



---

1940

## Limitation of Action Waiver by Corporation Footnotes

North Dakota State Bar Association

Follow this and additional works at: <https://commons.und.edu/ndlr>



Part of the [Law Commons](#)

---

### Recommended Citation

North Dakota State Bar Association (1940) "Limitation of Action Waiver by Corporation Footnotes," *North Dakota Law Review*: Vol. 17 : No. 12 , Article 4.

Available at: <https://commons.und.edu/ndlr/vol17/iss12/4>

This Note is brought to you for free and open access by the School of Law at UND Scholarly Commons. It has been accepted for inclusion in North Dakota Law Review by an authorized editor of UND Scholarly Commons. For more information, please contact [und.common@library.und.edu](mailto:und.common@library.und.edu).

LIMITATION OF ACTION WAIVER BY CORPORATION  
FOOTNOTES

1 Western Union Tel. Co. v. Baltimore etc. Tel. Co., 26 Fed. 55 (1885).

2 Kelly Asphalt Block Co. v. Brooklyn Asphalt Co., 180 N. Y. Supp. 805 (1920). No recovery could be had even if the president was the owner of all the stock of the corporation receiving the payment, and where such ownership was known to all of them.

3 Ibid.

4 Indiana Flooring Co. v. District Nat. Bank, 280 Fed. 522 (1922).

5 Fletcher, Cyc. Corps. (Perm. Ed.) § 488.

6 Ibid.

7 Kennedy v. Mutual Life Insurance Co. of Baltimore, 162 Md. 340, 159 Atl. 780 (Code Pub. Gen. Laws 1924 Act 57 § 1).

8 E. D. Morgan & Co. v. Merchants National Bank of Memphis, 81 Tenn. (Lea) 234 (1884).

9 Fletcher, Cy. Copps. (Perm. Ed.) § 618

10 Wash. Sav. Bank et al. v. Bucher's & Drovers 'et al., 107 Mo. 133, 17 S. W. 644 (1891).

11 Wells, Fargo v. Enright et al. and Commercial and Savings Bank of San Jose, 49 L. R. A. 647 (1900). An agreement not to plead the statute of limitations is not against public policy.

12 E. D. Morgan & Co. v. Merchants National Bank of Memphis, 81 Tenn. (Lea) 234 (1884).

13 Phillip Carey Mfg. Co. v. Dean, 287 U. S. 623, 53 S. Ct. 78, 77 L. Ed. 541 58 F. (2d) 737 (1932). And when the president and comptroller have this authority they may delegate it to the secretary to execute a waiver for them.

14 Piedmont Wagon & Mfg. Co. v. U. S., 6 F. Supp. 125 (1934).

15 Hammond v. Carthage Sulfite and Paper Co., 34 F. (2d) 155 (1928).

16 Note in 63 L. R. A. 193.

17 Abenakis Spring Co. v. Chabonneau, 34 Que. K. B. 402.

18 Kelly Asphalt Co. v. Brooklyn Asphalt Co., 180 N. Y. Supp. 805 (1920).

19 Cannel Coal Co. v. Luna, 144 S. W. 721 (Tex. 1912).

20 Jones v. Hughes, (1850) 5 Exch. 104, IX Mew's Digest 131.

21 *W. J. Hein v. Geavelle Farmers Elev. Co.*, 78 A. L. R. 631 (1931). Here the directors owned most of the notes, and the corporation was insolvent at the time the part payment was made just for the purpose of reviving the claim on the notes.

22 *Fletcher, Cyc. Corps.* (Perm. Ed.) § 549.

23 *Wych v. East India Co.*, (1734) 24 Eng. Rep. 1078, IX *Mew's Digest* 39.

24 *Allen v. Smith*, 129 U. S. 465, 9 S. Ct. 338, 32 L. Ed. 732 (1889).

25 *In re Sheppard's Estate*, 180 Pa. 57, 36 Atl. 422 (1897).

26 *Brookfield Nat. Bank v. Kimble et al.*, 76 Ind. 195 (1877).

27 *Cheshire v. Parker*, 207 N. C. 364, 177 S. E. 21 (1934).

28 *Waite et al. v. McKee*, 95 Ark. 124, 128 S. W. 1028 (1910).

29 7 R. C. L. 510.

30 *Johnson v. Albany & Susquehanna R. R. Co.*, 54 N. Y. 416 (1873).

31 *Campbell v. Holt*, 115 U. S. 620, 6 S. Ct. 209, 29 L. Ed. 483 (1885).

32 41 A. L. R. 925.

---

### OUR SUPREME COURT HOLDS

*In the North Dakota Mill & Elevator Assn., Pltf. and Applt., vs. Hartford Steam Boiler Inspec. & Ins. Co., Deft. and Respt.*

That the Industrial Commission of the State of North Dakota consisting of the Governor, the Attorney General and the Commissioner of Agriculture and Labor of the State of North Dakota, is a state agency charged with the operation, management and control of The North Dakota Mill and Elevator Association. Pursuant to the statute (chap. 191, S. L. 1933) "all orders, rules, regulations, by-laws and written contracts adopted or authorized by the Commission shall, before becoming effective, be approved by the Governor, as chairman, and shall not be in force unless approved and signed by him," and (chap. 193, S. L. 1933) " \* \* Title to property pertaining to the operation of the Association shall be obtained and conveyed in the name of 'The State of North Dakota, doing business as the North Dakota Mill and Elevator Association.' Written instruments shall be executed in the name of the State of North Dakota, signed by any two members of the Industrial Commission, of whom the Governor shall be one \* \*." The Commission at a meeting held on April 26, 1939, on motion of one of the members thereof, un-animously resolved to cancel and terminate certain policies of insurance then in force covering property of the Association. The minutes of the meeting showing the action thus taken were signed by the Governor and the other two members of the Commission. The insurance company with which the policies were written, refused to repay the unearned premium in the amount claimed and demanded by the Commission, whereupon suit to recover the same was instituted. On the trial evidence tending to show that written action of the Commission cancelling the policies of insurance was given to the company by the secretary of the Commission and the policies surrendered for cancellation and that the company waived any objection on account of irregularity or insufficiency in the notice of cancellation or in the manner and method of the surrender of the policies, was offered and ruled inadmissible on the ground that the policies could not be cancelled under the pro-