Corporations Private and Public an Attempt to Define Their Duties and Their Liabilities

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AN ATTEMPT TO DEFINE THEIR DUTIES AND THEIR LIABILITIES

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CORPORATIONS PRIVATE AND PUBLIC

An Attempt to Define
Their Duties and Their Liabilities.

The corporation has been variously characterized:
"A body created by law composed of several persons under a special denomination, with the capacity of continuous succession and of acting in many respects as an individual, always maintaining its identity, and possessing, however long its duration, the same rights, privileges, duties, and liabilities" (Waterman on Corporations, p. 3, Sec. 2, Ed. 1888).

In the Dartmouth College Case, 1 Wheat. 635, Chief Justice Marshall defines a corporation as an artificial being, invisible, intangible, and existing wholly in contemplation of law. Being a mere creature of the law, it possesses only those properties which the charter of its creation confers upon it, either expressly or as incidental to its very existence. These are such as are supposed best calculated to effect the object for which it is created.
Among the most important are immortality; and if the expression may be allowed, individuality; properties by which a perpetual succession of many persons are considered as the same, and may act as a single individual.

They enable a corporation to manage its own affairs, and to hold property, without the perplexing intricacies and hazardous and endless necessity of perpetual conveniences for the purpose of transmitting it from hand to hand. It is chiefly for the purpose of clothing bodies of men in succession with these qualities and capacities, that corporations were invented and are in use. By these means of perpetual succession of individuals is capable of acting for the promotion of the particular object, like one immortal being.

Angell and Ames (Sec. 1, Ed. 1882) define a corporation as a body created by law, composed of individuals united under a common name, the members of which succeed each other so that the body continues the same, notwithstanding the change of individuals who compose it, and is for certain purposes, considered as a natural person.

Enough has been said, perhaps, to show that a corporation is something of an abstract nature, having a met-
aphysical existence only, and therefore not tangible, visible, or the object of any of the senses.

It is a body of persons combined for the purpose of entering into contractual business or non-business relations, and is created by law, either by special or general legislation. The principal object of forming corporations is to relieve from each distinct person connected therewith the personal responsibility of a common law partnership and to thereby enable a large body of persons to act as one individual.

Being a "legal entity", a corporation is according to most legal writers, supposed to be subjected to all the rules of law and all the legal restrictions and limitations, to which an individual is subjected. This is not the case, however. There are many important qualifications in connection with a variety of circumstances which usually entail legal obligations on individuals, but which do not always result the same way on a corporation. Corporations are usually classified as private corporations and public, or municipal, corporations.

Morawetz, in his work on corporations says:— "Cor-
porations almost invariably act through agents. There are few acts which a corporation aggregate can possibly perform without the intervention of an agency of some kind. This is one of the most common and the most important obligations of a corporation of either class in relation to third parties.

It becomes more and more difficult each year to apply the established and fixed rules of the law of agency which apply to individuals, to the large class of cases which arise out of representations made by officials and agents of corporations when dealing with third parties, and this is especially the case with private corporations.

When one considers the vast increase in the number of corporations during recent years, the importance of the difficulty will be readily seen.

It must be remembered that each corporation becomes a new individual, as it were, with new powers, rights, interests and obligations; that these interests are not the interests of one individual alone, but the interests of as many individuals as compose it. It then becomes a question of how to hold this same powerful aggregation
to its obligations and to the proper use of its "rights
and powers".

It is estimated by conservative writers that the
number of corporations in existence in the United States
is upwards of one hundred and seventy-five thousand. Su-
perintendents, managers, agents and trustees administer
this vast aggregate of capital, and for the purpose of in-
ducing a bargain for the gain of some right or franchise,
or making credit, there often exist a great temptation
to exaggerate wittingly or unwittingly, the position and
financial responsibility of the company, or an almost
criminal neglect to make known, so far as it effects
third parties, the whole truth.

The representations which we will consider as tend-
ing to fix the obligations of a company as principal are
(a) representations amounting to fraud, and (b) those not
amounting to fraud, which have however distinct legal
consequences separate and apart from any kind of warrant;
meaning here statements made and inducements held out to
third parties to advance capital, further credit, or oth-
erwise change position as to property for the benefit of
the company.

Fraud is present if a representation is such as to be an unequivocal assertion of a falsehood which is known, the withholding of some facts or the suppression of the truth. It may be thought that the well known rules of law relative to fraud would be as applicable to a corporation as to an individual. There are, however, important qualifications.

To hold the company, the agency must exist and the agent must have acted within the scope of his authority when the fraud is brought to the knowledge of the company. At this point the rules are not strictly adhered to by the courts, and great confusion and uncertainty often arises from the departure.

Leaving the cases which amount to fraud, and passing to cases in which the representations do not amount to fraud, it is well to observe that a careful distinction should be made between such representations and warranty. The representations made are but incidental statements leading to a contract where a warranty is a part of a contract, and the burden of proving the untruthfulness of a representation, if any, is usually on the defendant.
It is not necessary that the representations need be strictly and literally complied with, but only in material points, whereas in cases of warranty the question of materiality does not arise.

This now brings us to the question of the authority of the agent to act for the company, whereby the representations of one so acting or purporting so to act shall operate to fasten the legal consequences upon the company.

Where one deals with an individual who purports to act as the agent of another, it is necessary to first satisfy yourself that the agency really exists, as otherwise you presume the authority of the agent at your own peril, so far as holding the principal is concerned. No person can be held liable on a contract of one assuming to act in his behalf unless he has actually or constructively authorized the agency or in some way thereafter ratified the act. The law does not presume the existence of any agency, but these are facts which have to be proved. In a reported case the court in substance says: "The existence of an agent's authority is purely a question of fact. What the agent may do by virtue of his commission
is a question of law".

Where one is dealing with the agent of an individual it is a comparatively simple matter to determine the responsibility of the principal and the extent of the agent's authority. Where the principal is a corporation this, however, is not so.

A board of directors is chosen from among the stockholders. To this board is delegated the entire management of the powers granted to the corporation under its charter, and to these powers other powers are often imposed by the operation of law. Usually in turn, the board of directors delegate their functions to the executive committee of one or more persons. To this executive committee in turn is granted the power to nominate the superintendent or acting manager. This superintendent may or may not be a stockholder in the corporation. He it is however who in the large majority of corporations manages and actually controls the entire assets and makes all the contracts for the company.
This delegation of powers sometimes is and sometimes is not made a matter of record on the company's books, but even if it is, the books are not accessible to a stranger as they are the private property of the company. The books of a corporation are public with respect to its members, but private with respect to strangers. If, therefore an inspection is wanted by a stranger, it can only be obtained by a bill of discovery through the aid of a court of equity.

Hence if a third party be wrongly informed as to the authority of an agent by the agent himself, or by the manager or other officer who may at the same time be the agent, he must depend upon subsequent ratification or the equitable doctrine of estoppel in pais, as the case may be.

The chance then in dealing with a corporation through its agents or officers is,

A. That the authority of an agent cannot be ascertained and fixed, so as to hold the corporation as principal at the time of the transaction.

B. That the corporation may fail to ratify such
authority if such authority is not fixed.

C. That it may refuse to take advantage of the agent's unauthorized act and thereby have no ground for estoppel in fact.

D. That it may not involved in the legal position which would constitute estoppel in law.

E. If it were possible that all these elements were present, to sustain the rights of third parties against the agent's lack of authority, the corporation might yet have acted "ultra vires" and defeat the whole transaction in favor of a class; for instance, antecedent creditors.

The rules of agency will not apply to protect a third party to this situation. No rule or method is established whereby, apart from other circumstances, a company must fix upon itself, or repudiate the authority of an agent in advance of a transaction, or give information leading to the same. Nor is there any authority to compel the corporation to ratify after it has withheld information as to its principalship, or when the corporation has given wrong information through its agents. This does not of course include that class of cases where a
corporation is bound by allowing its agents to habitually act in the same capacity without protest, or in the regular course of business and within the scope of authority.

A company cannot be compelled to take advantage of an agent's unauthorized act and place itself under obligation by estoppel in fact.

We now come to the doctrine of "ultra vires" behind which great corporations, or creditors on their own behalf, entrap the laws of agency and circumvent the courts.

This doctrine of "ultra vires" is a comparatively new legal invention. We are told by Bryce that it originated about the year 1850. Some courts tell us that this doctrine of estoppel is applied only for the purpose of compelling corporations to be honest.

The defense of "ultra vires" cannot be set up against a person who has entered into contractual relations with a corporation when such person had no notice of such want of authority, and to prevent confusion and disorder courts have refused to recognize this doctrine in transfers of real property.

The plea of "ultra vires" should not, as a general
rule, prevail, whether interposed for or against a corporation, when it would not advance justice, but on the contrary would accomplish a legal wrong.

The doctrine of "ultra vires" being still in its infancy the courts are more or less muddled and the reports and text books show a real and confusing conflict of authority.

There is no implied authority in a corporation to engage in a business outside of the particular business it was chartered to carry on. Thus it has been held that a railroad company cannot become a steamboat company or carry on a brewery. So a corporation chartered to dock and repair vessels cannot engage in the owning and navigating of ships, that being outside of and not authorized by its charter, i.e. "ultra vires".

Public policy demands that a corporation should be punctual in recognising and faithful in discharging every one of its public and private obligations. It is of greater importance, however, that its powers should be known than that they should be limited in number or restricted in scope. To remove doubt and uncertainty many
of the states require a complete and full exposition of all the rights and powers that the company expect to enjoy to be filed as a part of the incorporation articles with the Secretary of State, or other proper official.

Some states also require that an annual or semi-annual report of the financial status of the business and lists of the stock-holders, with their names and addresses be filed, as it has been urged that corporations should also be obliged to file copies of their bylaws and any other papers which might enable the public, or those concerned to have more authentic knowledge of the body with whom they are dealing. On the other hand this legislation is denounced as inquisitorial and prejudicial to the business interests of a corporation, allowing, it is said, competitors to pry into the private matters of the corporation, and that it is against the general policy of our government.

We next turn to the subject of municipal or public corporations.

In order to understand the basis upon which the obligations of such a corporation rest, and the circumstances
from which they arise, it is necessary to look for a moment at the organic existence of such a corporation, its powers, whether inherent or granted, its rights and duties and lastly the liabilities and obligations.

Morawetz on Corporations says:—"Public or municipal corporations are not associations, but are subdivisions of the state. The charter of such a corporation is not a contract between the corporators and the state, nor between the corporators themselves. The effect of an act of the legislature incorporating a municipality is to vest in the voters residing in the certain district of the state, powers of local government over all the inhabitants of that district. Such an act, strictly speaking, confers powers which did not exist before; it confers upon the majority of the voters and upon the government officers of the municipality, the powers of levying taxes and of passing local laws without the previous consent of the people of the district. The majority of the voters at the municipal elections, and the municipal authorities have the power to bind the inhabitants of the municipality by their acts, solely because the power was conferred
by the legislature."

A corporation is private as distinguished from public, unless the whole interest belongs to the government or the corporation is created for the administration of political or municipal powers.

A state is not included in the term "corporation". Municipal corporations proper are called into existence either at the direct solicitation or by the free consent of the persons who compose them.

Counties on the other hand, are local subdivisions of the state, created by the sovereign power of the state of its own sovereign will, without particular solicitation, consent, or concurrent action of the people who inhabit them.

A municipal organization is asked for, or at least assented to, by the people it embraces; counties are superimposed by a sovereign and paramount authority.

A municipal corporation proper is created mainly for the interest, advantage and convenience of the locality and its people; a county organization is created almost exclusively with a view to the policy of the state at large, for purposes of political organization and civil administration.
Public and private corporations both get their life from the great fountain head -- the King -- or with us the legislature. The powers of a corporation are those, and those only which expressly or impliedly are given to it by its charter or act of incorporation. No body politic or association of individuals for public purpose has a right to segregate itself or as a body acting for all the inhabitants of any division of territory, make any regulations, or assume any financial obligations, or incur any indebtedness except by express power granted by the state.

In order to establish the existence of a corporation, it is, as a rule, necessary to show the adoption of a charter or article of association, and that the corporation has held itself out to the world as such.

If the law provides that corporation may be formed upon the subsequent compliance with prescribed regulations and forms, some of those regulations and forms must have been observed though others have been omitted.

Any organization whatever means an expense which must be borne by the individuals comprising it. The
question of taxation and the power to tax then first a-
rises; and such organization itself becoming a legal per-
son, is itself a part of a great organization to which
it must contribute its share of support.

The power to which it owes its first duty is also
the power which grants it its legal existence, and can
take away its life. This is especially true in England,
where any corporation, either public or private, may be
dissolved by act of Parliament, but the Constitution of
the United States has limited this authority by saying
that although the charter of a public corporation may be
altered or repealed at pleasure the charter of a private
corporation, whether granted by the King of Great Britain
previous to the Revolution or by the legislature of any
state since, is unless in the latter case expres power
be for the purpose reserved, within the protection of
that clause of the Constitution of the United States
which provides among other things that no state may pass
any law impairing the obligation of contracts.

There is another class of corporations which might at
first appear to be without the sovereign power of crea-
tion, but which nevertheless by a fiction of law are
brought within the paternal care of the state. This is a class of corporations known as corporations by prescription. But only public corporations may exist by prescription and no such rule exists in favor of a private corporation.

If the acts or proceedings of a company or association, of however long standing, consist only of such acts as it is competent for individuals to perform without an incorporating act, a grant of such an act will not be inferred.

The fiction of law upon which this doctrine of prescription rests in favor of municipal corporations is that the corporation is so old that the license or charter which created it is lost, and that from long continued exercise of corporate powers the municipality is entitled to a franchise.

But every corporation public, private, aggregate or civil, eleemosynary, ecclesiastical, lay or sole enjoys the rights and powers incidental to the general limitations of its charter, and which in themselves imply the vast duties which there assumption compels. In general
they have:

First, the power of perpetual succession, and as one writer puts it, "Except in the case of simple stock corporations," the admission and removal of members for cause.

Second, the power to sue and be sued.

Third, to grant and receive grants and do all acts which it may do at all in its corporate name.

Fourth, to purchase, receive and hold lands and other property, and to transmit such property in succession.

Fifth, to have a common seal and to change, alter or renew the same at pleasure.

Sixth, to make by law for its government, so that they may be consistent with the charter and with the law.

Various states have statutes restricting somewhat these privileges and highly systematizing their corporation laws, and this is especially true in the state of New York.

It is, however, as a rule, the privilege of every corporation within the limits of the charter, whether express or implied, to do every act and enter into every obligation appropriate to the end for which the corpora-
tion was formed.

The objects of a public corporation are of such a nature, affecting so many public interests of general importance, regulating the property and lives of the citizens, protecting the family which is the foundation of the state, and the local guard of progress and civilization, that great powers are granted and implied as the appropriate means to a great end.

In addition to the powers above recited which are generally bestowed upon corporations, public corporations have the great powers of taxation and police. It is in the exercise of these powers that the great liabilities and obligations arise to which there attach the peculiar importance of the welfare of a community and its usefulness as a component part of our national life.

It is in the matter of taxation and police power that municipal corporations differ materially from private corporations.

Judicious expenditure means judicious taxation. Judicious taxation fosters judicious expenditures, and careful police regulations in the broad sense of that term, goes hand in hand with judicious taxation and econ-
City charters usually grant full power and authority over all matters of police, and also the power to establish ordinances for the good government, welfare and harmony of the community. These words are usually broadly construed by the court and allow the municipality much freedom, the courts holding that the great object of a city is to preserve the health and promote the general welfare of the people.

It allows a municipal corporation to regulate the manner of carrying on trade within the municipality, so far as to ensure proper conduct in those who practise it within its jurisdiction.

Municipal charters usually prescribe the mode of enforcing these ordinances and where that mode is prescribed it must be pursued.

If however, the mode or form of action is not prescribed, then the recovery of the penalty or fine for the violation of a municipal ordinance may be, as at common law, either by an act of "debt" or "assumpsit", or where these forms are abrogated, by a civil action in
In some states the recovery of a penalty for the violation of a municipal ordinance was regarded as a criminal, or at least a quasi-criminal, proceeding. But generally the action is a civil one, and the rules of civil procedure apply.

We have thus far considered the duty of a corporation to the individual, dealing with it as third party, and the obligations which it expressly assumes, or has thrust upon it.

There is, however, a reverse side, and there are duties and obligations which are peculiar to public corporations only far higher than the financial or legal obligations merely, and which are quite as essential from a public point of view; the relations of the individuals composing the body corporate to each other and to the corporation.

In a private corporation the members all become a part thereof of their own free will and by mutual contract. Those desirous of forming such a body voluntarily associate themselves together and file a certificate to
that effect, determine how much each shall contribute to
the enterprise, and if any or all become dissatisfied,
they may withdraw at pleasure.

While their corporate relations exist they have to
observe their financial and fair business dealings with
their fellow incorporators, and self interest and simple
business honesty can be said to be the measure of their
obligations. It is in a word only a matter of dollars
and cents.

Not so the public corporation. Dollars and cents are
the least important of the great objects its members
seek.

Individual liberty, social freedom, protection of
the person, maintenance of good order, and undisturbed
enjoyment of life and property are the objects for which
they have incorporated. The associate into a body corpo-
rate for that purpose, however, is not by voluntary agree-
ment and contract between the individuals composing such
corporate body, but at the request, and usually by the
will, of the majority of the residents who seek to have
powers chartered to their community by the state, as a
sort of conquest, to which there often is a dissenting
minority, powerless to withdraw at pleasure yet subject to taxation, restraint, or such other burdens as the majority may impose.

This majority then becomes the conservators of the powers of the corporation, which in turn makes them the conservators of the rights of the minority thereby raising an obligation which is only measured by the high trust imposed, and for the preservation of these inalienable rights the law has established ample safeguards in the great state writs of mandamus, certiorari and habeas corpus.

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