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Corporations—Bonds—Exercise of Conversion Privilege in Callable Bonds

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defendant. Undoubtedly an act of Congress authorizing such waiver would be constitutional. But the Supreme Court has not decided that in the absence of a statute the presence of a jury can be dispensed with or even that a statute authorizing such procedure would conform to the Sixth Amendment. On these points the principal case adds only dicta to which four justices have subscribed. Earlier decisions are reviewed in Aronson, *Waiver of a Jury in Felony Cases in Missouri* (1928) 14 ST. LOUIS L. REV. 34.

Still the case represents a significant development in the solution of an important constitutional question. It shows which way the wind is blowing, even though the decision may be somewhat surprising to those individuals, who, like the early courts, believe that the institution of trial by jury was God-given and that it could not be waived even by those for whose protection it was made into a constitutional right. N. F. D., '31.

CORPORATIONS—BONDS—EXERCISE OF CONVERSION PRIVILEGE IN CALLABLE BONDS.—Because of the stringency of the money market in recent years, corporations have been forced to issue bonds at extremely high interest rates. The practice has grown of inserting a redemption privilege, thus enabling corporations to call in their bonds when it becomes possible to float another issue at lower rates. Some bonds of this type also give the holder the privilege of converting to bonds of a different series at a different rate of interest. In *Brookes and Co. v. North Carolina Public Service Co.* (C. C. A. 4, 1930) 37 F. (2d) 220, a case of first impression, a corporation issued seven per cent bonds convertible at par to six per cent bonds at 92. Both series could be called in before maturity upon the corporation's publishing notice for four successive weeks. The corporation published the first notice of its intention to call in both series—the one at 103 and the other at 105. A holder immediately presented his seven per cent bonds for conversion to the six per cent series, intending to present bonds of the six per cent series for redemption. By this simple manipulation, he expected to realize \$11.13 on each bond converted since he would receive 100 six per cent bonds redeemable at 105 for only 92 seven per cent bonds which were redeemable at 103. The corporation refused. The court, in an action by the holder for this unrealized profit, held that a conversion privilege in redeemable or callable bonds terminates as soon as the first notice to redeem is published, and accordingly found for the defendant.

The district court had previously reached the same result on the ground of waiver of his rights by the plaintiff, but expressed the view that the corporation was liable in damages for refusal to convert on demand before the expiration of the period of notice. The court cited cases upholding the validity of conversion privileges: *Chaffee v. Middlessex R. R. Co.* (1888) 146 Mass. 224, 16 N. E. 34; *Bratten v. Catawissa Ry. Co.* (1905) 211 Pa. 21, 60 Atl. 319; *John Hancock Mutual Life Insurance Co. v. Worcester R. R. Co.* (1889) 149 Mass. 214, 21 N. E. 364; 33 Cyc. 453. None of these cases involved bonds of the callable variety, however.

The Circuit Court of Appeals stated that the call privilege must be con-

strued together with the conversion privilege, and that when so construed, the option to convert must be held to terminate when the option to redeem is exercised. Thus the determining question is whether the option to redeem is considered as exercised at the time of the publication of the first notice or whether all notices must have been published. In a Missouri case, a non-resident landowner contesting a drainage tax bill which required notice by publication for four successive weeks contended that there was no notice at all until the last publication, after which he must be allowed time to respond to the notice, but the court refused to uphold this contention. *State ex rel. v. Blair* (1912) 245 Mo. 680, 151 S. W. 148. In the principal case, it is apparent that the holder had actual notice, and the court, without going as far as it did, might reasonably have held this sufficient. A Kentucky case held that where a claimant of land had actual notice of prior equities, he could not rely on lack of notice simply because the proceedings from which he acquired notice were extra-judicial so that he could not be charged with constructive notice. *Hart v. Hawkins* (Ky. 1814) 3 Bibb. 502.

The reasoning of the Circuit Court of Appeals seems the more equitable, because it prevents a holder of bonds with both a redemption and a conversion privilege from realizing profits not contemplated by the contract by a bit of manipulation when the corporation seeks to call in its bonds.

H. C. H., '31.

CRIMINAL LAW—ACCESSORIES—PURCHASERS OF INTOXICATING LIQUOR.—

The defendant was charged with unlawfully and knowingly having purchased intoxicating liquor fit for use for beverage purposes, in violation of the National Prohibition Act. Prosecution was brought under sec. 6, tit. 2, 41 Stat. 310, (1919) 27 U. S. C. sec. 16, which provides that, "No one shall manufacture, sell, purchase, transport or prescribe any liquor without first obtaining a permit from the commissioner to do so." *Held*, the purchaser was not guilty of any violation of the National Prohibition Act because the section of the act prosecuted under was applicable only to abuse of the legal and controlled traffic in liquor and had nothing to do with illegal and unrestricted sales. *U. S. v. Farrar* (1930) 50 S. Ct. 425.

This is the first decision on the point under the National Prohibition Act, but it has always been held in states which had local prohibition laws that the purchaser of liquor was not guilty of violating that prohibition regulation in the absence of express law to the contrary. *Commonwealth v. Willard* (Mass. 1839) 22 Pick. 476; *Lott v. U. S.* (Alaska 1913) 205 F. 28; *U. S. v. Katz* (1926) 271 U. S. 354; *Brister v. State* (1924) 97 Tex. Crim. 395. Courts are inclined to interpret the law literally and hold that if the legislature has not made a proviso holding the purchaser guilty there is no reason for finding him so for some other reason or on some other grounds. Furthermore, since the purchaser of liquor is usually the chief source of evidence against the seller, the rule against self-incrimination would hinder the prosecution of the more important cases. Because of the same considerations the purchaser is not considered an accessory to the crime of selling liquor.