all renewals thereof are fully paid and discharged."

Held, that upon examination of the agreement the word "ultimate" was used to cover notes ultimately given in whole or in part in renewal of the notes given at the time of the guaranty and thus to clearly continue the obligation of guaranty, so long as the loans were extended. It further appears from the contract that the parties intended an unconditional guaranty and this intention must control. (*First National Bank of Litchfield, Conn.* vs. *Jones et al.,* 219 N. Y. 312.)

The agreement is an unconditional guaranty of payment of the notes in question, and as such the plaintiff's right of action was complete when the makers thereof failed to pay. (*Stein* vs. *Whitman,* 209 N. Y. 576.) The meaning of the guaranty depended upon the intention of the parties. (*Hamilton* vs. *Van Rensselaer,* 43 N. Y. 244; *Melick* vs. *Knox,* 44 N. Y. 676; *Catskill National Bank* vs. *Dumary,* 206 N. Y. 550.) On this question the Federal Court in the case of *Glaser, Kohn & Co.* vs. *U. S.,* 224 Fed. 84 said: "A guaranty should receive a liberal, fair and reasonable interpretation and attain the object designed." In the case of *Delaware County National Bank* vs. *King,* 47 Misc. 447, the Court laid particular stress upon the intention of the parties governing in cases of guaranty and there said, "The obligation of guarantor is neither enlarged or diminished by giving to the language a strained meaning, but in each instance the instrument is to be given effect according to the apparent intention and understanding of the parties as obtained from its context."

The intention in the case under discussion was based upon what in point of fact was meant by the words "ultimate" and "full and prompt payment;" the Court finally concluding that they could have no other meaning than that the obligor should continue beyond to the end of all substitutions, renewals and extensions. In *National Exchange Bank* vs. *Gay* (57 Conn. 224, 17 Atl. 555),

which was an action upon a similar contract of guaranty, that Court reached the same conclusion and upon the same reasoning. However, in the case of *Home Savings Bank of Fremont* vs. *Shallenberger* (146 N. W. 993), the Court said that a guaranty of payment of a note is an absolute contract—that the sum expressed in the note should be paid at the maturity thereof at all events.

It is respectfully submitted that in view of the authorities, this case is in accord with the general opinion on the subject of the guaranty of a note and substantiates the doctrine.

CORPORATIONS—PRACTICE OF LAW BY CORPORATION—CERTIORARI—NEW YORK TAX LAW.—In *People ex rel. Floersheimer* v. *Purdy,* 174 App. Div. 694, and *People ex rel. Trojan Realty Corporation* v. *Purdy,* 174 App. Div. 702, substantially the same state of facts were presented. The owner of real property situated in the City of New York, in the first case, an individual; in the second case a corporation, retained an attorney to obtain a reduction of tax assessments. In each case the attorney employed a corporation organized for such purposes to procure the desired reduction. Upon its failure in this respect before the Board of Tax Commissioners the corporation, through the same attorney, instituted certiorari proceedings to review the decision of the Tax Board. In one case the attorney's fee was to be paid out of the contingent fee of the corporation, if successful; in the other case, although in reality the same procedure was to be followed, there was a formal retainer signed by the relator before the beginning of the proceeding, but after the attorney had employed the corporation. *Held*—That this was an illegal practice of law by a corporation and that a corporation was not authorized under Section 37 of the Tax Law to apply for a reduction of taxes.

Under Section 280 of the Penal Law: "It shall be unlawful for any corporation or voluntary association to practice or appear as an attorney at law, for any person other than itself in any court in this State *or before any judicial body,* or to make it a business to practice as an attorney at law, for any person other than itself, in any of said courts or to hold itself out to the public as being entitled to practice law, or render or furnish legal services or advice, *or to furnish attorneys or counsel* or to render legal services of any kind in actions or proceedings." There can be little doubt that the corporation was contravening the above

statute in engaging the attorney to bring certiorari proceedings, even though brought in the name of the relator. (*Matter of Co-operative Law Co.,* 198 N. Y. 479, 483.)

The holding of the Appellate Division that the Tax Commission is a judicial body and therefore the appearance of the corporation before it was an illegal practice of law does not seem to be borne out by the authorities, nor does the majority opinion of the court cite any in support of its position.

The Tax Commission is not a judicial body: (*Matter of Town of Hempstead,* 32 App. Div. 6; *Matter of McMahon* v. *Palmer,* 102 N. Y. 176; *People ex rel. Kendall* v. *Feitner,* 51 App. 201; *Weimer* v. *Bunbury,* 30 Mich. 201); even though the action of the Tax Commission is made by statute (Tax Law, Secs. 37, 290) subject to judicial review.

Although the evident desire of the courts to curb the illegal practice of law is a laudable one, yet it would seem that the Appellate Division in the present instance had permitted the wish to be father to the thought. The dictum in the prevailing opinion (p. 708) that a corporation which had no prior relation to or knowledge of the property assessed cannot in the nature of things be thus qualified to apply for correction of assessments under the Tax Law, Sec. 37, seems clearly wrong. The dissenting opinion holding that a corporation may apply on the same footing as an individual appears to be more in accordance with logic and the decided law.

CONSTITUTIONAL LAW — INTERSTATE COMMERCE — LIQUOR TRAFFIC—WEBB-KENYON LAW.—West Virginia by statute forbade all advertisement, sale, purchase or shipment of liquor for personal use or otherwise, and obtained an injunction restraining defendants (common carriers) from transporting liquor from Maryland into the State. Plaintiff brought present actions to compel carriers to take a shipment of liquor ordered for personal use to be delivered in West Virginia. *Held,* by the Webb-Kenyon law, a party cannot under the protection of the commerce clause of the Constitution transport liquor into a State for any purpose in violation of the law of that State. (*The James Clark Distilling Co.* v. *The Western Maryland R. R. Co. and the State of W. Va.; Same* v. *The American Express Co. and the State of W. Va.,* 37 Supreme Court Reporter, 180.)

Up to the enactment of the Webb-Kenyon law (Act of Congress of Mar. 1, 1913, 37 Stat. 699), the law is well settled. Congress

has the power to regulate commerce among the States. (U. S. Constitution, Art. I, Sec. 8.) In the case of liquor traffic this power is exclusive. (*Gibbons* v. *Ogden,* 9 Wheat. 1.) And in the absence of Congressional regulation commerce is free. (*Leisy* v. *Hardin,* 135 U. S. 100; *Lyng* v. *Michigan,* 135 *id.* 161.) A legitimate article is a subject of interstate commerce as long as it remains in the original package or until it has left the hands of the importer and a state cannot interfere before that time. (*Leisy* v. *Hardin, supra; Brown* v. *Maryland,* 12 Wheat. 419; *American Steel & Wire Co.* v. *Speed,* 192 U. S. 500.)

The Wilson law (26 Stat. 313, 1890) forbids the sale of liquor in the original package when such sale is in violation of the State law. (*In re Rahrer,* 140 U. S. 545; *Pabst Brewing Co.* v. *Crenshaw,* 198 *id.* 17.) But this does not prevent importation by the consignee. (*Rhodes* v. *Iowa,* 170 U. S. 412; *Vance* v. *Vandercook,* 170 *id.* 438; *Amer. Exp. Co.* v. *Iowa,* 196 *id.* 133; *Rossi* v. *Penn.,* 238 *id.* 62, 66; *Rosenberger* v. *Pacific Express Co.,* 241 *id.* 48, 51.)

Lower courts have held that the Webb-Kenyon law does not prevent shipment of intoxicating liquor for personal use though contrary to the State law. (*Hamm Brewing Co.* v. *Chicago, R. I. & P. Ry. Co.,* 215 Fed. 672; *Van Winkle* v. *State,* 27 Delaware, 578.)

On the other hand the power given to Congress by the Constitution is direct, without limitation and far reaching, and it would seem that the permission or ratification of State legislation as in the principal case is within this power. (*Leisy* v. *Hardin, supra; Lottery Case,* 188 U. S. 321; *Hoke* v. *U. S.* 227 U. S. 308; *Willoughby on the Constitution,* pp. 680-683.)

The decision in the principal case is in accord with the spirit of the cases sustaining the Wilson law, and is undoubtedly a sound and practical application of congressional control of interstate commerce with a view to giving effect to the large mass of State legislation which has heretofore been fruitless because of the subterfuges protected by the commerce clause of the Constitution.

WORKMEN'S COMPENSATION.—Plaintiff sued for damages under Sections 1902-1905 of the Code of Civil Procedure, claimed to have been sustained by reason of the death of the intestate; defendants interposed in their answer the provisions of the Work-

men's Compensation Law as a bar to such action; plaintiff demurred to this defense, as insufficient, and the demurrer was sustained. (*Shanahan* vs. *Monarch Engineering Co.*, 219 New York, 469.)

Previous to the passage of the Workmen's Compensation Law, there existed statutory provisions as to actions for damages for death resulting through employers' negligence which could be brought by the next of kin of the decedent. The words "next of kin" were defined in these statutory provisions (Secs. 1902-1905 C. C. P.) so as to include the wife, children, parents, brothers and sisters, nephews and nieces of the deceased, and this right of action was protected by the State Constitution, Section 18 of Article 1.

The Workmen's Compensation Law of 1910 was held unconstitutional (*Ives* vs. *South Buffalo Railway Co.*, 201 N. Y. 271) on the ground that it took property without due process of law, since it imposed liability upon employers without fault.

In 1913, the State Constitution was amended, giving the State Legislature full power to enact Workmen's Compensation Laws, and containing provisions that "nothing contained in this Constitution shall be construed to limit the power of the legislature to enact laws for the protection of the lives, health or safety of employees; . . . or to provide that the right of such compensation, and the remedy therefor, shall be exclusive of all other rights and remedies for injuries to employees or for death resulting from such injuries."

In 1914 a new Workmen's Compensation Law was passed. (Laws 1914, ch. 41.) It provides (Section 10) that "every employer subject to the provisions of this chapter shall pay . . . compensation . . . for disability or death of his employee arising out of and in the course of his employment, without regard to fault as a cause of such injury," except where such injury is occasioned by wilful intent of the injured employee or results solely from his intoxication while on duty. Section 11 provides that "the liability prescribed shall be exclusive," excepting cases wherein the employer has failed to follow out the provisions of Section 50, as to securing the payment of compensation, when the injured person or his executor or administrator may elect to sue for damages or claim compensation under the Workmen's Compensation Law.

The plaintiffs in the principal case sued in behalf of adult brothers and sisters of the deceased. The Workmen's Compensa-

tion Law excludes adult brothers and sisters from its provisions, allowing compensation only to brothers and sisters under the age of eighteen and who are dependents. Plaintiffs consequently sought to sustain their action for damages under 1902-1905 of the Code, under the provisions of which they would come within the meaning of the words "next of kin." The Court of Appeals properly held the remedy in such cases to be exclusively under the provisions of the Workmen's Compensation Law.

The constitutionality of the Workmen's Compensation Law has been upheld by the Court of Appeals, notwithstanding the criticism which has been directed to it as a violation of the "due process of law" section of the Federal Constitution. The true basis for its constitutionality was stated in *Matter of Jensen* vs. *Southern Pacific Co.,* 215 N. Y. 514, which justifies the Workmen's Compensation Law as a valid exercise of the police power of the State. The Court in that case demonstrates that this Law protects both employer and employee; it protects both employee and employer from the expenses and delays and uncertainties of litigation; it protects the employer from the often unjust and extravagant verdicts for damages possible under the Code provisions, and it protects the employee from the certainty of defeat if unable to establish a case of actionable negligence. The intention of the Legislature in passing the Workmen's Compensation Law is stated in *Matter of Post* vs. *Burger and Zohlke,* 216 N. Y. 544, at p. 552.

The interpretation of the law by the Court in the principal case, seems but to be carrying out the obvious intent of the Legislature. Whatever may be said for the advantages of such a law as providing a workable, and in the main, a just and equitable system for assessing damages, it is evident that a law which imposes liability for accidents upon a person or class of persons, *irrespective of their negligence,* can be justified only by resorting to the police powers of the State. The ultimate burden of expense for these losses are thrown upon the consumer, so that in the end the employer does not suffer. All this seems to tend towards State paternalism. The State has and should have a certain latitude in the supervision of the affairs of its citizens; how far such supervision should be extended, is a question.

CORPORATIONS — CONTRACT OF GUARANTEE — DEFENSE OF ULTRA VIRES.—Where defendant, a corporation chartered to manufacture and sell beer, entered into a contract with plaintiff,

another corporation, whereby it guaranteed the payment of all bills rendered by plaintiff to the Bond Development Co. for services rendered to said Bond Depelopment Co. in towing away certain earth and garbage, *held,* the defense of *Ultra Vires* should be sustained. (*G. F. Harms Co.* v. *Leonard Michel Brewing Company,* 162 N. Y. Supp. 1071. Appellate Division, First Department, January 1917, opinion *per* Scott, J.)

English authorities have treated *Ultra Vires* contracts as absolutely null, and wholly void upon the broad ground that a corporation cannot act, as such, beyond the limits of its corporate powers. (*East Anglian R. Co.* v. *Eastern Counties R. Co.,* 11 Common bench, 775; Canfield and Wormser Cas. Corporations, 275; *Ashbury Railway Carriage & Iron Co.* v. *Riche,* L. R. 7 House of Lords, 653; Canfield and Wormser Cas. Corporations, 278; *Corbett* vs. *Southeastern, etc., R. Cos., Managing Committee,* L. R. 2 Ch. Div. 12; Canfield and Wormser Cas. Corporations, 283.) The United States Supreme Court has entertained a similar view, because of notice to contractors of the provisions of Corporate Charters and limitations thereon, protection of stockholders' rights, and the interests of the public in that a corporation shall not act beyond the limits of its corporate powers. (*Central Transportation Co.* vs. *Pullman's Palace Car Co.,* 139 U. S. 24; Canfield and Wormser Cas. Corporation, 295; *Penn Co.* v. *St. L., Alton, etc., R. R. Co.,* 118 U. S. 290.)

In New York and generally it has been held that where the contract remains wholly executory either party may disaffirm and no recovery may be had thereupon by the adverse party where *Ultra Vires* is pleaded. (*Nassau Bank* v. *Jones,* 95 N. Y. 115; Canfield and Wormser Cas. Corporations, 286; *Jemison* v. *Citizens Savings Bank,* 122 N. Y. 140.) Kansas is strongly contrary, however. (*Pape* v. *Capitol Bank,* 20 Kan. 440; *Harris* v. *Independent Gas Co.,* 76 Kan. 750, Canfield and Wormser Cas. Corporations, 337.)

Where the plea of *Ultra Vires,* if allowed, would work legal wrong it will not be tolerated. (*Whitney Arms Co.* v. *Barlow,* 63 N. Y. 62; Canfield and Wormser Cas. Corporations, 310; *Rider Life Raft Co.* v. *Roach,* 97 N. Y. 378; *Leslie* v. *Lorillard,* 110 N. Y. 519; *H. Remington & Sons, P. & P. Co.* v. *Caswell,* 126 N. Y. 142.) Accordingly, where a contract has in good faith been executed on one side and the corporation has had the actual benefit of performance, it has been settled that the defense of *Ultra Vires* cannot be sustained. (*Bissell* v. *N. S. & N. I. R. R. Co.,*

22 N. Y. 58; *Whitney Arms Co.* v. *Barlow, supra; Linkhauf* v. *Lombard,* 137 N. Y. 417; *Bath Gas Light Co.* v. *Claffy,* 151 N. Y. 24; Canfield and Wormser Cas. Corporations, 314; *Usher* v. *N. Y. C. & H. R. R. Co.,* 76 A. D. 422; Aff'd. 179 N. Y. 544.)

It would seem that this rule is founded by the New York Courts, upon the general principle of estoppel: (*Vought* v. *Eastern Building Loan Association,* 172 N. Y. 508). The corporation under such circumstances should not be heard to say that its acts were beyond its powers, but since it is admitted that any person dealing with a corporation is charged with notice of the extent of its corporate powers and the limitations thereon as set forth in its charter, (*East Anglian R. Co.* v. *Eastern Counties R. Co., supra; Central Transportation Co.* v. *Pullmans Palace Car Co., supra; Jemison* v. *Citizens Savings Bank, supra; Alexander* v. *Cauldwell,* 83 N. Y. 480), it is submitted as a sounder view that a corporation must for equitable reasons and on grounds of public policy satisfy the plaintiff where it has received the actual benefit of a *bona fide* performance. The Kansas Courts hold similarly (*Pape* v. *Capitol Bank,* 20 Kan. 440; *Harris* vs. *Independence Gas Co.,* 76 Kan. 750; Canfield and Wormser Cas. Corporations, 337.) (See also discussion Clark on Corporations, 3d Ed. by Wormser, pp. 234 and 235.)

As a general rule a corporation is not permitted to enter upon contracts of guaranty unless expressly so empowered by its charter. It has been consistently held that the power to lend money or credit cannot be fairly or reasonably implied from the ordinary charters of commercial and manufacturing corporations. (10 Cyc. 1109; *Kellogg-Mackay Co.* v. *Havre Hotel Co.,* 199 Fed. 727.) For added reasons of public policy banking corporations and institutions of a fiduciary character are not thus permitted to scatter their credit among enterprises beyond the fair contemplation of their charters. (*Bank of Genesee* v. *Patchin Bank,* 13 N. Y. 309; *National Bank* v. *Wells,* 79 N. Y. 498; *National Park Bank* v. *German-American Mutual W. & S. Co.,* 116 N. Y. 281; *Gause* v. *Commonwealth Trust Co.,* 196 N. Y. 154.) Where corporations of a purely commercial character are concerned, however, there is no public policy which prohibits even an accommodation endorsement of commercial paper by such a corporation, consequently, if such endorsement is made with the knowledge and consent of all the stockholders, and creditors' rights are not affected, such endorsement is valid and enforceable. (*Martin* v. *Niagara, etc., Co.,* 122 N. Y. 165.)

Moreover, it is well settled that where the contract of guarantee was made in the furtherance of the corporation's immediate business ventures, even though unattended by direct pecuniary benefit to the corporation, it is enforceable; the acts in such cases are really *Intra Vires.* (*Holm* v. *Claus Lipsius Brewing Co.,* 21 N. Y. 204; *Koehler* v. *Reinheimer Co.,* 26 N. Y. 1; *Holmes, etc., Co.* v. *Willard,* 125 N. Y. 75; *Bacon* v. *Montauk Brewing Co.,* 130 N. Y. 737; *Hess* vs. *Sloane,* 66 App. Div. 522; aff'd. 173 N. Y. 616; *Kellogg-Mackay Co.* v. *Havre Hotel Co.,* 199 Fed. 727.)

A more involved question is found in a discussion of what is meant by "benefit to the corporation" as applied to contracts partially executed. It has been held that it is unnecessary for the corporation to receive the actual fruits of the plaintiff's performance;—that it is sufficient under the law of contracts if the promisee has acted in good faith, to his detriment. (*Kannenberg* v. *Evangelical Creed Congregation,* 146 Wis. 610.) But see contra, (*Marshalltown Stone Co.* vs. *Des Moines Brick Mfg. Co.,* 149 Iowa, 141; *Visalia Gas & Electric Light Co.* vs. *Simms,* 104 Cal. 326.) It would seem that the New York Courts rely more on principles of equity and implied contract than on the strict rule of contract law, and make the receipt of actual benefits by the corporation under the contract the basis of recovery, rather than the rendition by the plaintiff of abstract legal consideration. (*Whitney Arms Co.* v. *Barlow, supra; Bath Gas Light Co.* v. *Claffy, supra; Appleton* v. *Citizens Central National Bank,* 190 N. Y. 417, Canfield and Wormser Cas. Corporations, 169.) Even the United States Supreme Court in the face of its rigid rulings forbidding a recovery on executory *Ultra Vires* contracts, recognizes the force of the equitable doctrine of implied contract as prohibiting the unjust enrichment of a corporation under the cloak of the plea of *Ultra Vires.* (*Citizens Central National Bank* v. *Appleton,* 216 U. S. 196, Canfield and Wormser Cas. Corporations, 169.) Where public policy demanded it New York courts have practically negatived the effect of contract law in these matters. (*National Park Bank* v. *German-American Mutual W. & S. Co., supra; Gause* v. *Commonwealth Trust Co., supra.*)

The decision in the principal case is sound. It must be borne in mind that both of the parties to the action were corporations. The plaintiff, therefore, was clearly chargeable with a knowledge of corporate methods and business procedure, over and above the constructive notice which is legally imputed to it.