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CORPORATIONS -DE FACTO EXISTENCE OF CORPORATIONS WHERE CHARTER EXPIRED

CORPORATIONS — DE FACTO EXISTENCE OF CORPORATIONS WHERE CHARTER EXPIRED — After expiration of its charter the defendant corporation, which had been operating under the name of "Trustees of the Young Harris Institute," continued to conduct the business for which it was incorporated, holding itself out to the public as a corporate entity under the name of "Young L. G. Harris College." Plaintiff sued on a contract for goods and services furnished to defendant as "Young L. G. Harris College." *Held*, defendant is a *de facto* corporation and cannot escape liability on the ground that there was in fact no legal corporation by the name of "Young L. G. Harris College." *Hall v. Kimsey*, (Ga. 1934) 173 S. E. 437.

It seems that the most convenient method of reaching this desirable result is to adopt the analysis of corporation by estoppel rather than to go the whole length of holding that the defendant is a *de facto* corporation.[1] Where one finds a clear misrepresentation of fact followed by a change of position in reliance thereon by the complaining party, one has what is generally admitted to be the best possible situation for the application of the estoppel doctrine.[2] But as to the further question of whether or not a corporation situated as is the defendant may be said to be a *de facto* corporation, the authorities are in conflict.[3] Some insist that some

[1] The local authorities cited by the court for the latter position are of only analogical significance: Georgia Southern & Florida R. R. v. Mercantile Trust & Deposit Co., 94 Ga. 306, 21 S. E. 701 (1893) (special charter granted after general corporation act passed); Torras v. Raeburn & Verell, 108 Ga. 345, 33 S. E. 989 (1899) (specific irregularity in organization not mentioned); Brown v. Atlanta Ry. & Power Co., 113 Ga. 462, 39 S. E. 71 (1901) (charter given without authority); Brooke v. Day, 129 Ga. 694, 59 S. E. 769 (1907) (insufficient stock subscribed); Howard v. Long, 142 Ga. 789, 83 S. E. 852 (1914) (insufficient stock subscribed); Ward-Truitt Co. v. Bryan & Lamb, 144 Ga. 769, 87 S. E. 1037 (1916) (failure to organize as a corporation after incorporation papers filed).

[2] BALLANTINE, CORPORATIONS, sec. 27 (1927). While the cases recognizing estoppel are not numerous, the purely formal procedure of incorporation would seem to justify the estoppel approach.

[3] Miller v. Newburg Orrel Coal Co., 31 W. Va. 836, 8 S. E. 600 (1888); Arlington Hotel Co. v. Rector, 124 Ark. 90, 186 S. W. 622 (1916); Citizens' Bank of Clinton v. Jones, 117 Wis. 446, 94 N. W. 329 (1903); Campbell v. Perth Amboy Shipbuilding Co., 70 N. J. Eq. 40, 62 Atl. 319 (1905). *Contra*, Meramec Spring Park Co. v. Gibson, 268 Mo. 394, 188 S. W. 179 (1916); Bonfils v. Hays, 70 Colo. 336, 201 Pac. 677 (1921); Screwmen's Benevolent Ass'n v. Monteleone, 168 La. 664, 123 So. 116 (1929); Knights of Pythias v. Weller, 93 Va. 605, 25 S. E. 891 (1896); Clark v. American Cannel Coal Co., 165 Ind. 213, 73 N. E. 1083 (1903).

charter is the *sine qua non* of corporate existence and that expiration of the charter necessarily brings about termination of corporate existence,[4] while others hold that such "corporations" cannot reasonably be ignored, and the courts cannot refuse to give corporate significance to their dealings.[5] In still other cases may be found variations of these views resulting from nice distinctions arising from application of local statutes.[6] At this point one ponders the relevancy of the Georgia statute providing for revival of the "expired" corporation, if application therefor be made within the stated period, with full confirmation of all acts done in the interim.[7] It is at least arguable from this provision that the concept of the legislature was more nearly that of *de facto* existence than anything else.[8] Certainly the diverging views of the authorities as well as the logical dilemma inherent in the problem itself render impossible a satisfactory rationale of this legal problem. To discard the *de facto* doctrine necessitates in all actions against the corporation not involving estoppel either to deny recovery or to impose partnership liability. In many situations these alternatives would prove unsatisfactory. To adopt the doctrine and apply it consistently is to run counter to strong precedents in many related problems arising in the wake of the expiration of the corporate charter.[9] It is submitted that the *de facto* doctrine is essentially a creature of equity invented for use where plain justice demands it, and that the courts should continue to employ it, not as a rigidly defined category to which certain general fact patterns must invariably be assigned, but as a flexible device for working out the real equities of the contending parties.[10]

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[4] Meramec Spring Park Co. v. Gibson, 268 Mo. 394, 188 S. W. 179 (1916).

[5] Miller v. Newburg Orrel Coal Co., 31 W. Va. 836, 8 S. E. 600 (1888).

[6] Wilson v. Brown, 107 Misc. 167, 175 N. Y. S. 688 (1919).

[7] Georgia Code (Park's Ann. 1914), sec. 2823 (i); see also sec. 2825.

[8] And this contention is not necessarily disturbed by the fact that elsewhere it is provided that expiration of the corporate charter is one of the grounds for dissolution. The problem in this connection would seem exactly the same. Georgia Code (Park's Ann. 1914), sec. 2241, and *ibid.* (Park's Ann. 1922 Supp.) 2246-a.

[9] 47 A. L. R. 1288 (1927).

[10] It is probably an open question whether the Georgia court would apply the *de facto* doctrine in a case similar to the principal one if the claim asserted arose purely in tort.