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CORPORATIONS — IDENTITY AS BASIS FOR ENFORCING CONTRACT OF PREDECESSOR AGAINST SUCCESSOR — FRAUD — The stockholders and officers of the Old South Engraving Company, wishing to escape a contract whereby that corporation was bound to hire only union labor, organized the Old South Photoengraving Corporation which purchased the business of the Engraving

Company, giving therefor 9,000 of the issue of 12,000 no-par shares and issuing the rest to the stockholders of the Engraving Company in proportion to their holdings therein. It was announced that the Engraving Company would cease operating Saturday, June 4, and employees were given due notice. On Monday, June 6, the new company began operating at the same location with non-union labor. Plaintiffs, representing the union, asked that both corporations be enjoined from breach of the labor contract. *Held*, injunction refused as to both corporations. The Engraving Company was not obligated to hire union labor after it went out of business; the Photoengraving Corporation is not bound by the contract of its vendor-predecessor. *Berry v. Old South Engraving Corp.*, (Mass. 1933) 186 N. E. 601.

The court found that for want of formal action by the old corporation directing the formation of the new, the organization of the new one was not the act of the old corporation but merely the unofficial act of its officers and stockholders although the transaction was first suggested at a directors' meeting of the old company, and necessary papers were prepared by the old company's attorney. Thus, no intent to avoid the contract could be imputed to the old company. The court's position on this point seems extremely legalistic.¹ Once this finding is made, however, the sequel is logical enough.² But the cases and texts abound in statements to the effect that the corporate entity will be disregarded to prevent fraud.³ Here the officers of the two corporations admitted that their only purpose in forming the new corporation was to escape paying union wages according to the contract; yet the court says that this is not fraud. The court seems to beg the question. It has regarded the corporate fiction with the utmost formalism in refusing to impute to the Engraving Company the acts of its stockholders in forming the Photoengraving Corporation. Having assumed that the stockholders are entirely distinct from the corporation and that the contract with the union binds only the latter, of course it can be said that the desire of the stockholders to do business through another corporation is legitimate. But the real question is not considered: namely, whether the old business is continued under the new corporate form, and whether there is such a human continuity between the successive legal forms as to render the metamorphosis fraudulent if effected to escape the contract executed by the predecessor corporation. The cases which come closest to the instant case on the facts have gone the other way, and have held that where stockholders of an obligor corporation organize a new corporation to take over the business of the former in order to operate free of an executory contractual obligation, the new corporation is bound as well.⁴ This seems more

¹ *State v. Standard Oil Co.*, 49 Ohio St. 137, 30 N. E. 279, 15 L. R. A. 145, 34 Am. St. Rep. 541 (1892); *People v. North River Sugar Refining Co.*, 121 N. Y. 582, 24 N. E. 834, 9 L. R. A. 33, 18 Am. St. Rep. 843 (1890).

² Of course corporate obligations do not bind officers or stockholders individually. *Hall's Safe Co. v. Herring-Hall-Marvin Safe Co.*, 146 Fed. 37 (1906); *Donnell v. Herring-Hall-Marvin Safe Co.*, 208 U. S. 267, 28 Sup. Ct. 288, 52 L. ed. 481 (1907).

³ I FLETCHER, *CYCLOPEDIA OF CORPORATIONS*, perm. ed., sec. 41 ff. (1931); Wormser, "Piercing the Veil of Corporate Entity," 12 *COL. L. REV.* 496 at 515 (1912).

⁴ *George v. Rollins*, 176 Mich. 144, 142 N. W. 337 (1913); *Higgins v. California Petroleum & Asphalt Co.*, 122 Cal. 373, 55 Pac. 155 (1898); *Higgins v.*

just and less likely to encourage corporate irresponsibility than the result in the instant case.⁵

R. A. P.

Petroleum & Asphalt Co. (another case), 147 Cal. 363, 81 Pac. 1070 (1905); Hollywood Cleaning & Pressing Co. v. Hollywood Laundry Service, Inc., (Cal. App. 1932) 12 Pac. (2d) 145, rev'd for failure of proof, (Cal. App. 1932) 17 Pac. (2d) 709.

⁵The principal case is noted in 47 HARV. L. REV. 135 (1933).