

13. Preliminary expenses and contracts before formation—*Ratification by Company*.—It is a rule, both of the Civil and the Common Law, that a person capable of contracting may, by his lawful and voluntary act, oblige himself toward another, and sometimes oblige another toward him, without the intervention of any contract between them.¹ And a person incapable of contracting may, by the quasi-contract which results from the act of another, be obliged toward him.² In the Province of Quebec there was some doubt as to whether a corporation was a person in the above sense, and the question was first decided in *De Bellefeuille v. Municipality of Mile End*³ to the effect that a corporation after it was formed was liable for the fees of the attorney who secured the charter of incorporation. This case was followed by *Atwater v. The Importers and Traders Co.*,⁴ and the very recent case of *Burroughs v. Corporation of Lachute*,⁵ all in the same sense. The question of ratification, it will be noticed, could not very well enter into these cases, for the very existence of the corporation depended upon the services which had been rendered on its behalf.

In England the Courts have held, even where there has been no ratification by the corporation, that a corporation should not be allowed to use its powers, which it has been enabled to obtain through the engagements of its promoters, in disregard of those engagements and to the prejudice of the persons with whom those engagements were made.⁶ Companies frequently embody in their Act of Incorporation, or articles of association, an undertaking to pay for the expenses incurred in their incorporation, and an action will then lie against the company on this express promise.⁷ If the attempt to incorporate the company is abortive, those who jointly signed the petition for incorporation will be held jointly and severally liable for

¹ Pothier Obligations, 113, 114; Art. 1041, Quebec C. Code; 1 Addison on Contracts, 1025.

² Pothier Obligations, 115 and 128; Art. 1042, Quebec C. Code; 2 Addison on Contracts, p. 1030.

³ 25 L. C. J., 18.

⁴ C. R. 1886, 31 L. C. J., 52.

⁵ S. C. 1894, 6 Que. 393.

⁶ *Edwards v. Grand Junction Ry.*, 1 M. & Cr., 650. The propriety of this decision has been questioned and denied more than once in the House of Lords, yet as regards contracts of the class above treated, it may still be regarded as unimpeached. See *Lindley Comp.*, 151, and *Bedford Rail. Co. v. Stanley*, 2 J. & H., 746.

Western Screw Co. v. Cousley, 72 Ill., 531.