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The Formation and Organization of a Corporation

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THE FORMATION AND ORGANIZATION OF A CORPORATION.

BY

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The distinctive characteristics which mark the advance of civilization, are its business interests and state of its commerce. They are almost concurrent, the one being the cause the other an effect. Where a nation or people live in a savage or barbaric state, their business and trading is carried on in the most primitive form; and business relations with a people or nation partly or wholly civilized, is to them comparatively unknown. Nor is it strange; their condition arising from their habits and manner of living is such that they do not require anything which they themselves cannot supply by their own efforts, and thus doing away with the necessity of obtaining, by mutual intercourse, anything which another people more civilized may require for their own edification, improvement, or existence. As they drift voluntarily or involuntarily by some means or causes, perhaps, their own efforts, into a semi-civilized state, their desires and necessities are increased. By observing the use of new things and devices, and by the study of these before
unknown methods of business and social relations, in vogue by the people to whose society they are drifted, they involuntarily, desire and in fact require those things which are characteristic of this new people, and which are actually necessary for them to maintain this new standard of progress and civilization.

History gives us no instance of a whole race drifting back into their former state after once reaching such an advance, but on the contrary, they have become more and more enlightened in every respect, socially, commercially, and in science, and in art, and always continuing to ascend in this respect until some great calamity wholly destroys the race and its institutions.

In the completely civilized people we see constant advancement of everything by every manner of means. Every innate possibility is made to assert itself and every known device or scheme, coupled with knowledge or science is utilized for the still further advancement and to satisfy the necessities, and the desires for comfort of the people who so bring them about. And as these necessities and desires in-
crease so much those things which satisfy them correspondingly increase, and the maxim, "that necessity is the mother of invention" may be well applied to this case.

A person perfectly isolated from society could, perhaps make such use of his ability and ingenuity as his situation affords as to sustain himself during the allotted period. And such forces as he might have which could be applied in society, if not so isolated, are entirely lost, for the want of a place to apply them. All persons being unlike, and each capable of executing something of which others are not yet which would serve all, it is better for both that they be brought in such a position to so apply their efforts for their common good, and make effect permanent and allow their posterity to profit by their action, which would be impossible in the case of isolation. Such an application in a particular line would produce a larger quantity of the particular thing then as is necessary for the use of the producer. The consummation by that person would be entirely to small for the production, and would necessarily leave a large surplus of unconsumed material which the producer must lose,
if a place for its use is not provided. And from these results in so many diverse individuals, naturally spring an exchange or trade between them for those things in the possession of the other, as one cannot live in a community wholly, without the assistance of some kind from others. As a general rule what is necessary for one is required by others in order to maintain himself, he must use their productions. The necessity of material other than one's own is the direct cause of this exchange. As the standard of civilization advances, so it is with their productions, and their wants and desires, also, following directly after or before, correspondingly increase. Thus, manifestly increasing the amount of trade with each other in many diverse branches. The amount of such business being now so great some means must be provided whereby it may be controlled, and serve the purpose of the people who by thrift and industry demand it. Usually a single person of great productive ability has not the tact to introduce or make wide his production, but desires means whereby he can introduce them. Or, perhaps, his pecuniary state prevents such action, and assistance must be obtained.
to further his purpose. By associating himself with persons
of ability or capital or both, of which he is lacking, those
things may be done which would otherwise remain undone and
his business relations commenced. Then after such association
with one or more other persons by some regular prescribed
method we have what is known as a business corporation, brough
about by many of the causes which usually impel such formation
and which serve the community in an innumerable of ways, and
do them an inestimable amount of good. The purposes for which
the corporations are formed are varied and numerous, and can
always be traced to the causes which bring them about, and
the nature of their origin. But the simple act of associating
with other individuals does not constitute them a
corporation or a body politic, nor does it give them any ad-
vantages to which the members of a perfect corporation, and
the body itself are entitled. By association simply, indi-
vidual rights, duties or liabilities are not avoided, the indi-
viduals are morely transformed into a partnership of the
whole, by their own acts, and derive, what benefits the
other members are able to give: and are compelled to share
equally any profit or loss which may be made or incurred by the others wholly by his own acts. And this liability exists as long as the partnership relations continue, notwithstanding, the inability of the other members of the partnership proper to stand the loss nor from the fact that the amount of financial aid one has given the firm which may be wholly out of proportion to his liability to the partnership itself.

A corporation is formed by authority or acts of the sovereign power, and with such rules regulations and restrictions as it may require and authorizes to act as a person in all matters for which it was formed.

Its distinctive characteristics may be seen better by a comparison with the partnership in all its business phases. The partnership is dissolved by a death of a member; the surviving partners are quasi representatives of the deceased as to his interest in the firm assets, which they may reduce to cash and pay therefrom the proper share to the actual personal representatives of the deceased.

A corporation has perpetual succession during its corporate existence; upon the death of the stockholder his
shares of stock vest in his personal representatives; the new stockholder occupies the same relation to the corporation as his predecessor, and the business of the corporation proceeds without jar.

A member of a partnership cannot transfer his interest to an outsider and substitute him in the firm without the consent of all the other members.

A stockholder in a corporation may freely sell his stock and substitute the new stockholder in his place as a member of the corporation without affecting a dissolution of the corporation.

Each member of the partnership is the agent of all the others and may bind the firm to any extent within the general scope of the partnership business. The power of any member to ruin the firm necessitates absolute confidence and absolute numbers.

The stockholders of a corporation as such, have no authority to bind the corporation. Only the duly elected officers or the duly authorized agents of the corporation have such authority." But the main distinction between these two
classes of associations of individuals to which we refer is a liability of the members for the debts of the association to which they belong.

"Each member of a partnership is liable for all firm debts. The common law recognized only associations of individuals, jointly contracting, each responsible upon the joint contract to the extent of his individual assets as fully as if he was sole contractor.

The corporation becomes a new person in the eye of the law, created by statute, and distinct from the persons composing the corporation; the corporation alone may contract and the corporate assets alone may, in the absence of statute variations, be taken for the payment of the corporate debts. In such case the corporate assets are the sole basis of corporate credit, the wealth or poverty of the members of the corporation has nothing to do with the solvency of the corporation.

The individual power which goes with the individual responsibility of each member of a partnership, may enable the single members of the partnership to protect himself against
a combination of all others.

The corporation is based upon the rule of the majority. The officers elected by the requisite majority, rule, and may sometimes "freeze out" the minority." The minor differences between partnerships and corporations are numerous and varied and to which, it will be needless to refer. Perhaps the enterprise which the corporation we now suppose has undertaken, to carry on, is so vast and widespread that it is absolutely impossible for a single person, and even a number of persons, to manage for any length of time in a manner satisfactory to themselves or any one else. A railroad is a very good illustration where a private person would be unequal to the task of being a common carrier such as our railroads are. He might carry, on a small scale, from one single place to another, but he must be wholly unfit to manage such a business in all its details necessary for such a vast concern; not only would the public not trust him but neither could he trust himself. And who, but few scattered exceptions can supply capital to float such an enterprise? They are certainly exceptions and it is a fact that the effect of a con-
trolling interest in our greatest corporations of to-day is widespread. But, yet, we never see the same amount of capital alone invested in a large individual concern. By investing in a corporation it has the advantages set forth in the above comparison of a corporation and a partnership, in which last named association the individual liability of the members of the partnership is the same as that of an individual. But, being a member of the former the individual liability which he otherwise would have is escaped, regardless of the finances of the corporation or other members.

The formation and instituting of corporations in our smaller towns arise from the desire to boom and revive business, and is generally caused by the insufficiency of individual capital to furnish the necessary money to start such an enterprise, and the combining of small capitalists, each risking a little, no one losing much, if in pursuance of their object they fail, and thereby accomplishing their purpose.

But one of the principal parts of a systematic review of this subject has been overlooked. Where and when the idea of a corporation had its origin. It must have been when the
business interests of the people demanded a substitute for individual liability, and something upon which creditors could rely for the payment of debts. Something definite; to which they always could look for satisfaction. It must also have been when the moral and intellectual standard of the people was sufficient to command such business schemes. Of the advanced education of the Romans there is no doubt, neither is there any doubt of their business qualifications, and it is with very much positiveness that Blackstone says, "the honor of originally inventing the political institutions entirely belong to the Romans. They were introduced as Plutarch says by Numa, who finding upon his accession, the city torn to pieces by the two rival factions of Sabines and Romans, thought it a prudent and politic measure to subdivide these two by instituting separate societies of every manner of trade and profession." And to continue in the words of Blackstone "they were afterward much considered by the civil law, in which they were called universititates, as forming one whole out of many individuals: or collegia, from being gathered together; they were adopted also by the canon law, for
maintenance of ecclesiastical discipline: and from them our spiritual corporations are derived." It will be seen that from the foregoing, the original invention of a corporation was not intended at that time, for the widespread purposes for which they are formed today. They seem to have been formed wholly for political purposes and afterwards found to be of good advantage and concern to the ecclesiastical body, who eventually made good use of them for the furtherance of religion. But our laws have considerably refined and improved upon the invention, according to the usual genius of the English nation: particularly with regard to sole corporations, consisting of one person only of which the Roman lawyers had no notion. Although they held that at the time of incorporation the body must consist of at least three persons, they might be reduced to two or even one person and still remain a corporation; while in later English law the corporation could consist of one person at its incipiency. In this sense the king is the sole corporation. He was considered a sole corporation in accordance with the maxim of the British people, "that the king never dies." This sole
corporation is one of the first divisions of corporations, the other subdivision being aggregate, the opposite to sole. And of which I shall speak wholly of hereafter. But of sole corporations, it is necessary to say a word. Their existence in the United States is very rare. In Massachusetts, it has been held that a minister seized of parsonage lands in the right of the parish, is for this purpose a sole corporation. Brunswick v. Dunering, 7 Mass., 447. And even in New York for the purpose of bringing an action against a joint-stock company, it is provided by statute that such actions shall be in the name of some officer, (usually president or treasurer), and in these cases he is deemed a sole corporation. Westott vs. Fargo, 61 N.Y. 542.

All corporations are again divided into public and private, the latter division containing corporations with more innumerable varied objects than all others combined.

Public corporations are such as are established by the government for minor purposes of government, and in fact, are a part of the main institution itself. They are chiefly established for the purposes of governing cities and villages
and are incorporated the names of those places, and all together are collectively termed "municipal corporations".

The other division, private corporation, include all those of a civil or private nature, which exist for the benefit of those particular individuals who compose it. Though it be created as it always is by public authority and though it contributes largely to public advantage, yet it is private though no power is given to it to administer public or municipal authorities.

And another distinction, between public and private corporations. The public or municipal corporation being regarded as an instrument of government for the purpose of executing its will and a simple depository of political power it can be dissolved, and reestablished, divested of the powers which it possesses or re-vested with the same powers and privileges, at the will of the power creating them. But the creation of a private corporation on the other hand, is in the nature of a contract, the power creating it undertaking that the members shall have power and privilege to do or not to do certain things, and they will be protected in pur-
suance of such powers and privileges, and the grant seems to be the express consideration between the members and the incorporating power, for these members becoming incorporated, and subjecting themselves to the liabilities which they by so becoming incorporated incur. And by the provisions in the United States constitution, which prohibits the states from passing any laws impairing the obligation of contract, the acts creating a private corporation cannot be abrogated, essentially altered or impaired, by the annexation of any new terms or conditions to the original charter without the consent or request from its members: and in order to change such creation, some means must have been provided in its original charter or under some law existing at the time when in the corporation took place. And to provide for the effects of this rule, it is sometimes provided by the state constitution that the charters of all private corporations shall be subject to modification or repeal, or a clause must be inserted in the charter itself.

As to the early formation of a corporation, I can neither choose better language and express myself clearer than to use
the words of Blackstone upon that subject. " Corporations by
the civil law seems to have been created by the mere act and
voluntarily association of their members; provided such
convention was not contrary to law, for it was then illicitum
collegium. It does not appear that the princess consent was
necessary to be actually given to the foundation of them;
but merely that the original founders of the voluntarily and
friendly socities, for they were little more than such, should
not establish any meetings in opposition to the laws of the
state. But with us in England, the King's consent is absolute-
ly necessary to the erection of any corporation, impliedly
or expressly given. The king's implied consent is to be
found in corporations which exist by force of the common law
to which our former kings are supposed to have given their
consent and concurrence."

Common law being nothing else but custom, arising from
the universal agreement of the whole community. Of this sort
as the king himself; all bishops, parsons, vicars, church-
wardens, and some others: who by common law have ever been
held as far as our books can show it to have been corporations
virtute officui: and this incorporation is so inseparably annexed to their offices that we cannot form a complete legal idea of any of these persons, but we must also have an idea of a corporation capable to transmit his right to his successors at the same time. Another method of implication whereby the king's consent is presumed is as to all corporations, by prescriptions such as the city of London, and many others which have existed as corporations time whereof the memory of man runneth not to the contrary; and therefore are looked upon in law to be well created. For though the members thereof can show no legal charter of incorporation, yet in cases of such high antiquity the law presumes that there was once one, and that by the variety of accidents which the length of time will produce, the charter is lost or destroyed. The methods by which the king's express consent is expressly given are either by acts of parliament or by a royal charter, by act of parliament, of which royal assent is a necessary ingredient the corporation may undoubtedly created: but it is observable that until late years most of these statutes which are usually cited as having created
corporations do either confirm such as have been before created by the king as in case of the College of Physicians, erected by charter, 10 Henry VIII. which charter was afterwards confirmed in parliament; or they permit the king to erect a corporation in futuro, with such and such powers as in the case of the Bank of England. So that the immediate creative act was usually performed by the King alone, by virtue of his royal prerogative. All the other methods therefore, whereby, corporations exist by the common law, by prescription and by act of Parliament, are for the most part reducable to this of the king's letter patents, or charter of incorporation. The Parliament we observe by its absolutely or transcendent authority may perform this or any other act whatsoever: and actually did perform to a great extent by statute 39 Elizabeth Chapter 5. But otherwise it has not formerly been usual thus to intrench upon prerogatives of the crown, and the king may prevent it when he please. The king could delegate the power to a subject to erect a corporation, but in our country the form of government being so different, such power of authority could not
Corporations may exist in the U.S., by prescription, though this is seldom the case, Robie vs. Sedgwick, 35 Barb., 319; and this was so held when a legislative act which was the mode of incorporation was technically defective. The period sufficient to claim that right seems to be twenty years, but corporations now, are created with but a few exceptions by legislative act. Either by a special which by its provisions grants the charter to, and endows a particular association of individuals with corporate powers for a particular purpose. Or by a general law which points out a method by which any association of individuals may obtain authority to act and constitute themselves a corporation without any special legislation for them particular. This special legislation made its evil so seriously felt, that it has been provided by the New York Constitution that all private corporations shall be formed under general laws and not by special acts, except in cases where, in the judgment of the legislature, the object of the corporation cannot be obtained by general legislation. Constitution Art. VIII. sed. 1.
The first general legislation in New York of this sort was an act passed by the legislature in 1811, Ch. LXVII, Laws of that year, which provided for the association of five or more individuals to become a corporation for manufacturing only and for twenty years thereafter to have corporate powers and liabilities. It, provided for the election of not more than nine trustees, and their capital stock is not to exceed $100,000; and even at this early date the need of particular provisions for banking and monied corporations was apparent, for in this act made special provisions for these corporations forming under it, and were expressly prohibited from using their funds in any banking transaction or the purchase of stock of any bank. And it also provided for the details of incorporation and limited their acts of business. Special legislation continued for the past century.

The greater part being passed for the benefit of railroad corporations. But a small amount of general legislation continued to be passed, each year including the two prominent corporation acts of 1848 (Ch. XL) and the act of 1875, (Chap DCXI.) The first of which can be explained better by its
title, which was, "An act to authorize the formation of a corporation for the manufacturing, mining, mechanical or chemical purposes" the doing of certain acts by three or more persons according to its provisions, constituted them a corporation. Those acts are substantially contained in the corporation acts now in force and which will be mentioned hereafter.

The law of 1875 was entitled, "An Act To provide for the Organization and Regulation of certain Business Corporations" but expressly excepted banking and insurance. That act being lengthy and having numerous details did not as far as corporation under was concerned supersede the act of 1848, and associations continued to incorporate under this latter law. But as those laws are all now repealed from the act of 1811, Chap. 67. to the act of 1891, Ch. 287, and the act of 1892, Ch. 2., amending sec 30 of the laws of 1890 Ch. 564, by our general corporation laws they are only of historical value and following in the line of Bentham and Field, we find our corporation laws all carefully codified and systematic.

As to the practical part of obtaining sufficient number
of persons and capital, for the purposes of corporation
can be said. The methods, obstacles and results of
efforts in that direction are so widespread and varied that
it would be useless to draw any definite rules or conclusions
as to such procedure. It is usually brought about by the
desire of a few persons to accomplish some business venture
and without associating themselves together, might not other-
wise obtain it. There must be at least three persons with
which to commence, and by complying with the provisions of
our general corporation laws which provide that in order to
become a corporation, for purposes of carrying on lawful
business they must make, sign, acknowledge and file a certif-
icate to the following effect in the office of the Secretary
of State: it should contain the name of the corporation
the object for which it is to be formed, including the na-
ture and locality of its business; the amount and descrip-
tion of capital stock; the number of shares of which the
capital stock shall consist, each of which shall be not less
than five nor more than one hundred dollars; the location of
its principle business office; its duration not to exceed
fifty years; the number of its directors not less than three nor more than thirteen who shall each be a stockholder, having at least five shares of stock; the name and post office address of the directors for the first year; the post office address of the subscribers and a statement of the shares of stock which each agrees to take in the corporation. The certificate may contain provision for the regulation of the business and the conduct of the affairs of the corporation, and any limitations upon its powers and upon the powers of the directors and stockholders which does not exempt them from any obligation or from the performance of any duty imposed by law; all of which if regularly done constitute them a corporation. This certificate of incorporation must be executed by a natural person all of whom must be of full age and at least two-thirds of them must be citizens of the United States and a majority of them residents of this State. No such corporation is allowed to engage in the business for which it is formed until one-half of its capital stock shall have been subscribed and a certificate to that effect filed
in the office where the first certificate is filed, which in New York is in the office of the Secretary of State. And a certified copy of the original certificate must be filed in the office of the clerk of the county where the principal business office is located.

Upon the doing of these acts and upon the payment of fees provided by statute, to the Secretary of State, and the payment of the organization tax of one-eighth of one percent upon the capital stock of the corporation, we have the birth of a New York corporation.

John G Snyder.

May 19, 1894.