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Subscription to Stock, Transfer of Subscriber's Interest, Fraud Upon Creditor's

Floyd R. Mechem

the prosecution; hence the constitutional question, as to the right of being confronted by the witness, was not involved, as the lucid opinion of Montgomery J. points out. Nevertheless, since *Finn's* case (misunderstanding the English history of the rule) had repudiated such use of testimony for criminal cases in general, by either side, the opinion here in *State* v. *Sauls* is justified in commenting upon the broader question.

The precise ruling in *State* v. *Sauls* is limited to the use of such testimony by the defendant, and does not deal with its use by the prosecution. But it may be hoped that the vogue of the sound doctrine of *State* v. *Heffernan*[5] will sooner or later in all states remove the last vestiges of the unhistorical doubt that has been promulgated by *Finn's* case.

JOHN H. WIGMORE.

CORPORATIONS—SUBSCRIPTION TO STOCK—TRANSFER OF SUBSCRIBER'S INTEREST—FRAUD UPON CREDITORS.—[Connecticut] In the recent case of *Butts,* et al. against *King,* et al.,[1] decided by the Supreme Court of Connecticut, the action was by creditors of the B. & D. Electric Railway Company to compel King to pay the amount of his subscription to the stock of that railway company, and it raises a question which seems to have been but rarely before the courts. A special act of the legislature had been passed providing for the organization of the company and a number of persons subscribed for its stock. Among these was King, who subscribed for an amount at par value of $199,600. The corporation was organized and elected directors, of whom King was one. The subscriptions to the capital stock were accepted; by-laws were adopted, and King was elected president of the company. King later found it impossible to raise the money upon which he relied, and, before any call had been made for the payment of subscriptions and before any debts had been incurred, King sold to one S. all the rights he had acquired by his subscription for a consideration of $25,000, of which S. paid $10,000 in cash, and gave his note for the balance. The assignment was recorded in the records of the company, and it assented to the assignment and accepted S. as a subscriber in place of King. S. was not, at the date of the assignment, or later, financially able to pay the subscription in full from his individual resources, but he was largely engaged in business and there was no evidence that King knew or believed him to be a person incapable of meeting the obligation upon the stock subscription. King thereafter took no part in the management of the business, and S. was elected a director and acted as such in the later operations of the company. The assignment from King to S. was found to have not been made in contemplation of any future indebtedness, or obligation to be incurred by the company. It later appeared that the money paid by S. to King had been supplied by a construc-

5. (1909) 24 S. D. 1, 123 N. W. 87, opinion by McCoy, J.

1. (1924 Conn.) 125 Atl. 654.

tion company which was afterwards active in the operation of the railway company, but there was no evidence that King knew this fact. The railway company issued a large amount of debenture notes; the road was constructed and operated for a few years, when all its property was assigned to another street railway company, and the B. & D. Company ceased to do business, owing large sums of money to creditors, among whom were the plaintiffs in this action.

The effort to recover from King was based chiefly upon the contention that the rights and liabilities resulting from the subscription by King were not assignable, that there was no novation, and that in any event, the assignment was in fraud of the company's creditors.

The court held that, by the subscription and the acceptance of it by the corporation, King acquired certain rights and incurred certain liabilities; that the rights acquired by him under the subscription were assignable; and that when the company accepted S. as the successor to King's rights and liabilities, there was a complete novation, which operated to release King, unless the transaction could be impeached as one in fraud of creditors. Upon the latter question, it was pointed out that there were no creditors at the time of the transaction, and the findings expressly disclaimed any intention on the part of King to defraud future creditors.

The making of the subscription and its acceptance by the corporation ordinarily completely establish the rights and liabilities of the subscriber, even though no call has yet been made for payment, and no certificate of stock has yet been issued. There seems to be no reason why these rights and liabilities should not be transferred at this stage as completely as they may be after certificates of stock have been issued, and to this effect are the authorities.[2]

FLOYD R. MECHEM.

EVIDENCE — ADMISSIONS — CONSPIRATORS.—[Iowa] M and F were jointly tried and convicted on a charge of conspiracy to commit the crime of adultery. Each of the defendants had made separate incriminating admissions which were proved at the trial over the objection of each to the admissions of the other. *Held,* that such admissions were properly received, though the admissions of one could not be considered as evidence against the other. *State* v. *Martin.*[1]

In the ordinary case of co-defendants on a joint trial, where one may be convicted and the other acquitted, the rule is well settled that an admission or confession is admissible against the defendant who made it, but not against the other, and the jury should be cautioned not to consider it as evidence of the guilt of the latter.[2]

2. See *Valentine* v. *Water Power Co.* (1901) 128 Mich. 280, 87 N. W. 370; *Roosevelt* v. *Hamblin* (1908), 199 Mass. 127, 85 N. E. 98, 18 L. R. A. (N. S.) 748.

1. (1924) 200 N. W. (Ia.) 213.

2. (1895) *Sparf* v. *U. S.* 156 U. S. 51.