Yale Law Journal

Volume 11
Issue 2 *Yale Law Journal*

Article 3

1901

EDITORIAL

YALE LAW JOURNAL

SUBSCRIPTION PRICE, $2.50 A YEAR. SINGLE COPIES, 85 CENTS.

Published monthly during the Academic year, by students of the Yale Law School.
P. O. Address, Box 735, Yale Station, New Haven, Conn.

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COMMENT.

LIABILITY OF DISSOLVED CORPORATIONS.

At common law upon the dissolution of a corporation its real property reverts to the donors and its personal property escheats to the sovereign, while all debts owing to or by it are extinguished. This rule of law had its origin at a time when the only corporations were ecclesiastical and municipal. *Morawetz Priv. Corp.*, Sec. 1032. It was founded on sound principles, for these corporations had no stockholders and few, if any, creditors and were created and empowered to hold property to accomplish certain ends. When they ceased to be able to exercise the functions for which they were created, it was proper that the property held by them should revert to the source from whence it came.

The great mass of corporations to-day, however, are business corporations, differing essentially from the ecclesiastical and municipal corporations of old England. They are organized for the benefit of their stockholders. The property which they possess is

accumulated from the funds paid in by the stockholders, the corporation itself holding the property merely as trustee. Therefore, when the corporation is dissolved and the purposes of the trust fail, it would seem that the property should revert to the stockholders, as the original donors.

The business corporation, however, must from its nature, have many creditors and, since the corporation, considered apart from its stockholders, is a mere fiction, the liabilities of the corporation are in reality the liabilities of the stockholders. *Morawetz Priv. Corp.*, Sec. 1034. Hence, if the stockholders are to derive the benefits, upon a dissolution they should be forced to recognize the rights of the creditors.

Obviously, therefore, the rule of the common law is arbitrary and unjust when applied to the business corporation.

The harshness of this rule was early observed by the Chancery Courts, which were quick to afford relief by treating the assets of the dissolved corporation as a trust fund belonging to the stockholders, subject to the rights of creditors. *Curran* v. *State of Arkansas,* 15 How. 304. In this, as well as in many other reforms, the legislatures have followed the Chancery Courts and made statutory provisions for the protection of both stockholders and creditors upon dissolution of corporations. *Morawetz Priv. Corp.,* Sec. 1037.

But, while the law governing the rights of creditors whose claims are based upon contractual relations with the corporation has been firmly established, there still exists very great uncertainty, due from the lack of adjudicated cases, as to the rights of parties whose causes of action arise from the torts of the dissolved corporation.

An important decision on this point has recently been rendered by the New York Court of Appeals in case of *Shayne* v. *Evening Post Publishing Co.*, 61 N. E. 115.

The facts, in brief, are these: The plaintiff brought an action to recover damages for alleged libels published in the defendant's newspaper. Before the trial the defendant corporation was dissolved and the action abated. The plaintiff moved the court for an order reviving the action against the directors of the defunct corporation and the motion was granted. The Supreme Court in its appellate division, however, reached the conclusion that the death of the corporation operated to destroy the cause of action and reversed the order. The Court of Appeals overruled the Appellate Division and sustained the order issued by the trial justice to receive the action.

The opinion is based on three grounds: The Court first points out that, since there are no decisions bearing directly upon the question it is free to discuss the case upon its merits and proceeds to do so. The dangers of a contrary doctrine are clearly set forth, not the least of which is the opportunity that would be afforded to stockholders to avoid all liability by dissolving the corporation and immediately reorganizing. It is also lucidly shown that the doctrine of the Court is not burdensome to the stockholders, inasmuch as no property is thereby subjected to the satisfaction of the plaintiff's claim that was not so subject before dissolution.

The second ground involves the interpretation of the statutory laws of New York and is therefore not of general interest.

But the third ground, namely, that the rule "Actio personalis moritur cum persona" should not be applied to corporations, raises a very interesting question.

The defendant contended that this common law maxim had been recognized by the courts of this country and was in force except when annulled by legislative enactment; that the statutes authorizing the continuance of certain actions against the administrators and executors of deceased wrong doers expressly excludes actions for libel; that, hence, by a process of analogical reasoning the common law rule might be extended to include artificial "persons," and thus extinguish actions for libel against dissolved corporations. This theory of the defendant was adopted by the Appellate Division. (56 App. Div. 426).

The Court of Appeals, however, shows the fallacy of the analogy by pointing out the reason for the rule preventing suits against an executor for the wrongs of their testators, i. e., that as the executors have committed no wrong they should not be prosecuted for torts in actions which were originally designed for the punishment of the wrong doer. The Court further shows that on the other hand the remedy for torts committed by corporations is against the property of the corporation solely and that whether the judgment be obtained before dissolution or after it must be satisfied out of the assets of the corporations, and that hence such actions are more strongly analagous to suits against executors on causes of action arising ex contractu and should survive the death of the corporation.

A review of the history of this common law maxim sustains the conclusions of the Court on this point. Its origin can be traced to that period of English common law when all causes of action were punishable offenses and no distinction existed between crimes, torts and breaches of contract, save the manner and severity of their punish-

ment. *Pollock and Maitland, History of English Law.* At that time the theory of the law was not to repair the damage sustained by the injured party but to make the offender suffer for his wrong doing. It is true that fines were sometimes imposed, but upon default in the payment the offender was answerable in his person.

That this maxim was applicable to such a system of remedial laws is obvious.

But in the development of the common law, the idea was conceived to make reparation for private wrongs by awarding damages to the injured party. The division of causes of action into the great classes of crimes, torts and actions ex contractu followed. Breaches of contract obligations were compensated by money damages, the injured party looking not to the person but to the property of the party in default, and, as a consequence, actions arising from these breaches were held to survive the death of the party liable therefor. Thus, the reason for the maxim gradually disappeared and the maxim itself became inapplicable to actions ex contractu. *Pollock and Maitland,* supra

Torts, however, retained their quasi-criminal nature for a long time and it therefore became a fixed rule of the common law that such actions died with the wrong doer. *Hubert's Case,* 3 Coke Rep. 11.

But as the theory of money compensation for all wrongs to individuals has become more and more firmly established in our system of jurisprudence, the law making bodies have from time to time enacted statutes which authorize the continuance of certain actions of torts against the executors and administrators of the wrong doer, until at the present day the common law maxim has become entirely inoperative except as to civil actions for libel and slander and a few other like actions, which are still considered primitive in their nature. The question may well be raised, whether there is any good reason for excepting these actions, since the main purpose of suits brought to enforce them is to recover satisfaction of the property of the offender.

However that may be with regard to individuals, there surely can be no reason for the application of this maxim to an artificial body, which cannot be subjected to punishment and against which but one remedy exists in favor of individuals regardless of how their cause of action arises, namely, an action to recover a judgment for damages to be satisfied out of the assets of the corporation.