

Washington University Law Review

Volume 14 | Issue 3

January 1929

Corporations—Liability of Promoter on Preorganization Contract

Follow this and additional works at: https://openscholarship.wustl.edu/law_lawreview



Part of the [Business Organizations Law Commons](#)

Recommended Citation

Corporations—Liability of Promoter on Preorganization Contract, 14 ST. LOUIS L. REV. 331 (1929).
Available at: https://openscholarship.wustl.edu/law_lawreview/vol14/iss3/14

This Comment on Recent Decisions is brought to you for free and open access by the Law School at Washington University Open Scholarship. It has been accepted for inclusion in Washington University Law Review by an authorized administrator of Washington University Open Scholarship. For more information, please contact digital@wumail.wustl.edu.

be ultra vires. Under the Missouri doctrine, this is not prohibited provided the corporation thereby carries out objects it could carry out if acting directly. The court cites *State v. Missouri Pacific Ry. Co.* (1911), 237 Mo. 338, 141 S. W. 643; also 241 Mo. 1, 144 S. W. 863. In this case the State of Missouri failed in an action to oust the defendant of its charter for owning stock in two coal mining companies and an elevator company, the court holding a company could do through the ownership of stock whatever it could do directly; and that here these activities were necessary to the railroad's business and could have been done directly. Formerly Illinois took a view directly contrary. See *People v. Pullman Car Co.* (1898), 175 Ill. 125. But by Statute in 1925 this rule was changed. Smith-Hurd's Rev. St. 1925, C. 32, Sec. 2. See also 156 N. E. at 264. The Missouri doctrine with its application to the present facts, is expressed in the Long-Bell case in these words: "Each and every kind of business carried on by these various subsidiaries (except perhaps the work of dredging) was only such business as respondent could, under its charter powers, have carried on directly."

D. A. M., '29.

CORPORATIONS, LIABILITY OF PROMOTER ON PREORGANIZATION CONTRACT.—The plaintiff made an employment contract with two individuals, promoters and prospective directors of a proposed corporation, for the benefit of and in the name of the corporation to be formed. Held, the individuals are not personally liable on that contract. *Schwedtmann v. Burns* (Tex. 1928), 11 S. W. (2d) 348.

The fact that the promoter has contracted for the benefit of the corporation does not of itself absolve him from personal liability on that contract. *Queen City Furniture Co. v. Crawford* (1894), 127 Mo. 356, 30 S. W. 163; *Lewis v. Fisher* (1912), 167 Mo. A. 674, 151 S. W. 172. In the *Queen City Furniture Co.* case the court held the promoters liable by reasoning on an analogy from agency: the agent is personally bound where the principal is not known or where there is no responsible principal. 2 Kent, COMMENTARIES 630; *Blakely v. Bennecke* (1875), 59 Mo. 193. Though the analogy is fallacious, there being no principal in existence when the corporation is not yet formed, the effect is the same; for an agent is liable where he purports to act for a non-existent principal. 2 C. J. 808. If the corporation is in existence when the contract is made, the knowledge or ignorance of that fact by the third party may determine the liability of the promoter. *Rust-Owen Lumber Co. v. Wellman* (1897), 10 S. D. 122, 72 N. W. 89. But some cases held the promoter liable even where the third party knew of the existence of the corporation, provided the contract was actually made with the promoters. *Bonsall v. Platt* (1907), 153 F. 126, 82 C. C. A. 260.

However, the principal case is in line with the general weight of authority today. When the parties rely on the credit of the proposed corporation the courts will usually give effect to their intentions, so that the promoters will escape liability. *Queen City Furniture Co. v. Crawford*, *supra*; *Carmody v. Powers* (1886), 60 Mich. 26; 1 Fletcher, CYCLOPEDIA CORPORATIONS,

329. If the contract is one which the corporation could not adopt the promoters are personally liable. *Marshalltown First National Bank v. Church Federation of America* (1906), 129 Iowa 268, 105 N. W. 578. But see *Durgin v. Smith* (1903), 133 Mich. 331, 94 N. W. 1044, where it was held that even where the contract was not binding on the proposed corporation, the promoters are not liable. Where, in such cases, there is an absence of stipulation as to liability in the contract between promoters and third parties the promoters are usually held liable. *Kelner v. Baxter* (1866), L. R. 2 C. P. 174; *Martin v. Fewell* (1883), 79 Mo. 401; *Munson v. Syracuse G. and C. R. Co.* (1886), 103 N. Y. 58, 8 N. E. 355. M. E. C., '29.

HABEAS CORPUS—EXISTENCE OF REMEDY BY APPEAL OR WRIT OF ERROR—JURISDICTION.—Defendant was charged with having intoxicating liquor in his possession. He pleaded guilty, was sentenced to six months in jail, *Bell*. None of these courts has declared a sterilization statute to be in was insufficient in that it did not specify the date upon which the alleged crime was committed. His appeal bond seemed to have been disallowed. After the time allowed for appeal had expired, defendant sued out this writ of habeas corpus. The court issued the writ and on the hearing discharged the defendant from custody. *Ex parte Syndor* (Mo., 1928), 10 S. W. (2d) 63.

From the face of this decision, it seems that the court deviated from the ironclad rule that a writ of habeas corpus will be issued only to test the jurisdiction of the court which committed the prisoner. This rule is followed in nearly every state of the union. *Henry v. Henkel* (1914), 235 U. S. 219; *People v. Zimmer* (1911), 252 Ill. 9, 96 N. E. 529; *Ex parte Mason* (1884), 16 Mo. A. 41; *State v. Dobson* (1896), 135 Mo. 1, 36 S. W. 238; *People v. Hanley* (1921), 191 N. Y. S. 501; *Ex parte O'Connor* (1915), 29 Cal. A. 225, 155 P. 115. Nor will a writ of habeas corpus issue in lieu of an appeal or writ of error. *In re Lincoln* (1906), 202 U. S. 178; *People v. Murphy* (1904), 212 Ill. 584, 72 N. E. 902; *In re Lewis* (1900), 124 Mich. 199, 82 N. W. 816. The court justifies its opinion, however, by expressly holding that a faulty information is a nullity, and that the court acquires no jurisdiction thereunder; and that since the court had no jurisdiction, and an appeal could no longer be brought, the writ of habeas corpus was rightfully issued and the defendant rightfully discharged.

But is the mere omission of the date of the crime an essential defect? It seems not. *State v. Myrberg* (1909), 56 Wash. 384, 105 P. 622; *State v. Hurley* (1912), 242 Mo. 452, 146 S. W. 1154; *Walker v. State* (1912), 12 Ga. A. 91, 76 S. E. 762; *Colwell v. State* (1916), 17 Ga. A. 750, 88 S. E. 410; *Ex parte Mitchum* (1922), 91 Tex. Cr. R. 62, 237 S. W. 936. The above cases and many others agree that where time is not of the essence of crime charged, it is immaterial.

Since the omission of time in the indictment is a mere formal requisite, it may be waived, either by express or implied waiver. In the principal