1894

The College Fraternity in the Light of the Law of Associations and Corporations

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THE COLLEGE FRATERNITY

IN THE LIGHT OF THE LAW OF ASSOCIATIONS
AND CORPORATIONS.

PRESENTED FOR THE DEGREE OF
BACHELOR OF LAWS.

--BY--

ADDISON C. CRIMSBEE

--O--

CORNELL UNIVERSITY-- SCHOOL OF LAW.

1894.
PREFACE.

The College Fraternity is but one of the large class of organizations whose legal status is not very clearly defined. Social clubs and other kindred societies abound in our cities and villages and exist for the mere pleasure of their members and for, no other purpose. They are seldom of sufficient importance to bring the legal questions to which they give birth into the higher courts, and we can therefore find but few reported decisions to enlighten us upon the rules of law which govern this class of organizations. In England however, the position of these societies and their internal and external relations have been the subjects of considerable litigation, and hence over there the law has become more settled. The few decisions which the American reports supply are in nearly all cases based upon the English law, and I have not hesitated to cite English authorities when unable to find any American cases directly in point.

The title of this thesis may not be a very good index of its contents, but it should be borne in mind that the College
Fraternity is but one of the large class and there are no rules of law peculiar to itself. The majority of these societies are not incorporated and the greater portion of this work is devoted to the discussion of the principles of law applicable to unincorporated societies which are usually termed in the books "Voluntary Associations". However, many fraternity chapters have been incorporated, as every well organized chapter ought to be, and I have endeavored in the last chapter to outline the procedure incident to incorporation under the "Social Club" statute in New York State. The form given in the appendix is one which has already stood the test.

Addison C. Ormsbec.

Cornell University
31st. of May, 1894.
CONTENTS.

---0---

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I.</td>
<td>The Legal Status of the Unincorporated Fraternity,</td>
<td>1.</td>
</tr>
<tr>
<td>II.</td>
<td>What is Membership?</td>
<td>3.</td>
</tr>
<tr>
<td>III.</td>
<td>Power of the Majority,</td>
<td>6.</td>
</tr>
<tr>
<td>IV.</td>
<td>Admission to Membership,</td>
<td>9.</td>
</tr>
<tr>
<td>V.</td>
<td>Expulsion,</td>
<td>13.</td>
</tr>
<tr>
<td>VI.</td>
<td>Liability of Members for Society Debts,</td>
<td>24.</td>
</tr>
<tr>
<td>VII.</td>
<td>The Fraternity Incorporated,</td>
<td>29.</td>
</tr>
</tbody>
</table>

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CHAPTER I.

THE LEGAL STATUS OF THE UNINCORPORATED FRATERNITY.

The college fraternity belongs to a class of organizations which occupies a somewhat anomalous position in the law. They bear resemblance to both the Corporation and the partnership, yet are not identical with either. It is because of their resemblance to these two great classes of combinations of individuals that considerable confusion exists among the cases many of which seem to have been decided upon the principle that every such combination must be either a corporation or a partnership, if it is not the one it must of necessity be the other. But a fraternal society is not a corporation unless by virtue of statute law. There is no grant from the sovereign power. The society has no existence apart from the individuals who compose it. It resembles a corporation in that it may provide a constitution and by-laws regulating admission and expulsion of members etc. and in that the members may be constantly changing, but a
member of such a society does not possess the transferable interest which is incidental to membership in a corporation.

Neither is such a society a partnership. A partnership as defined by Lindley is: "The contract relation subsisting between persons who have combined their property, labor, or skill in an enterprise or business, as principals for pecuniary profit". Pecuniary profit is the essential object of a partnership. Whatever definition may be considered the correct one, they all embody the idea that a partnership must exist for a business purpose and for that alone. This is manifestly not the object of a fraternal society.
CHAPTER II.

WHAT IS MEMBERSHIP?

Membership in a society arises out of contract. This contract consists of the written and unwritten laws of the society. The most important evidence of this contract are the constitution and by-laws of the society, if it has any. One of the essentials of a binding contract is mutuality, the consent of a party to be bound. It is therefore obvious that in order that a person may be bound by the articles in a constitution he must have either expressly or by implication consented to assume the duties and responsibilities arising from the contract of which these articles are evidence, expressly by placing his signature beneath the constitution or by a declaration to the effect that he assumes such duties and responsibilities, impliedly by entering into the full rights and privileges of membership in such society with knowledge of the existence of its constitution.

The constitution and by-laws of a society will determine
the effect of the contractual relation so far as they can be applied. The courts have fully recognized their supremacy when questions involving their binding force have come up for decision and they will be enforced as between the parties to the contract, no matter whether they are reasonable or not, so long as there is nothing illegal or unconscionable about them. The principle which obtains generally both in England and in the United States is clearly stated in the opinion in a Pennsylvania case, (Loach v. Harris, 2 Brewsters, 571,) as follows, "where an association is organized not in pursuance of any statute and the terms of membership are not fixed by the Common Law, the agreement which the members make among themselves on the subject must establish and determine the rights of the parties. The constitution of an association and its terms agreed upon form the law which should govern. The members have established a law themselves."

But the articles of association must not be unconscionable or contrary to the law of the land,. A good illustration of such a defect is found in (State v. Williams, 75 N.C. 134) where the constitution of a society called the Good
Samaritans provided for certain ceremonies which should attend the expulsion of an offending member and which consisted in tying a rope about the waist of the offender and suspending him in mid air. The court held that such a provision was in violation of the law of the land, and that an attempt to enforce it would constitute a battery for which those who participated could be held criminally liable.

Ordinarily the courts are reluctant to entertain questions involving voluntary associations and if they entertain them at all are disposed to give them a liberal construction; this though is altered and the courts will enforce a strict conformity to the articles of association against any members who may attempt to use force or violence in connection with association management.


Ugenst v. Shortz, 5 Whart., 506.

An interesting question arises as to how far a majority of the members of a society may act so as to bind the minority. Ordinarily the act of a majority at a meeting of which due notice has been given and at which a quorum is present, supposing that the proceedings have been conducted with due regard to correct parliamentary procedure, will be binding upon the minority, and those members who are present are by a parliamentary fiction deemed to be on the side of the majority. We assume however, that the proceedings have been regular and that questions have been put before the society by the person upon whom this duty devolves. A question put unofficially cannot bind the members who do not vote and who, if the question had been properly put, would have been regarded as a part of the majority. This was demonstrated in the case of (Com. v. Green, 4 Whart., 604). In this case a certain faction of a society, upon the refusal of
an appeal from the decision of the presiding officer, through one of their adherents made a motion to degrade him, which they asserted was carried by their actual votes and the constructive votes of those who refused to vote. The court said in the opinion, "To all questions put by the established organ it is the duty of every member to respond or be counted with the greater number because he is supposed to have assented beforehand to the process pre-established to ascertain the general will, but the rule of implied assent is certainly inapplicable to a measure which when justifiable even by extreme necessity is essentially revolutionary and based on no pre-established process of ascertainment whatever. To apply it to an extreme case of inorganic action as was done here might work the degradation of any presiding officer in our legislative halls by the motion and actual vote of a single member sustained by the constructive votes of all the rest."

The power of the majority may be limited or qualified by the constitution or by-laws and these will be binding whether reasonable or not, and subsequent additions or amendments to them will likewise be binding if passed according to methods
prescribed in the original articles.

Kohlenbeck v. Logeman, 10 Daly, 447.

The cases in which the question has been passed upon indicate that it lies within the power of the majority to alter or abrogate the original articles of agreement without restriction so long as property rights are not violated thereby. Thus in the case of (Smith v. Nelson, 18 Vt., 550) where the right of the majority of the members of a church congregation to renounce the constitution of the denomination to which they belonged was in question. The court in its opinion states the principle as follows, "And of these voluntary associations, though they frequently make constitutions and pass by-laws which they declare are not to be altered, except in a certain way or manner, nevertheless, these may at any time be altered or abrogated by the same power which created them and the vote of any subsequent meeting abrogating or altering such constitution or by-laws, though passed only by a majority, have as much efficiency as a previous vote establishing them".

The above doctrine must be taken subject to this quali-
fication, that where property rights are involved the courts will not allow the majority to unjustly impair them against the will of the owners. See on this point.

Livingston v. Lynch, 5 Johnson's Ch., 573.

Austin v. Soaring, 16 N.Y., 123.
CHAPTER IV.

ADMISSION TO MEMBERSHIP.

Although a contract relation exists between a member and his society after he has become a member, there is no such relation between the society and the public through which a person (regardless of how well qualified he may be) can compel the society to admit him to membership.

This proposition seems too reasonable to require the stamp of judicial authority, nevertheless two late cases illustrate the result of attempts to gain admission into societies through the courts. In (Mayer v. Journeymen Stone Cutters Association, 47 N.J. Equity, 519) the vice chancellor expressed the logic of the situation in the following well chosen words. "These organizations are formed for purposes mutually agreed upon. Their right to make by-laws and rules for the admission of members and the transaction of business is unquestionable. They may require such qualifications for membership and such formalities of election as they choose."
They may restrict membership to the original promoters or limit the number to be thereafter admitted. The very idea of such organizations is associations mutually acceptable; or in accordance with regulations agreed upon; a power to require the admission of any person in any way objectionable to the society is repugnant to the scheme of its organizations.----

Courts exist to protect rights and when the right has once attached they will interfere to prevent its violation, but no person has any abstract right to such membership; that depends upon the action of the society exercised in accordance with its regulations, and until so admitted no right exists which the courts can be called upon to protect or enforce.”

(McKane v. Adams, 123 N.Y.,309) is a very interesting case on this point. The plaintiff, John Y. McKane, sought to compel the democratic general committee of Kings County to admit him to membership therein on the ground that he had been elected a delegate to such committee and was therefore entitled to become a member of that committee but that by a majority vote it had refused to recognize him as such a delegate. In the course of his opinion, Judge Grey says, "The
right to be a member is not conferred by any statute; nor is it derivable as in the case of a corporate body. It is by reason of the action and of the assent of members of a voluntary association that it becomes associated with them in the common undertaking and not by any outside agency or by the individuals' action. Membership is a privilege which may be accorded or withheld and not a right which can be gained independently and then enforced.------ We cannot compare this case to that of other voluntary associations nor to a co-partnership, to which an unincorporated association is sometimes likened, when considering the rights of associates in the property of the association and the methods for their improvement."
CHAPTER V.

EXPULSION.

The rules pertaining to expulsion although not of practical importance in connection with the college fraternity yet form so large a part of the law relating to voluntary associations in general that an outline of this branch of the subject may not be inconsistent with the general nature of this work. At the outset we should note a distinction between incorporated societies and those not incorporated. In the former, a member has rights granted by the legislature which can not be taken away by the society unless authorized by the governing statute or charter. In the latter, a member has no rights of a higher dignity than those springing out of a voluntary contract between himself and his fellow members. Such contracts are, as we have seen, upheld when not contrary to law and a member may thereby voluntarily subject himself to summary expulsion for causes and in modes which would not be justifiable in the case of a corporation existing under a charter or act of the legislature.
Beach in his work on corporations makes the following statement, "As may be inferred from the general constitution of clubs, in the absence of any express rule there is no power of expulsion inherent in the members of a club, for such a power forms no part of the written contract by which the members are bound, and therefore even an otherwise unanimous vote of the club could not expel a member who refused to resign". (Beach on Corporations, Vol. I. p. 160) Perhaps we do not catch Mr. Beach's meaning, but if he intends to assert that a voluntary association of individuals possesses no inherent power of expulsion if its constitution or by-laws are silent on the subject, we believe the statement to be contrary to the underlying principles of association of individuals and to the weight of authority. It was a power of a corporation at Common Law, regardless of charter or by-laws, to expel a member who had been guilty of an infamous act or who had committed offenses in violation of his duty as an incorporator. And if under the Common Law the corporation possessed this inherent power, why should not clubs or societies in which the very fundamental basis of organization is the
compatibility of its members and in which questions of property or of state enfranchisement do not arise have at least the same privilege as the corporation. We believe this power to be more extensive in voluntary associations then in corporations. In the English case of (Rigby v. Conol, 42 L.T. 129) the learned judge states the principle which is supported by the weight of authority as follows, "There is no jurisdiction that I am aware of reposed, in this country at least, in any of the Queen's courts to decide upon the rights of persons to associate with each other when the association possesses no property. Persons, and many persons do associate without any property in common at all. A dozen people may agree to meet and play whist at each other's houses for a certain period and if eleven of them refuse to associate with the twelfth any longer. I am not aware that there is any jurisdiction in any court of justice in this country to interfere."

Of course whenever property rights were involved, the Common Law imposed limitations on this power of expulsion and even when there were no property rights it required good
faith and honest action according to principles of natural justice, but this is merely curtailing the power of expulsion and not interfering with it.

Granting therefore that a society possesses the inherent power of expulsion, we must take into consideration the limits imposed upon this power by the contractual relation subsisting among the members, and we may down as a general preliminary proposition that when the Constitution or by-laws of a society specify the grounds upon which a member may be expelled or place it within the discretion of certain members to determine the grounds of expulsion, a person becoming a member of such an organization and either expressly or by implication consenting to be bound by such constitution and by-laws is bound by them no matter how unreasonable may be the provisions in regard to expulsion, and the fact that the society has property merely for society purposes does not give the member such a pecuniary or property right as will justify the interference of the court to prevent his expulsion so long as the requirements of the law in respect to all associations are followed. This is settled law both in England
and in the United States.

In taking up the specific questions arising under expulsion, we observe, first, that the power to expel a member from a society exists only in the society at large unless the articles of association vest this power in a smaller number as in the board of directors, the trustees, or the managing committee. No decisions have been found directly in point on this proposition but it is supported by considerable dicta. In (Innes v. Wylie, 1 Car.& K. 282), a member was expelled by a majority vote from a society whose by-laws were silent on the subject of expulsion. The court held the expulsion unlawful because opportunity had not been given to the member to defend himself before the meeting at which his expulsion was considered, but it said through Denman, C.J., "I am of the opinion that when there is not any property in which all the members of a society have a joint interest the majority may by resolutions remove any one member." This dictum has been cited approvingly in (White v. Brownell, 4 Abb.(N.S) 162) the leading American case on the general subject of voluntary associations.
The constitution or by-laws of a society generally provide in what body the power of expulsion is lodged, usually in a committee or board of directors. This committee or board is sometimes given exclusive jurisdiction but usually an appeal is allowed to the society at large. It is obvious that no committee, board of directors, or trustees have any jurisdiction to expel members unless such power be expressly conferred by the articles of association. The function of such bodies is to conduct the business of the association and not to determine matters concerning its constituent character.

Secondly, the judiciary in a society has exclusive jurisdiction to determine what conduct in a member will justify his expulsion but it must not transcend the limits imposed by the articles of association. The exercise of this discretion in good faith and within the required limits will not be questioned in a court of equity.


White v. Brownell, 4 Abb.(N.S.) 162.

Thirdly, the law imposes the following duties upon such
judicatory; That it will act in good faith and without malice; that due notice shall be given to the accused member of the time and place where his case is to be considered and that he shall be allowed an opportunity to be heard and to give evidence in his defense; and that all proceedings shall be regular and conducted according to principles of natural justice.

These last propositions are settled law in England and the English cases deciding them have been approved and followed in this country. The leading English cases supporting these propositions are,

Fisher v. Kean, 41 L.T., 335.

In the latter case the court says, "The committee are bound to act according to ordinary principles of justice, and are not to convict a man of a grave offense which shall warrant his expulsion from the club without fair, adequate, and sufficient notice and an opportunity of meeting the accusa-
tions brought against him. They ought not, as I understand it, according to the ordinary rules by which justice should be administered by committees of clubs or by any other body of persons who decide upon the conduct of others, to blast a man's reputation forever, perhaps to ruin his prospects for life, without giving him an opportunity of either defending or palliating his conduct, and when such notice has not been given the court will interfere by injunction restraining the committee from carrying out their resolution to expel the member.

The English doctrine is approved and followed in,

White v. Brownell, 4 Abb. (N.S.) 102.

Hutchinson v. Lawrence, 67 How. Pr., 381.

Fourthly, when the articles of association specify the grounds of expulsion and the procedure with regard to time of notice and etc., they must be strictly followed by the judicature.

This proposition is in harmony with the general rules of law relating to procedure in cases where personal rights are involved, and if the articles of association specify a certain time when notice shall be given of a meeting in which the
expulsion of a member is to be authorized and decided upon, a variation from this provision will give sufficient ground to a member who should be expelled at this meeting to call upon the courts of equity.

Thus in (Labouchere v. Earl of Wharncliffe,) where the rules of a society required that a notice of such meeting should be posted fourteen days in advance and notice was posted on the first of November, for a trial to be had on the fourteenth. The member who was expelled from the society as a result of this meeting, appealed to the court on the ground of insufficient notice and the court held that the notice was not sufficient to support the sentence of expulsion.

Fifthly, a member must first exhaust his remedies within the society before the courts will entertain his case. Thus if an appeal is given from the judicatory which has passed the sentence of suspension or expulsion either to a higher judicatory or to the society at large, the complaining member cannot call upon a Court of Equity for redress until he has prosecuted the appeal within the society unless by evasions, intentional delays, or other unjust procedure he is deprived...
of any further remedy given him by the constitution or by-laws of the society. But where the laws of a society provide for no appellate tribunal within the society the member may appeal directly to the judicial courts.

White v. Brownell, 4 Abb. (N.S.) 182, 199.
Lafond v. Deems, 81 N.Y., 507.
Loubat v. Leroy, 40 Hun, 546.

The usual relief where members of unincorporated clubs or other societies are unlawfully expelled is by an injunction in a court of Equity. Authority has been found in an English case for the proposition that no action for damages will lie against the committee of a society which decrees an unlawful expulsion. A genius for refinement has discovered a reason for this conclusion in that the act of expulsion being void, the plaintiff has sustained no injury since notwithstanding the expulsion he is still a member. (Wood v. Wood, 91Exch., 190). If this holding be accepted as the law it results that the expelled member must either resort to the remedy of injunction or else he must attempt to assert his rights in the society by force and if he is forcibly ejected,
bring an action for the assault. In (Innes v. Wylie, 1 Car.& K., 257), the expelled member took the latter course and endeavored to enter the societies' room but was kept out by a policeman. He therefore brought an action against the defendants who had stationed the policeman there for the purpose, and recovered a verdict which Lord Denman refused to set aside.

It is believed however that decisions may be found which support actions for damages by the expelled member without his previously resorting to force to assert his rights.

See (Ludowishi v. Benevolent Society, 29 No. App., 337).
CHAPTER VI.

LIABILITY OF MEMBERS FOR SOCIETY DEBTS.

This branch of our subject is perhaps of the most practical importance to members of a college fraternity. Much uncertainty however exists in the law of the individual liability of the members of a voluntary association, particularly if it has no pecuniary gain for its object, and it is difficult to frame any rules to cover this branch of our subject which we can state positively to be the law. We assume at the outset that the society is unincorporated, for in the case of an incorporated society different considerations apply. Much also depends upon the jurisdiction, for courts in different jurisdictions differ in their views of the nature and basis of this liability. A discussion of the specific cases which have arisen in the different jurisdictions is beyond the limits of this work which permit only a general survey of the subject.

The earlier decisions indicate the prevalence of the
erroneous idea to which we have heretofore alluded that every association of individuals must be either a corporation or a partnership, and hence when the association lacked a charter or legislative grant, it was treated as a partnership and its members were held liable as partners for debts of the association. Subsequently the courts began to treat these organizations, in respect to their internal management, more like the corporation, but in their dealings with outside parties they were still treated as partnerships. Finally a distinction was made between voluntary associations which have pecuniary benefit for their object such as mutual benefit societies etc., and those societies which exist solely for the pleasure of their members, of which the college fraternity is a prominent illustration. As to the former class the partnership liability is to some extent retained, but, as to the latter, it has been held in the more progressive jurisdictions that no liability attaches to a member by virtue of his membership, and that it can only arise through the principles of agency. The courts take this position in Massachusetts, Connecticut, New York, Pennsylvania, and probably in other
jurisdictions.

McCabe v. Goodfellow, 123 N.Y., 89.

This doctrine was introduced in New York in the case of McCabe v. Goodfellow, which overruled the previously existing doctrine in that State as laid down in (Park v. Spaulding, 10 Hun, 128), a case in which the members were held liable as partners. The court in McCabe v. Goodfellow pointed out the distinction above mentioned and held that in societies formed for moral, benevolent, social, or political purposes, the individual liability of the members for contracts made by the association or its officers or committees depends upon the application of the principles of the law of agency and authority to create such liability will not be presumed or implied from the existence of a general power to attend to or transact the business or promote the object for which the society was formed except where the debt contracted is necessary for its preservation.
If the above doctrine be accepted as the correct one it follows that no individual member of a society is liable for goods supplied to the society or for debts otherwise incurred by it if he has not in some way pledged his personal credit. This he may do immediately by his own contracts, orders, or representations, or mediately through other persons acting as agents. The degree of authorization which will suffice to fix liability on an individual member of a society remains an open question at present. In older cases dealing with the pledging of personal credit some action of a distinct and conscious character was held necessary on the part of the individual sought to be charged. But as the law now appears to stand it is of no legal significance that the defendants did not intend to be individually responsible, or that they did not know or believe that as a matter of law they would be. Personal liability is incurred if there has been an "authorization" either actual or constructive, involving in liability even a person who had no intention of pledging his personal credit and who had but the slightest knowledge of the transaction.
In this connection it is important to bear in mind the distinction between general and special agents. When liabilities have been incurred by general agents acting within the scope of their authority all the members may be fairly presumed to have authorized or ratified such acts. Thus if the society either by rule or custom allows its officials or servants to incur debts, then all the members are personally liable and the more certain is this liability if the organization is habitually conducted on a credit principle. But in the case of a special agent, or of a general agent exceeding the scope of his usual line of duty, only those members are individually liable who can be shown to have authorized or ratified his acts; especially if the society works on a cash basis, the mere fact of membership will not make one personally liable for its debts unless he can be shown to have advised, sanctioned, or ratified the transaction.
CHAPTER VII.

THE FRATERNITY INCORPORATED.

In States like New York where special statutes exist under which organizations like college fraternities can conveniently become incorporated, many such societies, especially if they own real estate for society purposes, take advantage of the statutory privilege. Many benefits accrue to a fraternity incorporated under the New York Statutes which are not possessed by one not incorporated. In the former, personal liability is to a considerable extent eliminated; stock or bonds may be issued and this frequently facilitates the purchase of real estate for society purposes; the powers and liabilities of the incorporated society are more clearly defined and being a child of the state, the watchful eye of its stern parent furnishes a greater inducement for it to travel the path of financial rectitude.

In New York, there are two laws under which clubs, societies, or associations may be incorporated, one passed on
the 11th. of April, 1865, the other on the 12th. of May, 1875. These laws which at first sight seem to be so much alike differ in some important particulars. The act of 1875, covers a greater variety of objects than the act of 1865. If will largely depend therefore, upon the object and purposes for which the club or society is organized whether it should be incorporated under the former or under the latter act.

It is sufficient for us to note that the college fraternity may be incorporated under either. The number of trustees under the act of 1865, cannot exceed thirteen and cannot be less than three; under the act of 1875, there cannot be more than twenty nor less than five. Personal liability for corporate debts under Section eight of the act of 1865, extends only to trustees; in the act of 1875, the additional words "directors and managers" are used. Section seven of the act of 1865, declares that such liability shall extend to debts payable "within" one year from the time they shall have been contracted. The language of section eight of the act of 1875, is the same except that the word "within" is omitted. The result of this omission may operate to relieve
the trustees of a society, incorporated under the act of 1875, from personal liability in cases where debts are payable at any time "within" one year, though it is uncertain what construction would be given to this language by the courts.

By chapter 380 of the laws of 1877, corporations formed under the act of 1875, were given power to issue stock or bonds or either to an amount equal to the value of their real estate, and the act of 1865 with this amendment seems to offer the greater advantages to societies owning or contemplating the purchase of real estate upon which an indebtedness shall exist. By chapter 68 of the laws of 1884, it was provided that societies incorporated under either of the above acts may mortgage their real or personal estate upon applying for and obtaining an order from the Supreme Court granting permission to execute such mortgage, and the granting of this permission is made discretionary with the court. (The above acts and the amendments to them can be found in Banks & Bro's Edition of N.Y.Rev.Stat., Vol. III. pp. 2021-2027.)

There is little if any difference between incorporated and unincorporated societies in respect to the rules of law.
relating to expulsion and to the contractual relation between the society and its members. But in the matter of the individual liability of members for debts of the society there is a well defined distinction since by the common law this liability did not attach to the member of a corporation, and hence they are not liable unless made so by the legislature. As we have already noticed, in the kind of corporations we are considering personal liability only extends to the trustees and is limited to certain classes of debts.

A society may be incorporated under the act of 1865, by filing and recording it in the office of the Secretary of State and in the County in which the office of such society is situated a certificate in writing signed by five or more persons of full age, citizens of the United States, a majority of whom shall be also citizens of this State; in which certificate shall be stated the name or title by which such society shall be known in law, the particular object or business of such society, the number of trustees, directors, or managers to manage the same, and the name of the trustees, directors or managers for the first year of its existence, but such
certificate shall not be filed unless by the written consent and approbation of one of the justices of the Supreme Court of the district in which the principal office of such society shall be located, to be endorsed on such certificate. (A form of this certificate is given in the Appendix). The certificate must be acknowledged like a deed or any other instrument which is to be recorded. Although the consent of a justice of the Supreme Court is one of the conditions precedent to the right of filing, it decides nothing and does not preclude the Secretary of State from passing upon the question as to whether the certificate was authorized by statute as he is not bound to file a certificate which the statute does not authorize.

The act of 1865 specified the amount limit of real and personal estate which may be owned by a society incorporated thereunder, fixing the maximum value of real estate at $500,000, and of personal estate at $150,000; the powers and duties of trustees and directors; how the number may be increased and diminished; how the certificate of incorporation may be amended. It also provides that it shall be the duty
of the trustees or a majority of them in the month of December of each year, to make and file in the County Clerk's office where the original certificate is filed, a certificate under their hands stating the names of the trustees and officers of the corporation, with an inventory of the property effects, and liabilities thereof, together with an affidavit of the truth of such certificate and inventory. As this provision of the act is frequently not complied with, it may be well to note that in accordance with the rules of law affecting de facto corporations, a regularly organized corporation which has duly observed the formalities of the law in its inception can be called to account only by the State for a subsequent failure to comply with the requirements of the statute under which it was created; therefore an omission to file the above mentioned certificate and affidavit while giving ground for the Attorney General to proceed to dissolve the negligent or disobedient corporation, yet cannot be taken advantage of by any private individual and can in no way affect or change the exemption of a member from individual liability for society debts.
The revision of the statutes of New York which is now being accomplished will include the laws providing for the incorporation of societies similar to that which forms part of our subject, and it is probable that after the next session of the legislature, societies contemplating incorporation will find an act which will have more commendable features than those now on our statute books.
APPENDIX.

Form of Certificate under Chapter 268 of the Laws of 1865.

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CERTIFICATE OF INCORPORATION

OF

THE ALPHA ALPHA CHAPTER OF THE BETA BETA FRATERNITY.

We, A., B., C., D., E., F., and G. of the city of Ithaca, County of Tompkins, State of New York, desiring to form a society in pursuance of Chapter 268 of the Laws of 1865, entitled "An act for the Incorporation of Societies or Clubs for certain Social and Recreative Purposes", and of the several acts extending or amending the same, do hereby certify

I. That all of the incorporators herein named are of full age and citizens of the United States, and a majority of them are citizens of the State of New York.

II. That the name of such society shall be "The Alpha
III. That the object of such society is the social intercourse and the cultivation of feelings of brotherhood and good fellowship between its members.

IV. That the number of Trustees to manage the affairs and property of the corporation shall be five.

V. That the name of the Trustees for the first year are;

A.-------
B.-------
C.-------
D.-------
E.-------

VI. That the chapter house of such society is situated in the City of Ithaca, County of Tompkins, State of New York.
IN WITNESS WHEREOF we have hereto set our hands this
------ day of ------, 1894.

A.--------
B.--------
C.--------
D.--------
E.--------
F.--------
G.--------

State of New York:

County of Tompkins:

On this ---- day of ----, 1894, before me personally appeared A., B., C., D., E., F., and G., to me known, and known to me to be the individuals described in and who executed the foregoing certificate and they severally acknowledged to me that they executed the same.

John Smith
(seal) Notary Public.