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# Personal Liability of Corporate Officers for Ultra Vires Contracts

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# PERSONAL LIABILITY OF CORPORATE OFFICERS FOR ULTRA VIRES CONTRACTS

A director or other officer of a corporation, when contracting on its behalf, acts as its agent and the laws of agency are generally applicable. This note presents those problems, apparently unique to corporation law, in the liability of an agent who, with authority, contracts for a principal who has no authority.[1] Of no concern here are those instances where, either because of ratification or estoppel, the corporation itself is liable, since if the principal is bound the other party has no ground of complaint against the agent.[2]

An officer of a corporation, contracting in excess of or without authority given him by his principal, may incur a personal liability when the other party is unable to hold the corporation upon the contract.[3] Ordinarily, however, unless the contract binds the officer personally, as for example where his signature is unqualified and without indication of the agency,[4] or the principal is undisclosed during the contract negotiations,[5] the agent cannot be held liable upon the contract itself.[6] With the notable exception of actions under NIL § 20, which holds an unauthorized agent liable upon a note as a principal, an agent's liability is usually collateral to the contract.[7] The proper action against him would be in tort, for deceit or fraudulent misrepresentation of authority,[8] or for breach of an implied warranty of authority.[9] It is no

1. Use of the word "authority" in this manner, to apply to both a director and a corporation, is perhaps unfortunate in that the latter application should not, correctly, imply an agent-principal relationship between the corporation and the state. The cases have not expressed a necessity for further refinement, however. A distinction between corporate capacity and corporate authority has been attempted in the MODEL BUSINESS CORPORATION ACT, § 11-I, 9 U.L.A. 75 (1951). A distinction between a principal's competency and capacity is attempted in RESTATEMENT, AGENCY § 332 (1933).

2. Chieppo v. Chieppo, 88 Conn. 233, 90 Atl. 940 (1914).

3. This is true notwithstanding the agent's bona fide belief that he actually had the authority, provided the other party had no knowledge of the want of authority. Subsequent ratification by the corporation, however, may absolve the director of liability. Jacobs v. Williams, 85 Conn. 215, 82 Atl. 202 (1912); Grieb & Erickson, Inc. v. Estberg, 186 Wis. 174, 202 N.W. 331 (1925).

4. Baird v. Publishers' Nat. Service Bureau, 51 N.D. 374, 199 N.W. 757 (1924). *Cf.* Northern Trust & Savings Bank v. Ellwood, 200 Iowa 1213, 206 N.W. 256 (1925).

5. *See* Leimkauf v. Lombard, 137 N.Y. 417, 33 N.E. 472, 474 (1893).

6. Jacobs v. Williams, 85 Conn. 215, 82 Atl. 202 (1912); Hill v. Daniel, 52 Ga. App. 427, 183 S.E. 662 (1936); Groeltz v. Armstrong, 125 Iowa 39, 99 N.W. 128 (1904). A caveat, drawn from the cases, may be appropriate here. Many attorneys, when drafting their complaints, draw separate but identical counts against the corporation and the contracting director, erroneously reasoning that if one is not liable upon the contract, the other surely must be. Such complaints, against the agent upon the contract itself, have usually been dismissed.

7. Pierson v. Holdridge, 92 Kan. 365, 140 Pac. 1032 (1914). *Cf.* Chieppo v. Chieppo, 88 Conn. 233, 90 Atl. 940 (1914) (incomplete incorporation). See also BRITTON, BILLS AND NOTES § 166 (1943).

8. Jacobs v. Williams, 85 Conn. 215, 82 Atl. 202 (1912).

9. Pierson v. Holdridge, 92 Kan. 365, 140 Pac. 1032 (1914); Baltzen v. Nicolay, 53 N.Y. 467 (1873).

defense to the director that the other party could have ascertained the scope of his powers from the by-laws or minutes of the corporation which are internal regulations, not of the status of the law, and not normally open to nor binding upon the public.[10]

The capacity, power, rights and authority of a corporation, expressed in corporate charter or a statute, are matters of law,[11] and representations, express or implied, as to their existence or scope are consequently representations of matters of law.[12] Those contracting or otherwise dealing with a corporation are affected with notice of the authority and powers of that corporation,[13] and are chargeable with the same knowledge of those powers as is an agent, director or other corporate officer.[14] It is upon this reasoning that the courts have uniformly refused to impose tort liability, for deceit or false representation of authority, upon directors who make contracts which are *ultra vires* the corporation.[15]

Some cases indicate that liability might be imposed where the director is guilty of a willful wrong — where he is deceitful,[16] fraudu-

10. See Groeltz v. Armstrong, 125 Iowa 39, 99 N.W. 128 (1904). Also see BALLANTINE, CORPORATIONS § 107 (1946).

11. B. J. Wolfe & Sons v. McKeon, 2 Ala. App. 421, 57 So. 63 (1911); Parker v. Thomas, 19 Ind. 213, 81 Am. Dec. 385 (1862); Hermitage Hotel Co. v. Dyer, 125 Tenn. 302, 142 S.W. 1117 (1911); First Nat. Bank of Cuero v. Commercial Nat. Bank of Beeville, 99 Tex. 118, 87 S.W. 1032 (1905).

12. Parker v. Thomas, 19 Ind. 213, 81 Am. Dec. 385 (1862); Abeles v. Cochran, 22 Kan. 287, 31 Am. Rep. 194 (1879); Rashdall v. Ford, L.R. 2 Eq. 750 (1866).

13. Holt v. Winfield Bank, 25 Fed. 812 (C.C.D. Kan. 1885); Sandford v. McArthur, 57 Ky. 328 (1857); Merchants' & Planters' Packet Co. v. Streuby, 91 Miss. 211, 44 So. 791 (1907); Tennessee Automatic Lighting Co. v. Massey, 56 S.W. 35 (Tenn. Ch. App. 1899); *cf.* Newman v. Sylvester, 42 Ind. 106 (1873); *see* Groeltz v. Armstrong, 125 Iowa 39, 99 N.W. 128, 129 (1904).

14. B. J. Wolfe & Sons v. McKeon, 2 Ala. App. 421, 57 So. 63 (1911) (mere mistake of law as to capacity of principal no ground for charging agent); Abeles v. Cochran, 22 Kan. 287, 31 Am. Rep. 194 (1879); Humphrey v. Jones, 71 Mo. 62 (1879) (innocent mistake of law); *see* Thilmany v. Iowa Paper-Bag Co., 108 Iowa 357, 79 N.W. 261, 262 (1899); *cf.* Frost Mfg. Co. v. Foster, 76 Iowa 535, 41 N.W. 212 (1889).

15. Holt v. Winfield Bank, 25 Fed. 812 (C.C.D. Kan. 1885); Ketcham v. Mississippi Outdoor Displays, Inc., 203 Miss. 52, 33 So.2d 300 (1948); Merchants' & Planters' Packet Co. v. Streuby, 91 Miss. 211, 44 So. 791 (1907); Humphrey v. Jones, 71 Mo. 62 (1879) (the same rule applicable to officers of public or municipal corporations on contracts executed on behalf of the public); Hermitage Hotel Co. v. Dyer, 125 Tenn. 302, 142 S.W. 1117 (1911); Tennessee Automatic Lighting Co. v. Massey, 56 S.W. 35 (Tenn. Ch. App. 1899) (the doing of *ultra vires* acts by a corporation does not of itself render the members personally liable); First Nat. Bank of Cuero v. Commercial Nat. Bank of Beeville, 99 Tex. 118, 87 S.W. 1032 (1905). *Cf.* Sourwine v. McRoy Clay Works, 42 Ind. App. 358, 85 N.E. 782 (1908) (mutual mistake); Dietrich v. Rothenberger, 52 Ky. L. Rep. 338, 75 S.W. 271 (1903); Shoun v. Armstrong, 59 S.W. 790 (Tenn. Ch. App. 1900); Staacke v. Routledge, 111 Tex. 489, 241 S.W. 994 (1922); Eaglesfield v. Marquis of Londonberry, L.R. 4 Ch. 693 (1874). *But cf.* Leinkauf v. Lombard, 137 N.Y. 417, 33 N.E. 472 (1893); Ridenour v. Mayo, 40 Ohio St. 9 (1883); Small v. Elliott, 12 S.D. 570, 82 N.W. 92 (1900); Weeks v. Propert, L.R. 8 C.P. 427 (1873); Richardson v. Williamson & Lawson, L.R. 6 Q.B. 276 (1871).

16. Thilmany v. Iowa Paper-Bag Co., 108 Iowa 357, 79 N.W. 261 (1899); *see* Sourwine v. McRoy Clay Works, 42 Ind. App. 358, 85 N.E. 782, 783 (1908);

lently represents his authority[17] or fraudulently misleads another knowing that the corporation could or would not perform[18] — but there are virtually no cases which actually do impose liability upon that ground,[19] and the proposition is relegated to the status of dicta only. Indeed, if corporate authority is a matter of law, it would appear to be immaterial that misrepresentations as to its scope are willful. Moreover, since liability is not imposed for an intentional misrepresentation of corporate authority, it is not surprising that no liability is upon the director for either negligent failure to ascertain the scope of corporate power,[20] or failure to disclose known limitations.[21]

Where the action against the director is for breach of an implied warranty of authority, the courts generally agree that a director warrants his own authority, but deny that he warrants his principal's authority to enter into the contract.[22] Little attempt has been made to differentiate corporate authority and capacity in this regard.[23] Other cases indicate that a director will not be liable where he makes an unauthorized contract unless the contract is one which could have been enforced against the principal if authorized.[24] Others hold the agree-

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*cf.* Chieppo v. Chieppo, 88 Conn. 233, 90 Atl. 940 (1914) (incomplete incorporation); Parker v. Thomas, 19 Ind. 213, 215, 81 Am. Dec. 385 (1862). *But cf.* McCarty v. Love, 145 Miss. 330, 110 So. 795, 796 (1927); Hermitage Hotel Co. v. Dyer, 125 Tenn. 302, 142 S.W. 1117 (1911).

17. Abeles v. Cochran, 22 Kan. 287, 31 Am. Rep. 194 (1879); Merchants' & Planters' Packet Co. v. Streuby, 91 Miss. 211, 44 So. 791 (1907). The mere fact that the contract is *ultra vires* does not taint the transaction with fraud. Lowe v. Kohn, 128 Conn. 45, 20 A.2d 407 (1941).

18. *See* Lowe v. Kohn, 128 Conn. 45, 20 A.2d 407, 410 (1941); A. Lorenze Co. v. Wilbert, 165 La. 247, 115 So. 475, 476 (1928); McCarty v. Love, 145 Miss. 330, 110 So. 795, 796 (1927).

19. *But see* Holt v. Winfield Bank, 25 Fed. 812, 815 (C.C.D. Kan. 1885); First Nat. Bank of Cuero v. Commercial Nat. Bank of Beeville, 99 Tex. 118, 87 S.W. 1032, 1035 (1905).

20. *But see* Brannin v. Loving, 82 Ky. 370, 374-75 (1884).

21. *But see* Humphrey v. Jones, 71 Mo. 62, 65 (1879).

22. Thilmany v. Iowa Paper-Bag Co., 108 Iowa 357, 79 N.W. 261 (1899) (agent cannot be held to a warranty of legality of corporation's contracts); Ketcham v. Mississippi Outdoor Displays, Inc., 203 Miss. 52, 33 So.2d 300 (1948); Jenkins v. City of Henderson, 214 N.C. 244, 199 S.E. 37 (1938). *But cf.* Small v. Elliott, 12 S.D. 570, 82 N.W. 92, 93 (1900), in which the court said, "[D]efendant should not escape personal liability without establishing the liability of his principal."

23. The RESTATEMENT, AGENCY § 332 (1933) indicates that an agent contracting for a principal without capacity is not liable to the other party, unless he represents his principal has capacity or he knows the principal lacks capacity. Corporate compliance with registration requirements for doing business in other than the incorporating state has been viewed as a question of corporate capacity, however, which an agent has been held to warrant. Raff v. Isman, 235 Pa. 347, 84 Atl. 352 (1912). See Note, 26 HARV. L. REV. 542 (1913). Also see MODEL BUSINESS CORPORATION ACT, § 11, 9 U.L.A. 75 (1951).

24. Thilmany v. Iowa Paper-Bag Co., 108 Iowa 357, 79 N.W. 261 (1899). "Otherwise the anomaly would exist of giving a right of action against the assumed agent for an unauthorized representation of his power to make a contract, when the breach of the contract itself, if he had been authorized to make it, would have furnished no ground of action." Browne v. Hare, 112 W. Va. 648, 166 S.E. 362 (1932). See Baltzen v. Nicolay, 53 N.Y. 467 (1873) (recovery for breach of warranty of authority denied; contract barred by the

ment is illegal and there is consequently no liability on any party.[25]

There are indications in some of the cases that liability for an *ultra vires* contract might be imposed upon the director in one of the following situations: where the other party is ignorant of the existence of the corporation, upon the agency doctrine of undisclosed principal;[26] where the director is sole owner or in complete control of the corporatin;[27] where the incorporation is a cloak for illegal acts;[28] where the director receives and retains money upon the *ultra vires* contract upon the principle of unjust enrichment,[29] notwithstanding the contract was *ultra vires* the corporation. Imposition of liability upon a director on any of these grounds would appear to be consistent with decisions and reasoning in related areas.

### CRITIQUE

Although the rule which holds a director not liable for making an *ultra vires* contract is referred to by the text writers as the better and majority view,[30] it is in reality both unfair and virtually unanimous.

Because the doctrine of *ultra vires* is manifestly so unfair to those contracting with a corporation, the tendency of most courts has been to interpret the powers and authority of a corporation broadly so as to include many activities and thus limit the necessity for application

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Statute of Frauds); Dung v. Parker, 52 N.Y. 494 (1873). *But cf.* Small v. Elliott, 12 S.D. 570, 82 N.W. 92 (1900).

25. *See* Humphrey v. Jones, 71 Mo. 62, 66 (1879); Kennedy v. Kennedy, 91 N.Y.S.2d 294 (Sup. Ct. 1949). *But cf.* McGrew v. City Produce Exchange, 85 Tenn. 572, 4 S.W. 38 (1887). Performance of an act prohibited by statute may result in forfeiture of the corporate charter and criminal liability for the director, but it does not *per se* subject him to civil liability. See BALLANTINE, CORPORATIONS § 108 (1946). This result hardly seems satisfactory.

26. *See* Piser v. Serota & Gans, 182 Ill. App. 390 (1913); Leinkauf v. Lombard, 137 N.Y. 417, 33 N.E. 472, 474 (1893). The contract may by its terms impose a liability upon the director as an individual. *See* Hill v. Daniel, 52 Ga. App. 427, 183 S.E. 662, 663 (1936); Thilmany v. Iowa Paper-Bag Co., 108 Iowa 357, 79 N.W. 261, 262 (1899); Knickerbocker v. Wilcox, 83 Mich. 200, 47 N.W. 123, 124 (1890); Hermitage Hotel Co. v. Dyer, 125 Tenn. 302, 142 S.W. 1117, 1118 (1911).

27. Bankers Trust Co. v. Economy Coal Co., 224 Iowa 36, 276 N.W. 16 (1937). Since the corporation cannot conduct a business prohibited by law, it may be deemed to be the business of the officers only, and they may be liable as partners. Mandeville v. Courtright, 142 Fed. 97 (3d Cir. 1905). *Cf.* Ridenour v. Mayo, 40 Ohio St. 9 (1883).

28. McGrew v. City Produce Exchange, 85 Tenn. 572, 4 S.W. 38 (1887). *See* Musso v. Rice, 44 S.W.2d 895, 897 (Mo. App. 1932); Searight, Thornton & Co. v. Payne, 2 Tenn. Ch. 175, 180 (1874); Schorman v. McIntyre, 92 Wash. 116, 158 Pac. 993 (1916) (director cannot hide behind agency).

29. Schorman v. McIntyre, 92 Wash. 116, 158 Pac. 993 (1916); *see* Lehman v. Knapp, 48 La. Ann. 1148, 20 So. 674, 677 (1896); *cf.* Unternahrer v. Baker, 18 Wash.2d 393, 139 P.2d 318 (1943); Richardson v. Williamson & Lawson, L.R. 6 Q.B. 276 (1871). A quasi-contract action is not enforcement but disaffirmance of the *ultra vires* contract. See BALLANTINE, CORPORATIONS § 105 (1946).

30. See BALLANTINE, CORPORATIONS § 65 (1946); STEVENS, CORPORATIONS § 155 (2d ed. 1949); Notes, 48 Am. St. Rep. 916 (1895); 6 L.R.A. (N.S.) 1005 (1907); 26 HARV. L. REV. 542 (1913). Also see 1 MECHEM, AGENCY § 1386 (2d ed. 1914); 2 AM. JUR., Agency § 318 (1936).

of the doctrine;[31] but retention of the fiction of public notice of the charter of a corporation persists and is especially unfair and unrealistic in this era of vague charter provisions and foreign corporations. To continue to consider charter provisions as matters of law, misrepresentation of which will not afford grounds for liability, is difficult to justify.

In cases involving a tort arising out of an *ultra vires* activity (that is, collateral to, rather than upon, the *ultra vires* contract itself), the courts have been especially impatient with the doctrine and in imposing liability upon the directors, notwithstanding the injured party might have ascertained the corporate powers in advance of the injury have held the defense of *ultra vires* unavailable to the participating directors.[32] Normally, the plea of *ultra vires* is available only to the corporation itself, its stockholders and, in certain cases, the state or sovereignty.[33] There is no good reason why it should also be available to a fraudulent director.[34] It allows him to prove first that he was acting for the corporation, and then to show, seemingly inconsistently, that the corporation was without authority. Further, there should be some application of the doctrine of estoppel (which has been apparently overlooked in this area), to prevent an officer who asserts, expressly or impliedly, that his corporation has power to enter into a transaction to later deny that same power.[35] It is one thing to protect the corporation and its stockholders for the reason that an *ultra vires* contract is against the law and wrongful, and entirely different and

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31. Of course the doctrine itself is under persistent attack. See BALLANTINE, CORPORATIONS § 1021-1028 (1947). Also see BALLANTINE, CORPORATIONS § 106 logical and ill-founded." Proposed statutes would abolish the doctrine as to lack of authority, at least under the purpose clause of the charter. See MODEL BUSINESS CORPORATION ACT, §§ 10, 11, 9 U.L.A. 73, 75 (1951). Consider the anomaly of each of two contracting directors being under a greater duty to ascertain the authority of the other's corporation than his own.

The directors may later be liable to the corporation for unauthorized acts, which is, in result, similar to holding them liable directly to the other party. See STEVENS, CORPORATIONS § 155 (2d ed. 1949). As to director's liability to the corporation or stockholders for unauthorized acts, see 3 FLETCHER, PRIVATE CORPORATIONS § 1021-1028 (1947). Also see BALLANTINE, CORPORATIONS § 106 (1946). As to liability to creditors, see 3 FLETCHER, PRIVATE CORPORATIONS § 1191 (1947). Also see BALLANTINE, CORPORATIONS § 104 (1946).

32. "In a word, these defendants, in view of their knowledge and active participation, cannot be heard to say that what they were causing to be done, was not being done by them but by their corporation, when that corporation could not conduct the business and they knew that it could not." Mandeville v. Courtright, 142 Fed. 97, 100 (3d Cir. 1905).

33. See 13 AM. JUR., *Corporations* §§ 759-765 (1938).

34. Where an *ultra vires* transaction has some relation to, but is separable from, the contract in suit, the plea is not available. Pittsburgh, C. & St. L. Ry. v. Keokuk & H. Bridge Co., 131 U.S. 371, 9 Sup. Ct. 770, 33 L. Ed. 157 (1889). An action against a director in tort or warranty would also appear to be juristically distinct from the *ultra vires* contract, and the plea should similarly be not allowed.

35. *See* Mandeville v. Courtright, 142 Fed. 97, 100 (3d Cir. 1905). *But cf.* Bankers Trust Co. v. Economy Coal Co., 224 Iowa 36, 276 N.W. 16, 19 (1937).

inconsistent to protect the participating directors from liability for the very same reason.

The reason an agent is held liable when he has no authority is that the other party is deprived of a remedy upon the contract against the principal and it is but just that the agent who contracted without authority bear the loss.[36] This same reasoning seems equally appropriate to an *ultra vires* contract. Moreover, since a director warrants his authority, if the authority given him by a corporation is a nullity because *ultra vires,* has he not breached his warranty, whatever the state of the corporate power?[37]

Precedent for holding a director liable may be found most readily in those analogous cases which hold him liable for contracts made on behalf of a nonexistent, incompletely incorporated, defective, dissolved or forfeited corporation.[38] Where there is no principal, a person assuming to act as officer or agent is dealt with as a principal for breach of an implied representation that the corporation existed, and is personally liable for breach of contract or tort.[39] So also, the individual members are liable upon the contracts of an unincorporated organization, either because they held themselves out as agents of a principal that had no existence (or was not a legal entity) or because they themselves are principals, since none other exist.[40] A similar rationale would hold them liable where the corporation has no authority, either because they held themselves out as agents of a principal that could not legally perform, or because they themselves are principals, since

36. Grieb & Erickson, Inc. v. Estberg, 186 Wis. 174, 202 N.W. 331 (1925).

37. The statement of powers in a charter limits not only the corporation but the actual authority of the directors themselves. See BALLANTINE, CORPORATIONS § 82 (1946). A corporation which has ceased to exist upon forfeiture of its charter has no authority to do anything or to authorize anyone else to do anything for it. Black, Sivalls & Bryson, Inc. v. Connell, 149 Kan. 118, 86 P.2d 545 (1939). In Hill v. Daniel, 52 Ga. App. 427, 183 S.E. 662 (1936), an unauthorized agent made a contract for an unauthorized corporation, but since the action against the agent was erroneously brought on the contract itself, the court did not determine which lack of authority was controlling.

38. Lewis v. Tilton, 64 Iowa 220, 19 N.W. 911 (1884); Black, Sivalls & Bryson, Inc. v. Connell, 149 Kan. 118, 86 P.2d 545 (1939); Studerus Oil Co. v. Bienfang, 122 N.J.L. 238, 4 A.2d 787 (Sup. Ct. 1939). *See* Southeastern Const. Co. v. Robbins, 248 Ala. 367, 27 So.2d 705 (1946). But if there is a de facto corporation, the other party cannot disregard the corporate character, nor impose a personal liability upon a director by questioning the corporate existence. See Note, 48 Am. St. Rep. 916 (1895). Also see 3 FLETCHER, PRIVATE CORPORATIONS § 1121 (1947).

39. Claude Neon Lights, Inc. v. American Neon Light Corp., 39 F.2d 548 (2d Cir. 1930); Chieppo v. Chieppo, 88 Conn. 233, 90 Atl. 940 (1914); Seeberger v. McCormick, 178 Ill. 404, 53 N.E. 340 (1899). One who signs a promissory note as president of a nonexistent corporation is liable personally on the note itself. Black, Sivalls & Bryson, Inc. v. Connell, 149 Kan. 118, 86 P.2d 545 (1939). See NEGOTIABLE INSTRUMENTS LAW § 20.

40. Lewis v. Tilton, 64 Iowa 220, 19 N.W. 911 (1884) (club had no legal existence and could not sue or be sued); Blakely v. Bennecke, 59 Mo. 193 (1875) (liability not that of an agent but personal); Woodward v. Beasley, 2 Tenn. Ch. App. 339 (1902); *cf.* Small v. Elliott, 12 S.D. 570, 82 N.W. 92 (1900) (director must show corporation's power).

none other exist who could legally perform the contract. Upon identical grounds directors have been held individually liable when continuing the business of a corporation which has been dissolved or whose franchise has been forfeited.[41] Misrepresentations as to the existence, dissolution or forfeiture of a corporate charter are viewed as misrepresentations of fact, permitting recovery.[42] Why should a third party more easily discover the scope of the powers in a charter than the existence of the corporation itself? If what is in the charter is a matter of law, the very existence of the charter itself should be a matter of law also. That the courts do not consider it to be so testifies to the unfairness of that view.

Of course, cases involving *ultra vires* contracts are becoming less frequent than before for the reason that courts more readily hold the corporations themselves liable on many *ultra vires* contracts,[43] but it is still unreasonable to protect directors, who are so very close to a corporation and should be charged with complete knowledge of corporate powers, at the expense of the public. *Ultra vires* contracts should be made at the directors' peril, not at the public's. At least one case recognized the need for a statute imposing liability on the directors.[44] The paucity of recent cases should not completely preclude the introduction of statutes imposing liability, since the rule itself discourages many potential wronged suitors.

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41. Studerus Oil Co. v. Bienfang, 122 N.J.L. 238, 4 A.2d 787 (Sup. Ct. 1939) (notwithstanding good faith). In Tennessee Automatic Lighting Co. v. Massey, 56 S.W. 35 (Tenn. Ch. App. 1899), the plaintiff attempted a collateral attack on the charter, endeavoring to show that if there was no corporation, the contract could not be the corporation's.

42. *Cf.* Chieppo v. Chieppo, 88 Conn. 233, 90 Atl. 940 (1914).

43. See BALLANTINE, CORPORATIONS § 101 (1946); STEVENS, CORPORATIONS § 76 (2d ed. 1949).

44. See Sandford v. McArthur, 57 Ky. 328 (1857); *cf.* Frost Mfg. Co. v. Foster, 76 Iowa 535, 41 N.W. 212 (1889).