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Dedication: Nature and requisites; common law or implied dedication

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At first blush it would seem that the court went a trifle too far; that the directors had acted for the corporation as its general agent to proceed to conduct the business contemplated, and as such agent the directors endorsed the notes, all for the benefit of the corporation, thus creating a liability for any act done within the scope of his power. There is no question but that had the corporation been successful, the stockholders would not object to dividends or profits. But (following the court's reasoning) the directors, (the plaintiffs) knew or at least should have known that the corporation was not legally organized. They knew or should have known that by doing business in its corporate name and holding it out as legally organized, they in effect represented that it was such a corporation. They cannot, therefore, now as against their fellow stockholders, retrace their steps and claim that the corporation with and for whom they have dealt for so many years never had a legal existence and so compel their fellow stockholders to share a liability which they voluntarily assumed.

This precise question has no case exactly parallel in Wisconsin, but has arisen generally over the country. In Georgia[2] and Texas,[3] the shareholders are held not liable; likewise in Illinois,[4] Louisiana[5] and Maine.[6] There are many decisions to the contrary, Missouri being one of the leading ones, holding that the members of the corporation are liable to contribute their share to the managing members who have made themselves personally liable.[7] The great weight of authority, as well as the better reason, however, is the other way. The doctrine of partnership liability in such cases is not found in law or reason and is repugnant to the statute authorizing a corporation, one object of which is to limit liability of stockholders.[8]

S. G. SKOLNIK

[2] *Planters & M. Bank* v. *Padgett*, 69 Ga. 159.

Dedication: Nature and requisites; common law or implied dedication.

Dugan v. *Zurmuchlen*[1] is an action to enjoin the maintenance of a fence by defendant on the center line of an alleged sixteen-foot alley arising either by implied dedication or by prescription. Defendant is the owner of a subdivision which bounds the west side of the alley. The original owners on the east side made a dedication of sixteen-foot alley therein conveying eight feet of their land making up the east half of the alleged alley. The original owner of defendant's land never joined in the dedication of the west half of eight feet but nevertheless built a fence which allowed eight feet to the alley. The subsequent owner of the defendant's land subdivided it, and on the plot made no reference to the alley. Now defendant removed the

[3] *American Sale Co.* v. *Heidenheimer*, 80 Tex. 344.

[4] Cresswell & Oberly, 17 Ill. App. 281.

[5] *Pochel* v. *Kemper*, 14 Louisana 308.

[6] *McClinch v. Sturgis*, 72 Me. 288.

[7] Richardson & Pitts, 71 Mo. 128.

[8] *Gartside Coal Co*, v. *Maxwell*, 22 Fed. Rep. 197.

[1] 211 N.W. 986, Ia.

old fence and built a fence along the center line of the alleged alley, which borders the original eight feet conveyed by the east owners and being the east half of the alley. The alley has not been used by the public at large and the use was with the consent of the west owners originally.

The court spends a goodly portion of the opinion in differentiating between statutory dedication and common law dedication, and rights by prescription and common law dedication.

The real distinction between statutory law dedication and common law dedication is that the former requires that there be a grantee *in esse* at the time of the dedication to make an acceptance.

The former operates by grant and the latter by estoppel *in pais*, and whereas the former conveys the fee the latter merely conveys an easement. No writing or conveyance is required in either case and the statute of frauds does not apply, but there must be an unequivocal intention to dedicate; yet, long acquiescence in public use, coupled with acts and declarations by the grantor are sufficient.

The essential difference between common law dedication and a right acquired by prescription is that the latter is acquired by open and claimed adverse use for the statutory period whereas the former requires no such statutory period and operates by the very consent of the owner.

In this case there was no unequivocal intention to dedicate and the original use being by consent, the presumption is that the continued used was by consent of the owner. There being no adverse use or dedication, there is no easement acquired by prescription or common law dedication.

BERT BERKWICH

Master and Servant; Liability of Principal Contractors as "third parties" under Workman's Compensation Act.

Cermak v. *Milwaukee Air Power Pump Co.*[1] In this case the plaintiff was employed by the Universal Construction Company who was a sub-contractor to the defendant Pump Company. During the course of the plaintiff's employment he was injured. Both companies were under the Workman's Compensation Act of Wisconsin. The plaintiff collected compensation from the Universal Construction Company and now brings an action in tort against the defendant for injury sustained as a result of the said defendant's negligence. The defendant pleaded the act as the exclusive remedy to which a demurrer was interposed. The lower court sustained the demurrer and the Supreme Court affirmed the ruling.

The theory of the Workman's Compensation Act is based on the idea of quick and sure remuneration to an injured employee. The act provides for a uniform system of compensation, a speedy payment and a guaranty of funds. In giving this advantage to the employee he loses, however, some of his common law rights as against the employer for the remedy against the employer announced in the act is exclusive.

[1] 211 N.W. 354, —Wis.—