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Corporations—Powers—Charitable Contributions, A.P. Smith Manufacturing Co. v. Barlow, 98 A.2d 581 (N.J. 1953)

The Court has never held that a coerced confession can be used as evidence on which to base a conviction, nor does it do so in the principal case.[23]

There is a need for more definite criteria to determine the coercion issue. The lack of definition seems to stem from the fact that the Court cannot agree on the comparative weight to be given to the right of the public to have criminals eliminated from society and the right of the individual to be free from improper police procedure. Perhaps the state legislatures should adopt an acceptable standard, such as the rule employed in federal cases.[24]

CORPORATIONS—POWERS—CHARITABLE CONTRIBUTIONS

A. P. Smith Manufacturing Co. v. Barlow, 98 A.2d 581 (N.J. 1953)

A New Jersey corporation engaged in manufacturing and selling water and gas equipment resolved to contribute $1,500 to Princeton University's general maintenance fund. Minority stockholders objected that the contribution was *ultra vires*, and the corporation instituted an action for a declaratory judgment. The lower court held that the act was not *ultra vires* because the contribution was as a matter of law a direct benefit to the corporation.[1] On appeal the lower court's judgment was affirmed on the ground that reasonable charitable contributions by corporations, even if there had been no express statutory provision,[2] are within the corporation's implied and incidental powers under common law principles.[3]

American cases have consistently held that a non-charitable corporation is formed to transact business to obtain the maximum profits for its stockholders and not to make philanthropic contributions.[4] Unlike a natural person, a corporation does not have the power to make donations for the benefit of mankind in general.[5] A corporation

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23. The procedure in New York, as in many other states, is to submit the confession to the jury for judgment on the coercion issue. If the jury rejects the confession, then it cannot enter into the verdict and the conviction must stand on the basis of other sufficient evidence. Thus, the confession does not enter into the evidence on which the conviction is based. If Mr. Justice Jackson felt that a confession coerced as a matter of law could enter into the conviction, he would not have considered the question of coercion, but would merely have decided that there was sufficient other evidence on which to convict. His lengthy (4 pages) consideration of the question of coercion shows that this was not his view.

24. See note 5 *supra*.

1. 97 A.2d 186 (N.J. 1953).

2. N.J. STAT. ANN. § 14: 3-13.2 (1950). See note 14 *infra*.

3. 98 A.2d 581 (N.J. 1953).

4. Dodge v. Ford Motor Co., 204 Mich. 459, 170 N.W. 668 (1919). The sole function of a non-charitable corporation is to make a profit. BALLANTINE, CORPORATIONS 228 (Rev. ed. 1946).

5. An individual and a corporation are not to be equated under all circumstances. STEVENS, CORPORATIONS 218 (1936). Contributions resulting in benefits which are to be enjoyed substantially by the general public are not to be considered incidental to the purpose for which the corporation is chartered, and hence would be *ultra vires*. Dodge v. Ford Motor Co., 204 Mich. 459, 170 N.W. 668 (1919).

at common law has the power to make "charitable" contributions only if a direct and immediate benefit to the corporation, furthering its corporate purpose, results from the contribution.[6] The testimony of responsible corporate officers[7] and directors[8] is given weight in determining the directness of the benefit enjoyed by the contributing corporation.

The corporation's role in the educational field has been examined by various courts. Under a strict view of the direct benefit requirement, contributions of any type to educational institutions would be considered *ultra vires*.[9] A broader conception of direct benefit was applied in *Armstrong Cork Co. v. Meldrum Co.*,[10] where the power of the corporation to donate money for the establishment of a school for the "science of business" at two local universities was challenged. The court upheld the contribution and said that the corporation had received direct benefit from the transaction because the educational institutions were located where the corporation was doing business, that there was a lack of adequate local facilities for such training, and the need of trained employees by the corporation warranted the expenditures. An even broader concept of direct benefit was used in the leading case of *Evans v. Brunner, Mond & Co.*[11] The English court there permitted a leading chemical corporation to distribute £100,000 among the universities and scientific institutions of the United Kingdom with a broad grant that the fund be used "for the furtherance of scientific education and research." Under this view of direct benefit the contribution need not be restricted in its scope to advancing the interests of the contributor's industry. Nevertheless,

6. Whetstone v. Ottawa University, 13 Kan. 320 (1874); STEVENS CORPORATIONS 217 (1936). In Hutton v. West Cork Ry., 23 Ch. D. 654, 673 (1883), Lord Bowen made the classic remark: ". . . [C]harity has no business to sit at boards of directors *qua* charity. There is, however, a kind of charitable dealing which is for the interest of those who practise it, and to that extent . . . charity may sit at the board, but for no other purpose."

Contributions resulting in good will to the corporation could be considered within the powers of the corporation. *See*, Armstrong Cork Co. v. Meldrum Co., 285 Fed. 58, 59 (W.D.N.Y. 1922); A. P. Smith Manufacturing Co. v. Barlow, 97 A.2d 186, 191-192 (N.J. 1953). There is nothing in the principal case to indicate that the goodwill of the community or its customers was the motive for giving, although this inducement for the contribution appears highly probable.

7. Heinz v. National Bank of Commerce, 237 Fed. 942 (8th Cir. 1916).

8. Evans v. Brunner, Mond & Co., [1921] 1 Ch. 359. If the director's discretion in applying the fund is challenged, however, the problem is not whether the act is *ultra vires* or *intra vires;* the problem is whether or not the director has complied with the terms of the resolution authorizing the contribution.

9. *See*, Worthington v. Worthington, 100 App. Div. 332, 335, 91 N.Y. Supp. 443, 445 (1st Dep't 1905). A corporation could make contribution of its assets to educational institutions in certain limited circumstances. Whetstone v. Ottawa University, 13 Kan. 320 (1874) (a corporation was permitted to donate parts of its land as a site for a college).

10. 285 Fed. 58 (W.D.N.Y. 1922).

11. [1921] 1 Ch. 359.

the English court recognized that the benefit must not be "too speculative or too remote."[12]

Although the principal case was not decided upon statutory grounds, New Jersey, like many other states,[13] has statutes which give a corporation the power to make such philanthropic contributions[14] as its directors consider expedient for the protection of corporate interests. Furthermore, the corporation's obligation to society is recognized, and it is given the express power to aid in the creation or maintenance of educational institutions.[15] The New Jersey statutes empowering corporations to make philanthropic, social, and economic betterment contributions do not interfere with the common law rights and powers of corporations to make contributions which are of direct benefit.[16]

The court in the principal case held that the corporation has the implied and incidental power to make reasonable charitable contributions under modern conditions. The court, placing its determination of benefit to the corporation on possible rather than demonstrable benefit, adopted a long range view emphasizing the increased role of corporations in support of education rather than the direct benefit accruing to the donor. The court neither expessly rejected nor expressly approved the lower court's finding that the contribution would result in a direct benefit to the corporation. The court did, however, discuss several income tax cases which held that some contribution by

12. Evans v. Brunner, Mond & Co., [1921] 1 Ch. 359. There is also an indication that the size of the contribution must be reasonable in relation to the size of the corporation. *Id.* at 365, 366.

13. Twenty-nine other states and Hawaii have statutes empowering corporations to make philanthropic contributions. *E.g.*, MO. REV. STAT. § 351.385 (1949); DEL. REV. CODE c. 8 § 122 (1953). Some statutes expressly state that contributions must be for furtherance of corporate interests. Generally the statutes are broad. These statutes often expressly include educational institutions as permissible donees. Others use general phrases like "charitable" or "eleemosynary." Some states impose the restriction that the donees must be in the community where the corporation is doing business. The amount a corporation may contribute is often limited in some manner.

14. N.J. STAT. ANN. § 14:3-13 (1949). The defense contended that because the corporation received its charter prior to passage of the statutes giving corporations the power to make philanthropic contributions, the legislative enactments are inapplicable; that the enactments constituted a charter alteration; that a charter is considered a contract between the state and the corporation, the corporation and the shareholders, and the shareholders *inter se*. BALLANTINE, CORPORATIONS 645 (Rev. ed. 1946). The defense further contended that the reserve power doctrine is not applicable when the rights between the corporation and its stockholders *inter se* are affected. Charter alterations that concern matters of public interest although they might affect relations between the stockholders *inter se* are held valid under the reserve power doctrine. Murray v. Beattie Mfg. Co., 79 N.J. Eq. 604, 82 Atl. 1038 (Err. & App. 1912); Berger v. United States Steel Co., 63 N.J. Eq. 809, 53 Atl. 68 (Err. & App. 1912). Almost all of the regulations of corporations justified under the reserve power doctrine might be sustained under the police power of the state. Sutton v. New Jersey, 244 U.S. 258 (1917); See, Note, 31 COL. L. REV. 1163 (1930).

15. N.J. STAT. ANN. § 14:3-13.2 (1950).

16. N.J. STAT. ANN. § 14:3-13.3 (1950).

corporations to charitable institutions were deductible as "ordinary and necessary business expenses."[17]

There is no previous American case which under the circumstances of the principal case has considered a contribution to a university by a corporation of this type to be *intra vires* at common law.[18] The economic power of the nation in the twentieth century has shifted from private individuals to corporations.[19] As industrial methods change, business methods must keep pace with this change.[20] With changing business methods, corporate acts become permissible which earlier would not have been considered within the ambit of corporate power. Today educational institutions face high operating costs and they look to corporations for aid in solving their financial problems. Individuals alone are unable to meet the demand. Industrial leaders fear that if support for our educational institutions does not come from private sources then it will come from public sources.[21] The

17. Under INT. REV. CODE § 23 (q) charitable contributions by corporations are deductible without being classified as "ordinary and necessary business expenses." Prior to the enactment of this section, such charitable contributions were deductible only if they could be classified as "ordinary and necessary business expenses." Such contributions were not always so classified. Donations to the Red Cross made during World War I were considered not to be deductible from income for the contributions were not considered to be of direct benefit to the corporation. Niles Bement Pond Co. v. United States, 67 Ct. Cl. 693 (1929), *aff'd*, 281 U.S. 357 (1930); Consolidated Gas, Electric Light & Power Co. v. United States, 65 Ct. Cl. 252 (1928), *cert. denied*, 278 U.S. 612 (1928). When corporations were able to show benefit accruing to them for the aid of the corporate purposes, the courts permitted these contributions to be deductible business expenes. Fairmount Creamery Corp. v. Helvering, 89 F.2d 810 (D.C. Cir. 1937) (donation to a college by the corporation upon solicitation by a customer of the firm); Forbes Lithographic Mfg. Co. v. White, 42 F.2d 287 (2d Cir. 1930) (contribution to a general welfare fund); American Rolling Mills Co. v. Commissioner, 41 F.2d 314 (6th Cir. 1930) (contribution of $360,000 to a community welfare fund); Corning Glass Works v. Lucas, 37 F.2d 798 (D.C. Cir. 1927), *cert. denied*, 281 U.S. 742 (1930) (contribution to a fund to establish a hospital); Greene County National Farm Association v. Federal Land Bank, 57 F. Supp. 783 (D. Ky. 1944), *aff'd*, 152 F.2d 215 (6th Cir. 1945), *cert. denied*, 328 U.S. 834 (1945) (contribution to a member of the Association); Times-Picayune Publishing Co. v. Commissioner, 27 B.T.A. 277 (1932) (donation to a local university by a newspaper corporation to provide for a school of journalism). Factors which the courts have used in deciding whether a contribution is an "ordinary and necessary business expense" are: nature and size of the industry, location, number of its employees as compared to the entire community, type of its employees, and what other employers similarly situated are doing. American Rolling Mill Co. v. Commissioner, 41 F.2d 314 (6th Cir. 1930). If, however, the power of the corporation to make these contributions had been in issue, rather than the deductibility from gross income, a different result might have been reached on the ground that a direct and immediate benefit to the corporation would not have resulted from the contribution.

18. In the principal case the corporation does not dominate the town in which the university is located, and is forty miles away from the university.

19. Bleicken, *Corporate Contributions to Charities*, 38 A.B.A.J. 999 (1952); Cousens, *How Far Corporations May Contribute to Charity*, 35 VA. L. REV. 401 (1949); Dodd, *For Whom Are Corporate Managers Trustees*, 45 HARV. L. REV. 1145 (1932).

20. *See*, Steinway v. Steinway & Sons, 17 Misc. 43, 47, 40 N.Y. Supp. 718, 720 (Sup. Ct. 1896).

21. See note 19 *supra*. Returns from endowment have shrunk and the costs of operation have risen where it now takes two and one half times as much endow-

court in the principal case was acutely aware of these facts and therefore stressed the concept of a dual function of the corporation which prevailed in the eighteenth century: (1) To secure maximum profits for their stockholders; (2) To give support to the general community.[22] The court believed that the dire need of educational institutions for funds, the corporation's public obligations, and changing business methods justified considering the corporation's contribution to an educational institution as within its common law powers. Although the decision in the principal case is a departure from prior common law precedents, it manifests a sound public policy. In view of the fact, however, that the legislature had already adopted the same policy, the action of the court in deciding the case on a common law ground is unusual.

DOMESTIC RELATIONS—DIVORCE—LIABILITY OF FATHER FOR NECESSARY EXPENSES OF CHILD IN MOTHER'S CUSTODY

Mahaney v. Crocker, 98 A.2d 728 (Me. 1953)

The mother of a minor girl had been granted the temporary custody of the child pending a divorce action and the father had been ordered to pay her $15.00 per week for the child's support. A physician performed an emergency appendectomy upon the daughter and a second operation to relieve infection that had developed. Subsequent to the appendectomy but prior to the second operation, the mother was granted an absolute divorce and the temporary orders pertaining to the custody and support of the child were continued in the final decree. The physician then brought an action against the mother for services rendered in performing both operations. In reversing a verdict for the mother, based on the jury's feeling that the father *should* pay, but unsupported by the evidence, the appellate court held that inasmuch as the legal custody of the child had been given to the mother, the law imposed upon her the primary obligation to furnish the child such medical and surgical care which thereafter became reasonably necessary.[1]

It is the prevailing rule that a father owes a legal as well as a moral duty to support his infant children until they reach majority.[2] Where

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ment to support a given enterprise as it did in 1929. Irving S. Olds, former chairman of the board for U.S. Steel Co. said,

> [E]very American business has a direct obligation to support the free, independent, privately endowed colleges and universities of this country to the limit of its financial ability and legal authority. And unless it recognizes and meets this obligation, I do not believe it is properly protecting the long range interest of its stockholders, its employees, and its customers.

38 A.B.A.J. 999, 1000 (1952).

22. Dodd, *For Whom Are Corporate Managers Trustees*, 45 HARV. L. REV. 1145 (1932).

1. Mahaney v. Crocker, 98 A.2d 728 (Me. 1953).

2. 4 VERNIER, AMERICAN FAMILY LAWS § 234 (1936).