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## CORPORATIONS-FORFEITURE OF CHARTER-CRIMINAL ACT AS A GROUND THEREFOR

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CORPORATIONS—FORFEITURE OF CHARTER—CRIMINAL ACT AS A GROUND THEREFOR—Plaintiff, a private citizen, brought a civil action for forfeiture of defendant's corporate franchise, alleging a violation of the Minnesota anti-trust statute.<sup>1</sup> In addition to penal sanctions, the statute provided that any corporation violating its provisions "shall forfeit all of its corporate franchises," and, further, that any citizen may enforce the statute.<sup>2</sup> Defendant contended that proceedings under this statute, a part of the criminal code, were criminal, and that a private citizen could not conduct a criminal prosecution. *Held*, forfeiture of a corporate charter is a civil consequence of violating the criminal statute; thus, a criminal conviction is not a condition precedent to judgment of forfeiture, and plaintiff was qualified to conduct charter forfeiture proceedings. The complaint was dismissed, however, on the ground that quo warranto, rather than a civil action,

<sup>1</sup> Minn. Stat. Ann. (1947) §623.01.

<sup>2</sup> Minn. Stat. Ann. (1947) §623.02.

should be employed by a private citizen. *Miller v. Minneapolis Underwriters Ass'n., Inc.*, (Minn. 1948) 33 N.W. (2d) 48.

Where a violation of criminal law is not involved, the general rule is that a corporation may forfeit its charter by misusing or abusing its franchise.<sup>3</sup> The theory advanced in support of this rule is that there is an implied condition annexed to the grant, which, if violated, forfeits the franchise.<sup>4</sup> While the general rule is simply stated, much difficulty attends its application.<sup>5</sup> There seems to be substantial agreement, however, that to justify forfeiture the violation of the corporate franchise must be so substantial and continued as to frustrate the purpose for which the corporation was created. The problem becomes more complicated when the acts complained of are not only *ultra vires* but also criminal.<sup>6</sup> It has been argued that charter forfeiture is not a proper method of enforcing a criminal law against a corporation where another remedy is provided by statute.<sup>7</sup> But other courts have taken the view that if the criminal penalty is insufficient to deter the commission of the prohibited act, an action to forfeit the charter should be employed.<sup>8</sup> It is submitted, however, that neither of these arguments meets the issue squarely. The issue is whether the activities complained of frustrate the purpose for which the corporation was created. If so, forfeiture would seem an appropriate remedy whether or not the acts are criminal. On the other hand, even though the corporation has committed criminal acts, forfeiture should not ensue unless the corporate purpose has been frustrated. As a corollary to these propositions, the mere fact that criminal sanctions are provided should not preclude forfeiture where the reason for corporate existence has disappeared,<sup>9</sup> since forfeiture actions are not proceedings for enforcement of criminal law.<sup>10</sup> But even after solu-

<sup>3</sup> *State Bank v. State*, 1 Blackf. (Ind.) 267 (1823); *State v. Minnesota Thresher Mfg. Co.*, 40 Minn. 213, 41 N.W. 1020 (1889); *State v. Delmar Jockey Club*, 200 Mo. 34, 92 S.W. 185 (1905). But see *People v. Allied Architects Ass'n.*, 201 Cal. 428 at 435, 257 P. 511 (1927).

<sup>4</sup> *State Bank v. State*, 1 Blackf. (Ind.) 267 at 275 (1823); *State v. Minnesota Central Ry.*, 36 Minn. 246 at 258, 30 N.W. 816 (1886); 19 C.J.S., 1439 (1940).

<sup>5</sup> *State v. Minnesota Thresher Mfg. Co.*, 40 Minn. 213 at 226, 41 N.W. 1020 (1889). *State v. Delmar Jockey Club*, 200 Mo. 34 at 66, 92 S.W. 185 (1905) ("no insignificant acts of . . . misuser . . . will suffice," but forfeiture will be ordered if the acts "are sufficiently great"); *Kahan v. Alaska Junk Co.*, 111 Wash. 39 at 45, 189 P. 262 (1920) (there must be clear and convincing proof of "systematic and habitual" misuse).

<sup>6</sup> See 37 YALE L. J. 237 (1927); 41 HARV. L. REV. 244 (1927); 26 MICH. L. REV. 813 (1928).

<sup>7</sup> *Commonwealth v. American Baseball Club of Philadelphia*, 290 Pa. 136 at 148, 138 A. 497 (1927); *State v. Capital City Dairy Co.*, 62 Ohio St. 350 at 360, 56 N.E. 651 (1900).

<sup>8</sup> *Id.* at 366; *State v. Easton Social Club*, 73 Md. 97, 20 A. 783 (1890).

<sup>9</sup> *State v. Gamble-Robinson Fruit Co.*, 44 N.D. 376 at 383, 384, 176 N.W. 103 (1919). Cf. 8 THOMPSON ON CORPORATIONS, 3d ed., §6480 (1927).

<sup>10</sup> *State v. Standard Oil Co.*, 218 Mo. 1 at 353, 116 S.W. 902 (1909). There is almost universal agreement that actions to forfeit corporate charters are civil proceedings: *State v. Gamble-Robinson Fruit Co.*, 44 N.D. 376, 176 N.W. 103 (1919); 26 MICH. L. REV. 813 (1928).

tion of this special problem which arises when criminal conduct is present, there still remains the difficult question of ascertaining whether the charter misuse has resulted in frustration of the corporate purpose.<sup>11</sup> Statutes like that involved in the principal case solve or eliminate this problem by expressly providing for forfeiture when the prohibited acts have been committed.<sup>12</sup>

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<sup>11</sup> Where the misuse consists of violation of anti-trust laws, courts almost uniformly decree forfeiture: *People v. North River Sugar Refining Co.*, 3 N.Y. Supp. 401, (1889); *State v. Neb. Distilling Co.*, 29 Neb. 700, 46 N.W. 155 (1890); *State v. Portland Nat. Gas Co.*, 153 Ind. 483, 53 N.E. 1089 (1899). Similarly, where the statute violated concerns gambling, *State v. Delmar Jockey Club*, 200 Mo. 34, 92 S.W. 185 (1905); lottery, *State v. Nebraska Home Co.*, 66 Neb. 349, 92 N.W. 763 (1902); or liquor, *State v. Missouri Athletic Club*, 261 Mo. 576, 170 S.W. 904 (1914). Forfeiture has been refused where the misuse consisted of improper stock or bond issues; *State v. Minnesota Thresher Mfg. Co.*, 40 Minn. 213, 41 N.W. 1020 (1889); *State v. Janesville Water Co.*, 92 Wis. 496, 66 N.W. 512 (1896). Conflict exists where violation was of an insurance statute; *Fraternal Alliance v. State*, 86 Md. 550, 39 A. 512 (1898) (forfeiture decreed in second trial for same offense, the first having been dismissed); and of Sunday statutes, *State v. Baseball Club*, 127 Tenn. 292, 154 S.W. 1151 (1913) (dismissed); *Commonwealth v. American Baseball Club of Philadelphia*, 290 Pa. 136, 138 A. 497 (1927) (forfeiture decreed).

<sup>12</sup> By statute the following have been declared grounds for forfeiture: (1) Violation of any law: *Ariz. Code Ann.* (1939) § 53-307; *Cal. Corp. Code* (Deering, 1947) § 4690; *Minn. Stat. Ann.* (1947) § 301.57; *Mo. Rev. Stat. Ann.* (1939) § 4997.84, as amended by L. 1945, § 81; *N.C. Gen. Stat.* (1943) § 55-124; *N.D. Rev. Code* (1943) § 10-1607. (2) Activity in restraint of trade: *Alaska Comp. Laws* (1933) § 925; *Minn. Stat. Ann.* (1947) § 623.02. (3) Violation of charter or excess of powers: *Cal. Corp. Code* (Deering, 1947) § 4690; *Conn. Gen. Stat.* § 3467, as amended by L. 1945, Act 152, Supp. § 718h; *La. Gen. Stat.* (1939) § 1135; *N.D. Rev. Code* (1943) § 10-1616. (4) Fraudulent incorporation: *N.D. Rev. Code* (1943) § 10-1616; *Minn. Stat. Ann.* (1947) § 301.57. (5) Fraud, mismanagement, abuse of authority or waste: *Cal. Corp. Code* (Deering, 1947) § 4650; *Minn. Stat. Ann.* (1947) § 301.49; *Mo. Rev. Stat. Ann.* (1939) § 4997.88, as amended by L. 1943, § 88; *N.C. Gen. Stat.* (1943) § 55-124; 15 Pa. Ann. Stat. (Purdon, perm. ed.) § 2852-1107; *R.I. Gen. Laws* (1938), c. 116, § 57, as amended by L. 1945, c. 1610. (6) Objects of incorporation have failed, been abandoned, or are unascertainable: *La. Gen. Stat.* (1939) § 1135; *Minn. Stat. Ann.* (1947) § 301.49; 15 Pa. Ann. Stat. (Purdon, perm. ed.) § 2852-1107; *Va. Code* (1942) § 3810b, as enacted by L. 1944, c. 367; *Wash. Rev. Stat.* (Remington, 1932) § 3803-50. (7) Abandonment of business: *Ala. Code* (1940) tit. 10, § 109; *Cal. Corp. Code* (Deering, 1947) § 4650; *Minn. Stat. Ann.* (1947) § 301.57; *Ohio Gen. Code* (Page, 1938) § 8623-86.