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Article 9

Corporations: Officers and directors, guaranteeing corporation's notes, cannot recover from other stockholders on the ground that corporation was incompletely organized

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the validity of any government regulation of private schools is under consideration; but the limitations of the constitution must not be transcended.

The Supreme Court cited *Meyer* v. *Nebraska*,[3] *Bartels* v. *Iowa*,[4] and *Pierce* v. *Society of Sisters*,[5] to the general point of the rights guaranteed by the Fourteenth Amendment to owners, parents and children in respect of attendance upon schools against adverse action by the States.

The advance made in the present decision is the establishment of the proposition that the inhibition of the Fifth Amendment that "no person shall . . . . be deprived of life, liberty or property without due process of law" protects the fundamental rights of the individual against action by the Federal Government, and by the agencies set up congress for the government of the territories, as the territorial legislature or officers, as is secured by the Fourteenth Amendment which declares that no "state" shall "deprive any person of life, liberty or property without due process of law," against action considered in the cases cited above on the part of the States.

H.W.I.

Corporations: Officers and directors, guaranteeing corporation's notes, cannot recover from other stockholders on the ground that corporation was incompletely organized.

In the instant case[1] a number of farmers attempted to organize a corporation called the Blair Farmers' Exchange. Subscriptions were signed, a meeting of the subscribers was held, and the corporation commenced business in 1910. Its present officers and directors from time to time gave corporate notes to the home bank of Blair, of which they became joint endorsers and guarantors. In 1921 the corporation suspended business, and in 1923 the bank sued upon the unpaid notes, joining as defendants those officers and directors, who now appear as plaintiffs, and who had endorsed and guaranteed the notes. The bank had judgment, the officers and directors paid the judgment and now seek contribution from the other stockholders. They base their ground for recovery upon a violation of section 180.06, pleading that less than 50 per cent of the authorized capital had been subscribed at the time they assumed the obligation of guarantors, and assuming therefore, that the stockholders were personally liable as a violation of section 180.06.

The basis of the asserted liability under this action was the implied promise of the corporation that it would reimburse the guarantors in the amount paid by them in the discharge of its obligations. The court, however, held that this implied obligation of the corporation, is one arising between the corporation and members of the corporation and not one contracted in violation of the statute. Upon this principle the court decided that no liability exists on the part of the defendants to the plaintiffs.

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[3] 262 U.S. 404.

[5] 268 U.S. 510, 39 A.L.R. 468.

[1] Hanson & Martin, 211 N.W. 790.

At first blush it would seem that the court went a trifle too far; that the directors had acted for the corporation as its general agent to proceed to conduct the business contemplated, and as such agent the directors endorsed the notes, all for the benefit of the corporation, thus creating a liability for any act done within the scope of his power. There is no question but that had the corporation been successful, the stockholders would not object to dividends or profits. But (following the court's reasoning) the directors, (the plaintiffs) knew or at least should have known that the corporation was not legally organized. They knew or should have known that by doing business in its corporate name and holding it out as legally organized, they in effect represented that it was such a corporation. They cannot, therefore, now as against their fellow stockholders, retrace their steps and claim that the corporation with and for whom they have dealt for so many years never had a legal existence and so compel their fellow stockholders to share a liability which they voluntarily assumed.

This precise question has no case exactly parallel in Wisconsin, but has arisen generally over the country. In Georgia[2] and Texas,[3] the shareholders are held not liable; likewise in Illinois,[4] Louisiana[5] and Maine.[6] There are many decisions to the contrary, Missouri being one of the leading ones, holding that the members of the corporation are liable to contribute their share to the managing members who have made themselves personally liable.[7] The great weight of authority, as well as the better reason, however, is the other way. The doctrine of partnership liability in such cases is not found in law or reason and is repugnant to the statute authorizing a corporation, one object of which is to limit liability of stockholders.[8]

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[2] *Planters & M. Bank* v. *Padgett*, 69 Ga. 159.

Dedication: Nature and requisites; common law or implied dedication.

Dugan v. *Zurmuchlen*[1] is an action to enjoin the maintenance of a fence by defendant on the center line of an alleged sixteen-foot alley arising either by implied dedication or by prescription. Defendant is the owner of a subdivision which bounds the west side of the alley. The original owners on the east side made a dedication of sixteen-foot alley therein conveying eight feet of their land making up the east half of the alleged alley. The original owner of defendant's land never joined in the dedication of the west half of eight feet but nevertheless built a fence which allowed eight feet to the alley. The subsequent owner of the defendant's land subdivided it, and on the plot made no reference to the alley. Now defendant removed the

[3] *American Sale Co.* v. *Heidenheimer*, 80 Tex. 344.

[4] Cresswell & Oberly, 17 Ill. App. 281.

[5] *Pochel* v. *Kemper*, 14 Louisana 308.

[6] *McClinch v. Sturgis*, 72 Me. 288.

[7] Richardson & Pitts, 71 Mo. 128.

[8] *Gartside Coal Co*, v. *Maxwell*, 22 Fed. Rep. 197.

[1] 211 N.W. 986, Ia.