

impeachment, may be absolutely void or be voidable only as to the parties, or some of them, by reason of the incapacity to contract affecting the party personally, or in relation to some of the objects embraced in the agreement, the question naturally arises: Is the validity of a judgment affected by the legal incapacity of the parties to contract?

Infants and lunatics are so protected in the practice of the Courts, by means of the official guardian, that a judgment in their cases could not be regularly pronounced without the formalities necessary to make it conclusive having been complied with. It is, however, submitted as a general proposition that where the capacity to contract by law is wanting, or does not extend to the subject involved so that there could be no valid agreement, there can be no valid judgment. The Court cannot by its judgment do that which it is the function of the Legislature alone to accomplish.

Can a corporation, in respect of matters admittedly ultra vires of the corporation, be parties to a valid judgment dealing with such matters? Can a corporation by consenting to a judgment conclude itself in respect of such matters? If such a consent be given can the corporation itself come into Court to impeach the judgment? The second and third, at least, if not all of these questions are directly in issue in the case of *Delap v. Charlebois* (the corporation being one of the plaintiffs) now pending for judgment upon the appeal to the Supreme Court. The questions appear never to have been decided before this case.

In Brice on Ultra Vires, at page 625 (note), it is stated that such a consent judgment has been decided to be void, citing the case of *Re New Zealand Native Land Company*, 6 N.Z.L.R., S.C. (1888), page 549. But on investigation of this case, it does not sustain Mr. Brice's note. The point was not up for decision and was not decided in that case. In *Delap v. Charlebois* the decisions on the point, so far, are those of the Chancellor and the Court of Appeal. The Chancellor in his judgment says: "The company created by Act of Parliament has no right to spend a penny of its money except in the manner provided by the Act. It follows from that, if the act