

which are similar, but not necessarily identical, with those of another state, and especially where compensation claims under the foreign statute may be enforced in any of the ordinary courts to the same extent that other claims could be enforced, then there appears to be no legal reason why they cannot be enforced in the ordinary courts of other states.³⁹

IGNORING THE CORPORATE FICTION IN THE CASE OF ONE-MAN COMPANIES—Usually a corporation is looked upon by the law as an artificial person having the rights and duties of an ordinary individual.¹ Yet, courts do not hesitate to brush aside the fiction where the corporate

³⁹ BRADBURY, WORKMEN'S COMP. LAWS (3d ed.), p. 98; GOODRICH, CONFLICT OF LAWS, p. 204, 205; Bradford Elec. L. Co. v. Clapper, 286 U.S. 145, 76 L. ed. 1026, 52 Sup. Ct. 571, anno. 82 A.L.R. 709 (1932); Doughtwright v. Champlain, *supra*, note 30; Pensabene v. S. & J. Auditors Co., 155 App. Div. 368, 140 N.Y.S. 206 (1913).

¹In Jackson v. Hooper, 76 N.J.Eq. 592 (E. & A. 1910) reversing *Ibid.* 185 (Ch. 1909), two individuals owned all the stock of a business corporation under an agreement that they should be partners having equal voice and equal control in the management and business of the corporation, that it should be treated as a mere agency in carrying out the copartnership agreement, that the directors other than the two parties should be mere nominal directors, and that corporate forms should be ignored and the business transacted and treated as a partnership. After operating for a time thereunder, the parties disagreed, and, in what amounted to an action for specific performance of the partnership agreement, the court refused its aid on the ground that the rights of the parties must be administered as shareholders in the corporation, not as members of a partnership. The court speaking through Dill, J. said (at p. 599): "It is fundamental that, no matter how the shares of stock are held, the corporation itself is an entity wholly separate and distinct from the individuals who compose and control it. The complainant and defendant, though owning the entire capital stock of the two corporations, are not, * * * 'the corporation, in the sense of that term as applied to the management of the corporate business or the control of the corporate property.'"

In Loomis v. Public Service Transportation Co., 102 N.J.Eq. 259 (E. & A. 1928), complainants, several of the members of a voluntary unincorporated association, were instrumental in forming two New Jersey corporations to which property belonging to the association was conveyed in exchange for the capital stock thereof, which was issued to the members individually; thereafter defendant purchased the shares of some members. Complainants sought to have a trust declared alleging that the corporations were mere dummies holding common property for the convenience of the association. The court held that, as they had elected to deal through these corporations for their own benefit, the complainants could not be heard to object to the disadvantages resulting therefrom.

In Leviton v. North Jersey Holding Co., 106 N.J.Eq. 517 (Ch. 1930), a bill was filed whose object was the winding up of the affairs of defendant corporation (a closed corporation of which complainant owned two shares less than fifty per cent of the outstanding stock) and the distribution of its assets among stockholders, upon the theory that the stockholders were partners conducting a joint venture under corporate guise. Relief was denied, the court saying (at p. 520): "A joint venture, with its personal responsibilities, cannot assume corporate garb, with its privileges and immunities, and again emerge as a joint

structure is used to effect monopolies or restraints of trade,² to circumvent or evade the law,³ to avoid the obligations of contract,⁴ or to

venture; once taking on corporate form, adventure arrangements, inimical to corporate rules and statutory regulations, are abortive or supplanted."

¹Stockton, attorney-general v. American Tobacco Co., 55 N.J.Eq. 352 (Ch. 1897), *aff.* 56 N.J.Eq. 847 (E. & A. 1898); Tinker Realty Corporation v. S. C. C. Realty Co., 115 N.J.Eq. 427 (Ch.1934); Speedograph Corporation v. Maier, 92 N.J.Eq. 125 (Ch. 1920); McCarter, attorney-general v. Pitman, Glassboro and Clayton Gas Co., 74 N.J.Eq. 255 (Ch. 1908). It has been held that the president, though the active manager of its affairs, and also a large stockholder, cannot encumber the corporation's property by mortgage without concurrence of the board of directors. Bennett v. Keen, 59 N.J.Eq. 634 (E. & A. 1899). Nor can a director, without authority, execute a lease in the name of the corporation even though he owns most of the stock. Clement v. Young-McShea Amusement Co., 70 N.J.Eq. 677 (E. & A. 1905).

²Stockton, attorney general v. Central Railroad Co., 50 N.J.Eq. 52 (Ch. 1892). Defendant, a New Jersey corporation had leased its road and franchises for 999 years to Port Reading Railroad Co., another New Jersey corporation, which was owned by Port Reading Construction Co. and the construction company was owned, in turn, by Philadelphia and Reading Railroad Co., a Pennsylvania corporation. The latter and the defendant operated parallel lines through the anthracite coal fields of eastern Pennsylvania and both owned and operated through subsidiary companies extensive coal mines in this territory. Chancellor McGill, disregarding the attempted disguise, found the Philadelphia and Reading Railroad Co. to be the true lessee and that these various corporations had not only been created to circumvent the law but to establish a monopoly in anthracite coal which would substantially lessen competition and raise prices to the injury of the public. In declaring the lease void he said (at p. 75): "The misnomer of papers and the use of a nominal entity as nominal lessee does not change the substance of the transaction with which this court deals. * * * It must not be thought that courts are powerless to strip off disguises that are designed to thwart the purposes of the law. The mere suggestion of such a condition is an insult to the intelligence of the judiciary. Whenever such disguises are made apparent they can readily be disrobed. The difficulty is in showing the disguises, not in penetrating them when they appear." By ignoring the entity, restraints of trade have been bared in such industries as petroleum; State v. Standard Oil Co., 49 Ohio St. 137, 30 N.E. 279 (1892); Standard Oil Co. of New Jersey v. United States, 221 U.S. 1 (1911); sugar; People v. North River Sugar Refining Co., 121 N.Y. 582, 24 N.E. 834 (1890); whiskey; Distilling and Cattle Feeding Co. v. People, 156 Ill. 448, 41 N.E. 188 (1895); milk; Ford v. Chicago Milk Shippers Association, 155 Ill 166, 39 N.E. 651 (1895); coal; United States v. Reading Co., 226 U.S. 324 (1912); tobacco; United States v. American Tobacco Co., 221 U.S. 106 (1911); and transportation; Northern Securities Co. v. United States, 193 U.S. 197 (1904). *Cf.* Massie v. Asbestos Brake Co., 95 N.J.Eq. 298 (E.&A. 1923); Meredith v. New Jersey Zinc and Iron Co., 55 N.J.Eq. 211 (Ch. 1897) *aff.* 56 N.J.Eq. 454 (E. & A. 1897) no illegal restraint of trade proved.

³Stockton, attorney general v. Central Railroad Co., *supra*, note 2. Strenuous efforts have been made by the railroads to evade the provisions of the commodities clause of the Hepburn act, 34 U. S. STAT. 584, 585, but the true nature of such corporate schemes was exposed and properly curbed. United States v. Lehigh Valley Railroad Co., 220 U.S. 257 (1911); United States v. Delaware, Lackawanna & Western Railroad Co., 238 U.S. 516 (1915); United States v. Reading Co., 253 U.S. 26 (1920), wherein Justice Clarke said (p. 62: "* * * while the ownership by a railroad company of shares of the capital

accomplish fraudulent or otherwise unconscionable acts.⁵

Where a person, real or artificial, acquires by gift or purchase the entire capital stock of a company, the corporate entity is not thereby

stock of a mining company does not necessarily create an identity of corporate interest between the two such as to render it unlawful under the commodities clause for the railroad company to transport in interstate commerce the products of such mining company, yet where such ownership of stock is resorted to, not for the purpose of participating in the affairs of the corporation in which it is held in a manner normal and usual with stockholders, but for the purpose of making it a mere agent, or instrumentality or department of another company, the courts will look through the forms to the realities of the relation between the companies as if the corporate agency did not exist and will deal with them as the justice of the case may require." Cf. *United States v. Delaware & Hudson Co.*, 213 U.S. 366, 413 (1909). Evasion of statutes prohibiting the granting and receiving of rebates by carriers and shippers has been attempted unsuccessfully. *United States v. Milwaukee Refrigerator Transit Co.*, 142 Fed. 247 (C.C.A., E.D. Wis. 1905). Creation of incorporated social clubs to evade excise laws imposing a tax on the retail sale of liquor has been thwarted by ascertaining the *bona fides* of incorporation. *Commonwealth v. Ewig*, 145 Mass. 121, 13 N.E. 365 (1887); cf. *State v. Essex Club*, 53 N.J.L. 99 (Sup. Ct. 1890).

⁴Where the vendor of a business, having covenanted not to engage in the same business in a restricted area, created a corporation to conduct that business, the corporation as well as the vendor will be enjoined from breaching the contract. *Beal v. Chase*, 31 Mich. 490 (1875); *Kramer v. Old*, 25 S.E. 813, 815 (N.C. 1896) wherein the court held "The three contracting defendants have presumably received the full value of the business sold and which is protected by their own agreement against their own competition, and equity will not allow them, with the price in their pockets, to evade their contract under the thin guise of becoming the chief stockholders in a company organized to do what they cannot lawfully do as individuals." Cf. *Moore & Handley Hardware Co. v. Towers Hardware Co.*, 6 So. 41 (Ala. 1889) in the absence of allegations of fraud with intent to avoid or evade contractual obligations, a corporation will not be enjoined from carrying on the business in which its stockholders covenant not to engage; *Cosmos Dyeing and Printing Works v. Calderini*, 91 N.J.Eq. 378 (Ch. 1920) preliminary injunction denied; *Trenton Potteries Co. v. Oliphant*, 58 N.J.Eq. 507 (E.&A. 1899) reversing 56 N.J.Eq. 680 (Ch. 1898) the corporation was not made a party to the suit but the officers and stockholders who owned a substantial part of the company were enjoined from breaching the contract. An agreement to pay royalties on a mining lease which was transferred to a corporation, has been enforced against the corporation. *Higgins v. California Petroleum & Asphalt Co.*, 81 Pac. 1070 (Cal. 1905).

⁵*Ritz Realty Corporation v. Eypper & Beckmann, Inc.*, 101 N.J.Eq. 403 (Ch. 1927) *aff.* 103 N.J.Eq. 24 (E. & A. 1928); *Morse v. Metropolitan Steamship Co.*, 87 N.J.Eq. 217 (Ch. 1917) modified 88 N.J.Eq. 325 (E. & A. 1917); *Driver v. Smith*, 89 N.J.Eq. 339 (Ch. 1918); *Steitz v. Old Dominion Copper Mining and Smelting Co.*, 89 N.J.Eq. 265 (Ch. 1918); *Mitchell v. United Box Board and Paper Co.*, 72 N.J.Eq. 580 (Ch. 1907). Where financially embarrassed persons, partnerships and corporations have organized corporations to which their assets have been transferred, to place them beyond the reach of creditors, it has sometimes been held that in setting aside such transfers, the corporate veil is pierced but the better authority seems to be that in granting relief the corporate fiction is not interfered with. 17 Col. L. R. 128. Cf. *Terhune v. Hackensack Savings Bank*, 45 N.J.Eq. 344 (E. & A. 1889) affirming

extinguished.⁶ Nor is a parent corporation generally liable for the acts of a wholly owned subsidiary company, it being held, and properly so, that contracts between a subsidiary and third persons are enforceable only against the parties thereto⁷ and that torts committed by the officers or agents of a subsidiary do not render the dominant corporation liable unless the subsidiary is a mere agency or instrumentality of the parent.⁸

Ibid. 565 (1889); *Hull v. Angster*, 107 N.J.Eq. 454 (Ch. 1931); *Bourgeois v. Risley Real Estate Co.*, 82 N.J.Eq. 211 (Ch. 1913); *Sullivan v. International Baking Co.*, 60 N.J.Eq. 80 (Ch. 1900); *Wilkinson v. Bauerle*, 41 N.J.Eq. 635, 645 (E. & A. 1886). The creation of foreign corporations so as to confer jurisdiction upon a Federal court to hear disputed matters, has been condemned. *Lehigh Mining and Manufacturing Co. v. Kelly*, 160 U.S. 327 (1895); *Miller & Lux, Inc. v. East Side Canal & Irrigation Co.*, 211 U.S. 293 (1908); *South-ern Realty Investment Co. v. Walker*, 211 U.S. 603 (1909).

⁶ *Evarts v. Killingsworth Manufacturing Co.*, 20 Conn. 447 (1850); *Rhawn v. Edge Hill Furnace Co.*, 201 Pa. 637, 51 Atl. 360 (1902); *Commonwealth v. Monongahela Bridge Co.*, 64 Atl. 909 (Pa. 1906) holding that the ownership of all the shares by a municipal corporation is no reason for dissolving the company at the instance of the state. A business or manufacturing corporation by owning nearly all the stock of a railroad corporation, does not thereby become the owner of the railroad company's road, franchises or other property. *Ulmer v. Lime Rock Railroad Co.*, 98 Me. 579, 57 Atl. 1001 (1904). The sole stockholder is not individually liable for debts contracted by him in the corporate name. *Louisville Banking Co. v. Eisenman*, 94 Ky. 83, 21 S.W. 531 (1893). Nor is he liable individually for judgments rendered against his corporation. *Tilley v. Coykendall*, 74 N.Y.S. 631 (1902). Actions are properly brought in the name of the corporation and not in the name of the sole shareholder. *Button v. Hoffman*, 61 Wis. 20, 20 N.W. 667 (1884). A creditor's claim by the sole stockholder against his bankrupt corporation is allowed. *Wheeler v. Smith*, 30 Fed. (2d) 59 (C.C.A. 9th 1929); *Haese v. A. R. Demory Investment Co.*, 38 Fed. (2d) 232 (C.C.A. 9th 1930).

⁷ In *Cleveland Trust Co. v. Consolidated Gas, Electric Light & Power Co. of Baltimore*, 55 Fed. (2d) 211 (C.C.A. 4th 1932) modifying 51 Fed. (2d) 566 (D.C. Md. 1931) the court held that it was beyond the power of a court of equity to decree that a mortgage executed by one corporation can create a lien on property owned by a separate corporation the title to which was never vested in the mortgagor. In *Kingston Dry Dock Co. v. Lake Champlain Transportation Co.*, 31 Fed. (2d) 265 (C.C.A. 2d 1929) it was held that libellant making repairs to a vessel owned by the parent corporation upon its order but in the possession of a subsidiary company, could not recover therefor from the subsidiary corporation. In *Fairbanks Morse & Co. v. District Court*, 247 N.W. 203 (Ia. 1933) the court refused to enforce against a parent corporation, a contract of employment made by its subsidiary with plaintiff. *American Cyanamid Co. v. Wilson & Toomer Fertilizer Co.*, 51 Fed. (2d) 665 (C.C.A. 5th 1931); *Majestic Co. v. Orpheum Circuit, Inc.*, 21 Fed. (2d) 720 (C.C.A. 8th 1927); *Pagel, Horton & Co. v. Harmon Paper Co.*, 258 N.Y.S. 168 (1932); 39 A.L.R. 1071. *Contra.* *Marsh Wood Products Co. v. Babcock & Wilcox Co.*, 240 N.W. 392 (Wis. 1932).

⁸ *Berkey v. Third Avenue Railway Co.*, 244 N.Y. 84, 155 N.E. 58 (1926); *General Motors Corporation v. Moffett*, 160 N.E. 878 (Ohio 1927); *Mas v. Nu-Grape Co. of America*, 62 Fed. (2d) 113 (C.C.A. 4th 1932); *Owl Fumigating Corporation v. California Cyanide Co.*, 30 Fed. (2d) 813 (C.C.A. 3d 1929); 50 A.L.R. 611 *cf. Davis v. Alexander*, 269 U.S. 114 (1925). In the following cases it was held that the subsidiary was a mere instrumentality through which the parent corporation operated. *Ross v. Pennsylvania Railroad Co.*, 106 N.J.L. 536 (E. & A. 1930); *Costan v. Manila Electric Co.*, 24 Fed. (2d)

That one person owns or dominates the corporation, however, has made some courts more disposed to look behind the entity and to treat the shareholder as, virtually, the corporation itself.⁹ Why a court should be more willing to lift the veil in the case of a one-man company than where there are many shareholders is an enigma to which there is no satisfactory answer. Such disposition on the part of courts makes for uncertainty in determining the status of those doing business in corporate form.

Even where a corporation is organized for the very purpose of being owned by a single individual, without intervening beneficial interest, it should be accorded the same judicial treatment as one composed of many stockholders. The leading case in favor of carrying out logically the principle that such a corporation should be recognized as a separate entity is *Salomon v. Saloman & Co., Ltd.*¹⁰ There Salomon, a merchant, formed a corporation to take over and conduct his business, the capital being divided into 40,000 shares. Salomon, his wife, his daughter and his four sons subscribed the memorandum of incorporation for one share each. In payment for the transfer of the business to the corporation, Salomon received 20,000 shares and first mortgage debentures to the amount of £10,000. No other shares were ever issued. The company got into difficulties and finally became insolvent. The House of Lords held that, the incorporation being valid, Salomon was protected from individual liability for the company's debts, and further was entitled, as debenture holder, to a preference over other creditors in the distribution of the company's assets. The court rejected the view that Salomon could be regarded for some purposes as though he were conducting the business under the alias of the corporation, so that its creditors would be his creditors and so that he could not be permitted to prove against the assets in competition with his own creditors.¹¹

The corporation is often used as a repository for the real estate of its principal stockholder. Even though he treats the property thereafter as his own without regard to corporate forms, the title is held to be in the corporation and not in its shareholder.¹² It is not unusual for

383 (C.C.A. 2d 1928); *Detroit Motor Appliance Co. v. General Motors Corporation*, 5 Fed. Supp. 27 (D.C. E.D. Ill. 1933); *Industrial Research Corporation v. General Motors Corporation*, 29 Fed. (2d) 623 (D.C. N.D. Ohio 1928).

⁹ *Grand Valley Irrigation Co. v. Fruita Improvement Co.*, 86 Pac. 324 (Colo. 1906); *Central Vermont Railway Co. v. Southern New England Railroad Corp.*, 1 Fed. Supp. 1004 (D.C. Mass. 1932).

¹⁰ (1897) A.C. 22.

¹¹ *In accord.* *Alexander v. Cosden Pipe Line Co.*, 63 Fed. (2d) 663 (C.C.A. 10th 1933); *Oldham v. Chicago & Northwestern Railway Co.*, 52 Fed. (2d) 111 (C.C.A. 8th 1931); *Texas Co. of Mexico v. Roos*, 43 Fed. (2d) 1 (C.C.A. 5th 1930); *Finn v. George T. Mickle Lumber Co.*, 41 Fed. (2d) 676 (C.C.A. 9th 1930); *In re Watertown Paper Co.*, 169 Fed. 252 (C.C.A. 2d 1909). *Cf.* *Rapid Transit Subway Construction Co. v. City of New York*, 259 N.Y. 472, 182 N.E. 145 (1932). *Contra.* *Central Vermont Railway Co. v. Southern New England Railroad Corp.*, 1 Fed. Supp. 1004, *supra*, note 7.

¹² *Irvine Co. v. Bond*, 74 Fed. 849 (S.D. Cal. 1896); *Fox v. Robbins*, 70 S.W. 597 (Tex. 1902).

the sole stockholder who deals with the assets of his company without regard to its separate existence, to attempt to devise by will property of the corporation as though title were in himself. Where a court is called upon to construe such a will it must adopt either of two courses: one, that since he had elected to secure the benefits resulting from incorporation, the testator cannot object to the enforcement of his rights as a shareholder in the corporation; the other, that having dealt with the property as his own, the corporate entity should be ignored to effectuate the testator's intention. In *Fidelity Union Trust Co. v. Vander Roest*,¹³ the testator, having created a corporation to which two parcels of land owned by him had been conveyed, thereafter made his will whereby he devised to his son one of the properties, title to which was in the corporation both at the time of making his will and at his death. The court refused to ignore the corporate entity, giving as its reason that to do otherwise would be restoring to the testator's intention as a substitute for the requirements of law for transferring title to real property. Again in *Schwartz v. Gertwagen Realty Corporation*,¹⁴ the problem was before the court. In this case the testator conveyed property already specifically devised by his will, to a wholly owned company which held title thereto at the time of his death. The court held that the conveyance to the corporation adeemed the devise, thus rejecting the charge that the testator was the corporation. While the court found itself able to effectuate the testator's intention in the former case¹⁵ but

¹³ 113 N.J.Eq. 368 (Ch. 1933).

¹⁴ 114 N.J.Eq. 428 (Ch. 1933).

¹⁵ The court found that since the testator had directed his trustee to hold his residuary estate, including the stock of the corporation, in trust, his intention could be effectuated either by having the trustee as stockholder direct a conveyance by the corporation to the devisee, or by dissolving the corporation in which case the trustee as stockholder would receive the assets, and thereafter having the trustee convey the property to the devisee; and it was so decreed. That courts of equity will effectuate wherever possible the testators intention is to be expected. In *In re Buslis Estate*, 209 N.Y.S. 776 (1925) the testator devised two hundred shares of preferred stock of M corporation to X, the stock being registered at the time of his death in the name of C corporation and held by it. The testator was the owner of all the stock of C corporation. The court construed the gift as if the testator had directed his executors to dissolve C corporation and then transfer the designated shares to X. In *In re Cartledge's Estate*, 192 N.Y.S. 838 (1922) *aff.* 197 N.Y.S. 902, *aff.* 236 N.Y. 515, 142 N.E. 265, held that where testatrix devised real property, title to which was in a corporation, a substantial part of whose stock she owned, she intended a gift of the stock of the corporation which held title to the real estate. In *In re Friedman*, 164 N.Y.S. 892 (1917) the court held that since the charter of the corporation had expired before testator's death so as to vest title to its property in the directors as trustees for stockholders, a devise by the sole stockholder of its property was effective to pass title to the beneficiary. In the case at bar, however, there were two properties title to which were in the corporation but only one was devised. By what power can a court of equity direct the dissolution of a corporation when the testator has not devised all of its assets? Can it be said the testator intended that the corporation be dissolved? If he had so intended, it seems logical that he would have made a

not in the latter, it is submitted that both are properly decided with respect to upholding the entity theory.¹⁶

How far courts will go in holding a one-man company and its stockholder to be one and the same, is illustrated by the case of *White v. Evans*.¹⁷ Evans insured a building owned by him against loss by fire, receiving a policy which contained the usual alienation clause;¹⁸ thereafter he conveyed the premises to a trust company as trustee which, more than two months later, conveyed the same premises to W. C. Evans Company, a New Jersey corporation, of which Evans owned all but two qualifying shares; no notice of change in interest had been received by the insurer down to the date of the fire. Did the conveyances from Evans to the trustee and by the trustee to the corporation effect such a change in interest as to avoid the policy? The court reasoned that even though legal title to the property was in the corporation, the substantial beneficial ownership was, in equity, for corporate purposes in Evans, and, held that the insurance company should not escape liability under the policy by reason of the transfer, especially since the hazard had not increased, nor the interest of Evans in the protection of the property diminished, as the entire loss would fall on him.¹⁹ This is a startling decision not only because the entity is unceremoniously brushed aside without one of the exceptions already mentioned²⁰ but also because it implies that equity will grant relief to the negligent. The alienation clause is inserted in fire insurance policies for the protection of the insurance company.²¹ Insurers have a right to know with whom they are contracting in order to determine whether the applicant is a satisfactory moral and financial risk.²² No new party can be introduced

disposition of the other property, if not specifically, at least to his trustee. This case appears to carry the doctrine very far, for if there was no intent that the corporation be dissolved, the court has no power to direct its dissolution.

¹⁶ *In accord.* *In re Brown's Executor*, 226 N.Y.S. 1 (1927) modified 232 N.Y.S. 371, modified 252 N.Y. 366, 169 N.E. 612 (1930); *In re Langdon's Estate*, 248 N.Y.S. 146 (1931). *Cf. In re Gerbereux' Will*, 266 N.Y.S. 134 (1933). *Contra. In re Winburn's Will*, 240 N.Y.S. 208 (1930); *In re Currier's Estate*, 245 N.Y.S. 703 (1930).

¹⁷ 115 N.J.Eq. 177 (Ch. 1934).

¹⁸ The clause provided as follows: "The entire policy * * * shall be void * * * if any change other than by death of an insured takes place in the interest, title or possession of the subject of insurance (except change of occupants without increase of hazard) whether by legal process or judgment or by voluntary act of the insured or otherwise * * *"

¹⁹ Much reliance is placed by the court on *Evans v. The London Assurance Corp.*, 107 N.J.L. 183 (E. & A. 1930), but that case stands merely for the proposition that where an option, as distinguished from a contract of sale, is given, the vendee of other real estate, to turn over the insured premises to the vendor at a specified valuation or to pay the amount thereof in cash, it does not amount to a change in interest for the insured has incurred no obligation to convey the property.

²⁰ *Supra*, notes 2, 3, 4, 5.

²¹ RICHARDS, INSURANCE LAW (3d ed.) ch. XIII, and cases cited therein.

²² What amounts to the introduction of a new party has long been a subject of judicial concern. It is held that where the insured are joint owners of prop-

into the contract without their consent. It must be borne in mind, however, that provisions in the policy which tend to effect a forfeiture, should be construed most strongly against the insurer.²³ The company, having insured property owned by Evans individually, should be entitled to know that it is now contracting with him not individually but as a corporation. The insurer intended to contract with the individual; it cannot be presumed that it intended to contract with Evans in corporate form. In the corporate form he is vastly different from Evans as an individual; his financial liability is limited, perhaps to the extent that he is no longer a desirable risk. Furthermore, the property covered by the policy was at the disposal of the three directors of the corporation, and even though dummies, the two other than Evans might so deal with it as to enhance the burden assumed by the insurer. Why the court should have brushed aside the fiction in the case of this one-man company is not satisfactorily explained by the decision.²⁴ It is to be hoped that our courts will not find it necessary to follow this doctrine as it makes for uncertainty in the legal status of this type of corporation.

NOTICE TO TERMINATE UNCERTAIN TENANCIES IN NEW JERSEY—
The doctrine of notice to quit has been recognized ever since the time of Henry VIII, and is recorded in the year books, as well as the early English Reports.¹ A perusal of these shows that the ancient rule of

erty, as in the case of partners, a transfer from one to another or the withdrawal of one without the introduction of another party, does not amount to a violation of the alienation clause. *Loeb v. Fireman's Insurance Co.*, 77 N.Y.S. 106 (1902); *Walradt v. Phoenix Insurance Co.*, 136 N.Y. 375, 32 N.E. 1063 (1893). This conclusion rests upon the ground that, the company having exhibited its willingness to grant insurance to all those named in the policy, a mere shifting of interest among them should not be regarded as objectionable by the company. RICHARDS, INSURANCE, *supra*, note 21, p. 350; JOYCE, THE LAW OF INSURANCE (2d ed.) p. 3914 *et seq.* But a partner selling out to an incoming member or a new partner being brought into the firm does amount to a change in interest. *Drennen v. London Assurance Co.*, 20 Fed. 657, reversed 113 U.S. 51 *aff.* 116 U.S. 461 (1886); see also 18 L.R.A. (N.S.) 482.

²³ *Precipio v. Insurance Co. of Pennsylvania*, 103 N.J.L. 589 (E. & A. 1927); *Hampton v. Hartford Fire Insurance Co.*, 65 N.J.L. 265 (E. & A. 1900); *Jersey City Insurance Co. v. Carson*, 44 N.J.L. 210 (E. & A. 1882).

²⁴ It is further submitted that since the trustee to whom Evans conveyed the premises retained legal title thereto for over two months, the presumption should arise that Evans did not originally intend to use the trustee as a mere conduit but that he intended the trustee to hold the property upon an express trust. The use of a corporation to hold the farm would then be a subsequent development. If this presumption was not rebutted, it would be sufficient to avoid the policy.

¹ 13 Hen. 8, 15b. See *Right v. Darby*, 1 T.R. 159, 99 Eng. Rep. 1029 (1786); *Doe v. Watts*, 7 T.R. 83, 85; *Doe v. Daggett*, 2 Bl. Rep. 1224; *Ellis v. Paige*, 2 Pick. Rep. 71; 2 BL. COM. 147; 4 KENT'S COM. (1st Ed.) 110; ADAMS ON EJECTMENT (Ed. of 1821) 103; *Ibid.* 129; COMYN ON LANDLORD AND TENANT BY CHILTON (2d Ed.) 303; *Brown v. Van Horne*, 1 Bin. Rep. 334, in note.