the development of the doctrine of agency, i. e., that one should be liable for the acts of another subject to his control and for his benefit.

The instrumentality theory has already been distinguished from what might be called the "fraudulent purpose" theory.

6. A final possibility for holding the parent liable exists when the subsidiary is inactive, a mere sham, existing in name only. It seems clear that if the parent acts in the name of the subsidiary in such situations to avoid liability, it will be held liable for any obligations incurred. All of the factors lettered "c" in the chart are evidence of this situation. The outstanding example of a case of this sort is number 53, Auglaize Box Board Co. v. Hinton.

VI.

The above theories have been suggested by the writers on the subject rather than by the courts. Sometimes the courts mention in their opinions one or another of the various theories, but for the most part they do not attempt to analyze their cases and base their decisions on any one logical theory. Their opinions are thus as vague and conflicting as their actual decisions. At the present time, therefore, we can only say with Justice Cardozo that "the whole problem of parent and subsidiary corporations is still enveloped in the mists of metaphor."[27]

ROBERT W. YOST '36.

SUPPLEMENTARY NOTE—WHEN IS A FOREIGN CAUSE OF ACTION BARRED BY LIMITATIONS IN MISSOURI?*

In the December, 1935, number of the St. Louis Law Review, there appeared a note by John H. Haley of the Class of 1936 on the subject *"When is a Foreign Cause of Action Barred by Limitations in Missouri?"* In that note Mr. Haley had occasion to criticize adversely the decision of Judge Reeves of the United States District Court for the Western District of Missouri in the case of *Wright v. New York Underwriters Insurance Company.*[1] In the *Wright* case it was held by the court that when an original action was commenced in Missouri on a foreign cause of action, within the time allowed therefor by the law of the state in which it originated, then the requirements of R. S. Mo.

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[27] (1926) 244 N. Y. l. c. 94.

* Compare the views expressed in this supplementary note, with those stated in Note, 21 St. Louis Law Rev. 43.

[1] (1933) 1 Fed. Supp. 663.

1929, sec. 869[2] were satisfied; and if subsequently the plaintiff in the original action suffered a non-suit, his right to commence a new suit on the same cause of action in Missouri was governed by R. S. Mo. 1929, sec. 874.[3] The reader is referred to Mr. Haley's note for the grounds of his adverse criticism.[4] On similar grounds, Mr. Haley criticized adversely the opinion of Judge Bland of the Kansas City Court of Appeals in *Christner v. C., R. I & P. Ry. Co.*,[5] but was of the opinion that the expression of Judge Bland upon the point in question appeared from the facts stated to have been dictum in that case.[6]

Denton Dunn, of the Kansas City Bar, an alumnus of the School of Law, happens to have been counsel for the plaintiff in the *Wright* case and to have won that case on the theory criticized by Mr. Haley. Judge Dunn has submitted a documented criticism of Mr. Haley's objection. A *precis* of Judge Dunn's defence of the holding in the *Wright* case is here appended as a supplement to Mr. Haley's note of December, 1935.

"I cannot agree that the adoption of sec. 869 has changed the rule of operation of sec. 874, which allows a year after non-suit or dismissal for the refiling of a new suit on the same cause of action. Sec. 869 is merely a part of the Missouri *lex fori*, and thus is subject to sec. 874. The *lex fori* applies to the renewal of suits which were once timely brought under limitation laws, and the Missouri law is therefore the applicable law to the renewal of suits in Missouri on foreign causes of action, once they have been timely brought.[7]

"The decision of *McCoy v. C. B. & Q. R. R. Co.*,[8] holding that sec. 874 did not apply to foreign causes of action sued upon in Missouri was erroneously decided, and is now overruled by

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[2] Laws of Missouri (1899) page 300. "Whenever a cause of action has been fully barred by the laws of the state, territory or country in which it originated, said bar shall be a complete defence to any action thereon in any of the courts of this state."

[3] Laws of Missouri (1855) Ch. 103, Art. c, sec. 3, page 1051. "If any action shall have been commenced within the times respectively prescribed in the preceding articles, and the plaintiff therein suffer a non-suit, or after verdict for him, the judgment be arrested, or after judgment for him, the same be reversed on appeal or error, such plaintiff may commence a new action from time to time, within one year after such non-suit suffered or judgment arrested or reversed."

[4] *See* 21 St. Louis Law Rev. pp. 46-49.

[5] (1933) 228 Mo. App. 220, 64 S. W. (2nd) 757.

[6] *See* 21 St. Louis Law Rev. on p. 48-9.

[7] Mr. Haley's contention is, however, that in construing such a statute as sec. 869, the courts hold that for the purposes of suit in Missouri on foreign causes of action, the statute incorporates into the law of the forum the statutes of limitation of the state where the cause of action arose, and in applying them are merely applying the law of the forum, i. e., the law of Missouri. (*Editor.*)

[8] (1909) 134 Mo. App. 622, 114 S. W. 1124.

Christner v. C., R. I. & P. Ry. Co.[9] Nor is the *Christner* case dictum, as stated by the author of the note, because inquiry reveals that the first suit was filed within a few weeks after the cause of action arose, rather than two years and five months after it arose, as the reports show.

"The case of *Handlin v. Burchett*[10] is not the last controlling decision of the Missouri Supreme Court upon the question here involved, because that case merely held that the Iowa statute, which the defendant had invoked as a bar to the action under the Iowa law, did not apply in the case, and that the trial court was in error in holding that the action was barred by limitations. Thus *Handlin v. Burchett* had nothing to do with the question relating to the filing of a new suit in Missouri on a foreign cause of action after the plaintiff had suffered a non-suit in a prior action which had been timely brought. Incidentally, the attorneys for the defendant in *Wright v. New York Underwriters Insurance Co.*[11] cited *Handlin v. Burchett* but stated: 'the precise question (i. e. the one involved in the *Wright* case) has apparently not been decided in this state,' and 'It is conceded that the foregoing Missouri Supreme Court decisions do not pass directly upon the precise point involved in the case at bar.'

"It appears, therefore, that the Federal District Court which decided the Wright case was not bound to follow the case of *Handlin v. Burchett,* which did not decide the point in controversy. Nor was the court bound to follow the *McCoy* decision, because the decisions of intermediate state courts are not binding on the Federal Courts."[12]

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[9] Footnote 5, above.

[10] (1917) 270 Mo. 114, 192 S. W. 1016.

[11] Footnote 1, above.

[12] Hudson v. Maryland Casualty Co. (C. C. A., 8th 1927) 22 Fed. (2nd) 791; Woods Bros. Const. Co. v. Yankton County (C. C. A., 8th 1931) 54 Fed. (2nd) 304; Federal Land Co. v. Swyers (C. C. A., 8th 1908) 161 Fed. 687.