than once that the public welfare may call upon the best citizens for their lives. It would be strange if it could not call upon those who already sap the strength of the state for these lesser sacrifices—in order to prevent our being swamped with incompetence." But a strong dissenting opinion in *Smith v. Command, supra,* regarded only as "a very improbable theory" the conclusive presumption that insanity is hereditary.

Contra to the principal case are *Smith v. Board of Examiners of Feeble-Minded* (1913), 85 N. J. Law 46, 88 A. 963; *Osborn v. Thomson* (1918), 103 Misc. 23, 169 N. Y. S. 638; *Haynes v. Lapeer Circuit Judge* (1918), 201 Mich. 138, 166 N. W. 938, L. R. A. 1918 D. 233.

The statute in the last cited case was declared unconstitutional and void as class legislation because it concerned only those mentally defective who were confined in state institutions. This distinction is to be noted between this and the other Michigan case cited. It is the fourteenth amendment of the National Constitution, however, which again has been declared to be violated, so that all of these cases have been directly overruled by *Buck v. Bell*: None of these courts has declared a sterilization statute to be in violation of the state's constitutional guarantee of due process (present in practically all states), and the failure to do so probably supports the tendency shown in the holding of the principal case. S. H., '31.

CORPORATIONS—IMPLIED POWERS—ULTRA VIRES ACTS—OUSTER PROCEEDINGS.—The Long-Bell Lumber Co., a Missouri corporation, owned a large tract of land in Washington. In order to develop it, a gigantic undertaking was carried out requiring the expenditure of some thirty millions of dollars. This timber land included a small valley bordering on the Columbia and Cowlitz Rivers. Two mills were erected, one being the largest of its kind in the world. In order to secure high-type employees, the company laid out the model town of Longview. It built a large hotel, water and light plants, and put up about one-third of the residences. A ferry line and bus line were established. A railroad was built from the mills on the Columbia River to the site of the logging operations. As the whole valley was subject to floods, dikes were erected. To do this it was necessary to purchase dredges. A drainage district was organized under the laws of Washington to drain and improve the valley. Bonds were issued, which were guaranteed by the Long-Bell Company. To develop its land, the company engaged in real estate transactions. A national advertising campaign was undertaken in an effort to interest outside capital. The Longview Daily News was organized, although it has since passed into outside hands. The company subscribed for part of the stock in a loan and investment company, to help employees purchase land and build their own homes. The company also helped organize a bank, subscribing for part of its stock. This stock was later sold. Most of the foregoing activities were carried out through eleven subsidiary companies, whose stock was held by the Long-Bell Lumber Co. In 1926 the State of Missouri brought ouster proceedings against the Long-Bell Lumber Co. for engaging in ultra vires

activities. *Held*, that these activities were not ultra vires, but reasonably necessary to carry out the express powers granted. *State v. Long-Bell Lumber Co.* (Mo., 1928), 12 S. W. (2d) 64.

This case is certainly a remarkable one, both from the standpoint of the facts involved and the many legal questions presented. It is a significant case, showing the policy in Missouri to uphold a gigantic industrial activity operating both directly and through numerous subsidiary companies to effectuate the purposes of its charter. The report of the case impresses one with the possible magnitude of modern industrial activity—especially when it is considered that here the whole undertaking was engineered by a single corporation. The processes by which the court held that the company could engage in so many activities should be noted.

The Long-Bell Company was incorporated in 1884. Its charter was amended in 1907 and again in 1922, so that at the time of this action it contained, among its objects, six of the ten subdivisions of specific objects found in R. S. Mo. 1919, Sec. 10151. (The eleventh and final subdivision of this section is a general clause.) The State contended that a corporation could not engage in more than any single group of objects. This was overruled, the court finding that the statutory language of Section 10151 declaring a corporation may be created "for any of the following purposes" meant in effect "any one or more of the following purposes." The fact that Section 10159 allows a corporation to "extend its business to any other purposes authorized by this article" and that Sections 7055 and 7056 provide that the singular number shall include the plural, unless the contrary is indicated, were of aid in arriving at this conclusion. Also the fact that the Secretary of State has habitually granted certificates of incorporation to corporations engaging in numerous objects, was evidential.

It was then contended that, granted corporations could organize for more than one purpose, nevertheless said purposes were limited to only related or cognate matters. This was also overruled, the court finding that here all the activities were "more or less essentially related to the business-like establishment and maintenance of its main object, to-wit, the manufacture and sale of timber on a very large scale." The court then considers the rule applicable to implied powers—showing that implied powers are those reasonably necessary to enable a corporation to accomplish the objects of its creation, provided they are such as are recognized and permitted by the charter-granting power. See *State v. Missouri Athletic Association* (1914), 261 Mo. 576 l. c. 599, 170 S. W. 904. The court then shows how each of the above-enumerated projects falls within the sphere of intra vires activity. A brief resume of these conclusions follows.

As to the development of the Longview site, this fell within the authority "to purchase, develop and handle town sites" found in the charter. This power to develop a town site and provide living facilities would have existed even in the absence of a charter provision. See *Steinway v. Steinway & Son et al.* (1896), 17 Misc. Rep. 43, 40 N. Y. S. 718; 2 Flet. Cyc. Corp., 1768, par. 792 (4), cited in the Long-Bell case.

Authority to guarantee the drainage and improvement bonds was implied, the court saying the company through organization of the drainage district and guaranteeing its bonds averted the necessity of making a loan and carrying out the same acts directly. It further said that as corporations have power to take and dispose of securities of another corporation, they may guarantee their payment to give them a marketable quality. See 14a C. J. 742, p. 2789 (2).

Aiding in organizing the bank and subscribing for part of its stock, which was later sold, was justified on the ground that it was the "only means of securing banking facilities for the embryo community." The fact the stock was later sold was important. A corporate charter will not be forfeited unless the misuser is repeated and willful. *State v. American Can Co.* (Mo., 1928), 4 S. W. (2d) 448 l. c. 454. The fact that an ultra vires act has occurred in the past and has since then ceased is no basis for a present action.

The right to engage in the real estate business was implied from the power to develop town sites. Justification for the national advertising and for the publication of the newspaper was on this ground also. And on the further ground that a corporation having property for sale has implied power to advertise it. 2 Flet. Cyc. Corp. 1787, par. 813.

Authority to operate the ferry, busses, the electric light and water plants, was expressly found in the amendment of 1922.

The hotel, a six-story, 200 room, modern structure, was built at an expense of $732,000. Only the cost and size thereof were attacked. The court held this was determinable by the good-faith judgment of the directors; and that here they were not exceeding their implied powers.

The building and operation of the railway was indispensable, as it was the only way the defendant could move its lumber. The railway was restricted to the defendant's business. It was found to be "well within its charter powers."

Ownership of stock in the loan and investment company was implied from the company's power to build homes, rent the same, etc. By giving financial aid, the company would be doing a lesser thing, *viz.*, enabling the employees to build their own homes.

The purchase of dredges was justified, as necessary to develop the townsite. These dredges were no longer necessary, and some had been sold. Two were rented to the government for use in California pending an opportunity to sell the same. This was found to be intra vires, as the dredges depreciated more when idle than when in use. The court illustrates the point by showing that the courts are very liberal in holding all reasonable acts of a corporation in connection with its collection of debts to be within its implied powers, such as allowing a corporation to run a business temporarily where otherwise it would have no power to do so. It then says that if a corporation may temporarily engage in outside activities to conserve its intangible assets, such as debts, that it certainly should possess like power to conserve its tangible assets no longer needed in its business.

Finally, the ownership of stock in subsidiary corporations was claimed to

be ultra vires. Under the Missouri doctrine, this is not prohibited provided the corporation thereby carries out objects it could carry out if acting directly. The court cites *State v. Missouri Pacific Ry. Co.* (1911), 237 Mo. 338, 141 S. W. 643; also 241 Mo. 1, 144 S. W. 863. In this case the State of Missouri failed in an action to oust the defendant of its charter for owning stock in two coal mining companies and an elevator company, the court holding a company could do through the ownership of stock whatever it could do directly; and that here these activities were necessary to the railroad's business and could have been done directly. Formerly Illinois took a view directly contrary. See *People v. Pullman Car Co.* (1898), 175 Ill. 125. But by Statute in 1925 this rule was changed. Smith-Hurd's Rev. St. 1925, C. 32, Sec. 2. See also 156 N. E. at 264. The Missouri doctrine with its application to the present facts, is expressed in the Long-Bell case in these words: "Each and every kind of business carried on by these various subsidiaries (except perhaps the work of dredging) was only such business as respondent could, under its charter powers, have carried on directly." D. A. M., '29.

CORPORATIONS, LIABILITY OF PROMOTER ON PREORGANIZATION CONTRACT.—The plaintiff made an employment contract with two individuals, promoters and prospective directors of a proposed corporation, for the benefit of and in the name of the corporation to be formed. *Held*, the individuals are not personally liable on that contract. *Schwedtman v. Burns* (Tex. 1928), 11 S. W. (2d) 348.

The fact that the promoter has contracted for the benefit of the corporation does not of itself absolve him from personal liability on that contract. *Queen City Furniture Co. v. Crawford* (1894), 127 Mo. 356, 30 S. W. 163; *Lewis v. Fisher* (1912), 167 Mo. A. 674, 151 S. W. 172. In the *Queen City Furniture Co.* case the court held the promoters liable by reasoning on an analogy from agency: the agent is personally bound where the principal is not known or where there is no responsible principal. 2 Kent, COMMENTARIES 630; *Blakely v. Bennecke* (1875), 59 Mo. 193. Though the analogy is fallacious, there being no principal in existence when the corporation is not yet formed, the effect is the same; for an agent is liable where he purports to act for a non-existent principal. 2 C. J. 808. If the corporation is in existence when the contract is made, the knowledge or ignorance of that fact by the third party may determine the liability of the promoter. *Rust-Owen Lumber Co. v. Wellman* (1897), 10 S. D. 122, 72 N. W. 89. But some cases held the promoter liable even where the third party knew of the existence of the corporation, provided the contract was actually made with the promoters. *Bonsall v. Platt* (1907), 153 F. 126, 82 C. C. A. 260.

However, the principal case is in line with the general weight of authority today. When the parties rely on the credit of the proposed corporation the courts will usually give effect to their intentions, so that the promoters will escape liability. *Queen City Furniture Co. v. Crawford, supra; Carmody v. Powers* (1886), 60 Mich. 26; 1 Fletcher, CYCLOPEDIA CORPORATIONS,