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Eminent Domain—Power of Domestic Corporation Acting in Interest of Foreign Corporation

Under a separate and distinct charge of conspiracy to violate the Prohibition Act and under conditions pertinent thereto the purchaser can be prosecuted with the seller as a party to the conspiracy. *De Witt v. U. S.* (1923) 291 F. 995; *U. S. v. Slater* (1922) 278 F. 266; *U. S. v. Vanatta* (1922) 278 F. 559; *U. S. v. Kerper* (1928) 29 F. (2d) 744. But there must be actual planning by the purchaser with the seller to justify a conviction on this ground. So it seems clear that the casual buyer of liquor can be charged neither with violating the National Prohibition Act nor with conspiracy to violate it. C. F. G., '32.

EMINENT DOMAIN—POWER OF DOMESTIC CORPORATION ACTING IN INTEREST OF FOREIGN CORPORATION.—The case of *Patterson Orchard Co. v. Southwest Ark. Utilities Corp.* (Ark. 1929) 18 S. W. (2d) 1028, furnishes an example of judicial interpretation of a constitutional provision with the view to avoiding injurious effects and to facilitating economic enterprises despite a relatively clear contrary intention in the provision itself. *Held*, a domestic corporation, organized by employees of a foreign corporation, which had been unsuccessful in condemning a right of way because foreign corporations were prohibited by the state constitution from taking property within the state, has power to condemn a right of way for an electric transmission line and immediately lease it to the foreign corporation.

The decision is in line with the weight of authority, as exemplified by the comparatively few cases passing on the question. At an early date, *Lower v. Chicago, B. & Q. R. Co.* (1882) 59 Iowa 563, 13 N. W. 718, and *In re Staten Island Rapid Transit Co.* (1886) 103 N. Y. 251, held that a domestic corporation could condemn land for a railroad right of way, with the express design of procuring the right of way for a foreign corporation. In *Postal Telegraph & Cable Co. v. Oregon Short Line Co.* (1901) 23 Utah 474, 65 Pac. 735, the court said, "There is nothing in the letter, spirit, or policy of the law which prohibits the same person from forming and conducting two or more different corporations." In 20 C. J. 543, the rule is stated: "The fact, however, that a foreign corporation is interested in a domestic corporation, or owns the greater part of its stock and controls its management, will not prevent the latter from exercising the power of eminent domain." In *Shepherdstown Light & Water Co. v. Lucas et al.* (W. Va. 1929) 148 S. E. 847, it was held that ownership by a non-resident corporation of controlling stock in a public service corporation deprives the latter of the power to condemn property. See also *Snyder v. Baltimore & O. R. Co.* (1904) 210 Pa. 500, 60 Atl. 151. In *Potter v. Gardner* (Ky. 1928) 1 S. W. (2d) 537 it was held that foreign telegraph and telephone companies need not domesticate themselves to be entitled to condemn right of way across private property.

But in *In re N. Y., L. & W. R. Co.* (1885) 99 N. Y. 12, 1 N. E. 27, it was held that if the fact were established that the taking was not for the purpose of enlarging the railroad company's road but for the sole benefit of a foreign lessee an injunction should issue against the condemnation proceedings. And Nebraska courts hold that a domestic railroad company cannot

acquire land under its power of eminent domain and lease it to a foreign company, since that would be doing indirectly what the state constitution prohibits the foreign corporation from doing directly. *State ex rel. Burlington & M. R. Co. v. Scott* (1888) 22 Neb. 628, 36 N. W. 121; *Koenig v. Chicago, B. & Q. R. Co.* (1889) 27 Neb. 699, 43 N. W. 423. The principal case distinguishes the Nebraska cases on the ground that the Nebraska Constitution differs from the Arkansas Constitution in that the former expressly prohibits a foreign railroad corporation not only from exercising the power of eminent domain but also from acquiring land in the state in any manner until it shall have become a body corporate pursuant to the laws of the state. The only pertinent clause in the Arkansas Constitution is, "Nor shall foreign corporations have power to condemn or appropriate private property." Const. Ark. art. 12 sec. 11.

The economic disadvantages to the modern big business projects under the minority view are clearly evident and seem to have been the chief reason why the courts have quite generally allowed foreign corporations to use this legal method of evasion. L. O. C., '31.

LANDLORD AND TENANT—ATTACHMENT FOR RENT.—Plaintiff sued to recover rent in aid of which an action of garnishment was issued and garnishee summons served upon banks in which defendant had funds on deposit. On appeal it was held that the landlord's statutory remedy of attachment for rent against the personal property, R. S. Mo. (1919) sec. 6893, was limited to personalty on leased premises, precluding attachment of tenant's bank deposits. *Phillips v. Hunter* (Mo. App. 1930) 31 S. W. (2d) 224.

This case was one of first impression, the court finding no other authority directly in point in the state. The Missouri statute provides that, "any person who shall be liable to pay rent . . . shall be liable in attachment for such rent . . . sixth, when the rent is due and unpaid after demand thereof . . . and that the person to whom the rent be owing . . . makes an affidavit of one or more of the foregoing grounds of attachment and that he believes that unless an attachment issue the plaintiff will lose his rent." The section further provides that the officer be authorized to issue an attachment for rent "against the personal property, including the crops grown on the leased premises . . . " The plaintiff maintained that the latter clause of the statute gave him a right of attachment of all the defendant's personal property, whether on or off the premises. In refusing to accept this interpretation of the statute the court reached the conclusion that if the plaintiff were given a right of attachment to all the personal property of the defendant, "a landlord would have a right superior to all creditors in that his attachment would reach not only the personal property on the premises, but also to any property belonging to the tenant no matter where it might be found although none of it was ever located or used upon the rented premises." This interpretation of the court in effect limits the statute to a declaration of the common law right of distress