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right to reimbursement is denied or affirmed:<sup>19</sup> the only logical result when the existence or non-existence of the duty rests solely upon a balance of considerations of expediency, for clearly the assets in the hands of those entitled thereto will be equally affected by a recognition of the duty in a contest following, as well as in one preceding, probate. Conceding, moreover, that in the interval between the probate and a subsequent successful contest a nominated executor is a legal representative whose letters will justify an executor's claim for the performance of acts clearly within the scope of his executorial functions, the defense of a contested will does not, in the absence of statute, seem to be such a function. Consequently, this duty apparently rests wholly upon judicial declaration. It would seem, therefore, that if the duty is to be recognized at all, it should be declared to exist as well before, as after probate.

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THE RECOGNITION OF THE CORPORATE ENTITY IN SUITS BETWEEN STOCKHOLDERS.—Although the conception of a corporation as a legal entity distinct from the individuals who compose its membership has become familiar through repetition in judicial utterance,<sup>1</sup> courts and authors are far from any real agreement as to the true nature of the conception. By some writers it is termed a fiction, a mere figurative description of the actual fact of the association of individuals for the conduct of business.<sup>2</sup> Others consider it an accurate statement of the fact that the corporation is endowed by law with rights and subjected to obligations, which do not pertain to the individual shareholders jointly or severally. In this view, the corporation is as correctly called a legal entity as is any natural person.<sup>3</sup> Conceding the entity to be a fiction, however, there is no general agreement as to the value of the employment of such a fiction. "The conception of a number of individuals as a corporate or collective entity" is justified as "essential to many of the most ordinary processes of thought," and the fiction of a corporate entity is accordingly considered a principle of great convenience, which in most cases accomplishes justice.<sup>4</sup> On the other hand, the fiction is regretted because it obscures the true nature of the problems arising from corporate activity, and is held responsible for the unsatisfactory state of the decisions in this branch of the law.<sup>5</sup>

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<sup>19</sup>Brown *v. Vinyard supra*; Andrews' Executors *v. His Adm'r. supra*; Mumper's Appeal *supra*; Kelly *v. Davis supra*. It is interesting to note that the only case recognizing the distinction has reached a result directly *contra* to that in the principal case. *In re Estate of Soulard supra*.

<sup>1</sup>Dartmouth College *v. Woodward* (1819) 4 Wheat. 518, 636; *In re Sheffield etc. Society* (1889) L. R. 22 Q. B. D. 470; *Gallagher v. Germania Brewing Co.* (1893) 53 Minn. 214.

<sup>2</sup>Morawetz, *Priv. Corps.* (2nd ed.) §§ 1, 227.

<sup>3</sup>W. Jethro Brown, *The Personality of the Corporation and the State*, 21 *Law Quart. Rev.* 365, 367, 370. For an analysis of the "fiction" and "organic" theories of corporations, see Freund, *The Legal Nature of Corporations*.

<sup>4</sup>Morawetz, *Priv. Corps.* (2nd ed.) §§ 1, 234; see also Carr, *The Law of Corporations*, Ch. XII; Machen, *Modern Law of Corporations* § 1312.

<sup>5</sup>Taylor, *Priv. Corps.* (3rd ed.) § 51; Prof. Hohfeld, *Nature of Stockholders' Individual Liability for Corporation Debts*, 9 *COLUMBIA LAW REVIEW* 285.

Whatever may be its true nature and value, however, the conception of the corporation as a legal entity is definitely established by the decisions, and plays an important part in the discussion of the various questions of corporation law. The legal title to the corporate property is in the corporation.<sup>6</sup> The transfer of property from a partnership to a corporation formed to take over its business, is "a conveyance and sale" under a stamp statute.<sup>7</sup> The corporation may make valid contracts with the stockholders.<sup>8</sup> It is the corporation which is primarily liable to creditors on corporate obligations.<sup>9</sup> In the interpretation of statutes, the courts have commonly held that "persons" include corporations.<sup>10</sup> The corporation is liable for torts,<sup>11</sup> and for many crimes.<sup>12</sup> When it has become necessary to determine whether an act required by statute was performed through an agent or in chief, it has been held that the corporation is capable of acting in chief.<sup>13</sup> In general, the corporation is treated by courts of law as a separate legal personality.

Although it has been said that equity disregards the fiction of a corporate entity whenever necessary for the accomplishment of justice,<sup>14</sup> the actual decisions have only refused to sanction the perpetration of fraud or illegality upon creditors.<sup>15</sup> In other cases, courts of equity have frequently recognized the corporation as a subject of rights and duties distinct from those of its members.<sup>16</sup> For example, the conveyance of mortgaged property by a mortgagee, under a power of sale, to a corporation of which he is a stockholder is valid, in the absence of fraud, though a conveyance to the mortgagee or to anyone acting for him is not sustained.<sup>17</sup> A few courts have refused to recognize the corporation as a separate entity when its stock is owned wholly by one person.<sup>18</sup> The weight of authority, however, is opposed to this view.<sup>19</sup> Thus, suits against the corporation are not abated

<sup>6</sup>Button v. Hoffman (1884) 61 Wis. 20; The Queen v. Arnaud (1846) 16 L. J. (Pt. 2) 50.

<sup>7</sup>Foster & Sons v. Comm. of I. R. L. R. [1894] 1 Q. B. 516.

<sup>8</sup>Salomon v. Salomon & Co. L. R. [1897] App. Cas. 22. Cf. 8 COLUMBIA LAW REVIEW 567, 568.

<sup>9</sup>See Gallagher v. Germania Brewing Co. *supra*.

<sup>10</sup>Bray v. Wallingford (1850) 20 Conn. 416; People *ex rel.* Dayton v. May (N. Y. 1858) 27 Barb. 238.

<sup>11</sup>Jordan v. Ala. etc. R. R. Co. (1883) 74 Ala. 85; Reid v. Home Savings Bank (1881) 130 Mass. 443.

<sup>12</sup>9 COLUMBIA LAW REVIEW 78.

<sup>13</sup>8 COLUMBIA LAW REVIEW 403.

<sup>14</sup>See Morawetz, Priv. Corps. § 227; The Des Moines Gas Co. v. West (1878) 50 Ia. 16, 25; Sawyer v. Hoag (1873) 17 Wall. 610, 623.

<sup>15</sup>Stockton v. Central R. Co. (1892) 50 N. J. Eq. 52, 74; Bank v. Trevein (1898) 59 Oh. St. 316, 325.

<sup>16</sup>Einstein v. Rosenfeld (1884) 38 N. J. Eq. 309; *In re* George Newton & Co. L. R. [1895] 1 Ch. 674.

<sup>17</sup>Farrar v. Farrars, Limited (1888) 40 Ch. Div. 395, 409.

<sup>18</sup>First Natl. Bank v. Winchester (1898) 119 Ala. 168; Swift v. Smith, Dixon & Co. (1886) 65 Md. 428, 434; The Bellona Co. Case (Md. 1841) 3 Bland 442 (*semble*).

<sup>19</sup>Gallagher v. Germania Brewing Co. *supra*; Monongahela Bridge Co. v. Pittsburg etc. Co. (1900) 196 Pa. St. 25; Parker v. Bethel Hotel Co. (1895) 96 Tenn. 252, 272; Goulburn etc. Co. v. Bank (1900) 26 Vict. L. R. 351.

because the stock is owned by a few stockholders, or even by one person.<sup>20</sup> The title to corporate property is still vested in the corporation so that it is the proper plaintiff in an action of replevin.<sup>21</sup> In an action relating to the property, the corporation is "the real party in interest."<sup>22</sup>

A recent New Jersey case illustrates the application of the entity theory to suits between members of a corporation. The plaintiff and the defendant organized two corporations to carry out the purposes of their copartnership. The stockholders and directors, apart from the plaintiff and the defendant, were only nominally interested in the concern. Upon a disagreement, the plaintiff sought an accounting of the partnership affairs in equity upon the theory that the corporations could be disregarded, since they had been formed as agents in the conduct of the partnership business. The court refused relief, holding that the parties must be treated as members of a corporation, and their rights and duties measured in terms of corporation law. *Jackson v. Hooper* (N. J. 1910) 75 Atl. 568. This decision is in accord with an earlier case of similar facts.<sup>23</sup> In applying the doctrine of the separate corporate entity to a suit between members of the corporation, the court is supported by the authorities;<sup>24</sup> and would seem to be justified by the reasoning in cases in which the rights of non-members were involved. The doctrine that the corporation is an entity distinct from the sum of its members being well settled, it is properly invoked against the claims of stockholders and directors, as well as in their favor: as well in controversies between members of the corporation, as in suits between the corporation, or a stockholder, and a creditor or other third party. To permit the use of the doctrine of the separate corporate entity by the stockholders to escape full individual liability for debts, without recognizing that the parties have assumed the duties as well as the rights of stockholders, could only work injustice. The principal case is accordingly correct in its recognition of the corporate entity in a controversy between stockholders.

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THE RIGHTS OF A LANDOWNER INJURED BY BLASTING ON ADJOINING PREMISES.—The recognition of the doctrine of correlative rights between adjoining landowners was early compelled by "the necessities of the social state,"<sup>25</sup> but the development and application of the principle have been characterized by conflicting decisions. This conflict is well illustrated in the field of injuries caused by blasting operations, where the misleading doctrine of consequential injury has bred confusion. Admittedly, mere damage in fact is insufficient to support an action; some right must be infringed or duty violated, but in determining these rights and duties the courts have reached differing conclusions. In some jurisdictions the landowner's right to use and develop his land is viewed liberally. Thus, injury caused by vibration is non-actionable as *damnum absque injuria* unless accompanied

<sup>20</sup>*Newton Mfg. Co. v. White* (1871) 42 Ga. 148.

<sup>21</sup>*Button v. Hoffman supra*.

<sup>22</sup>*Winona etc. Co. v. St. Paul etc. Co.* (1877) 23 Minn. 359.

<sup>23</sup>*Russell v. M'Lellan* (Mass. 1833) 14 Pick. 63.

<sup>24</sup>*Einstein v. Rosenfeld supra; In re George Newman & Co. supra*.

<sup>25</sup>*Booth v. Rome etc. Ry. Co.* (1893) 140 N. Y. 267.