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CORPORATIONS - NON-PROFIT CORPORATIONS - POWER OF COURT OF EQUITY TO PRESERVE ORIGINAL PURPOSES AND SET-UP OF SUCH A CORPORATION

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CORPORATIONS — NON-PROFIT CORPORATIONS — POWER OF COURT OF EQUITY TO PRESERVE ORIGINAL PURPOSES AND SET-UP OF SUCH A CORPORATION — The Osteopathic Hospital was incorporated in 1919 as a non-profit corporation by five persons who subscribed funds for its support. Its articles provided that the qualifications for trustees, method of filling vacancies in the board of trustees and the manner in which persons could become members should be set out in the by-laws to be adopted by the original incorporators. The by-laws thus adopted provided for a self-perpetuating board of trustees with power in them to amend the by-laws. These by-laws were not questioned until January 20, 1938, when a group of the members attempted to amend the by-laws to permit election of the trustees by the members and the same group purported to elect trustees under such amendments. This bill in equity was brought by those who were trustees previous to January 20, 1938, in conjunction with the hospital, to determine who were the true trustees and also asking injunctive relief. The lower court found for the plaintiffs and enjoined the defendants from further attempts to amend the by-laws or elect trustees. *Held*, this was a trust and a court of equity had the power to enjoin interference with the intent of the founders. The injunction was properly granted. *Detroit Osteopathic Hospital v. Johnson*, 290 Mich. 283, 287 N. W. 466 (1939).

The real issue faced by the court was whether the members of a non-profit corporation have an inherent right to vote which may be abridged only by statute or in the articles. Such a rule seems to be well-established regarding business corporations.[1] If this were the rule as to non-profit corporations it is doubtful whether the court could have found a basis of justification for its decision. The writer was unable to find any cases in which the question was decided and the text writers are of no assistance on this point. The court had strong grounds for the trust analogy, since the legislature had first declared that a non-profit corporation with a benevolent or charitable purpose [2] should be deemed to be a "trustee corporation"[3] and later that such should be deemed to be a

[1] ". . . the board of directors have no power to enact by-laws unless so authorized by law, by the articles of association, or by proper action of the stockholders. . . . The power to enact them resides primarily with the stockholders. . . . It is a power which the directors have no inherent power to exercise. North Milwaukee Town Site Co. v. Bishop, 103 Wis. 492 at 495, 79 N. W. 785 (1899); also see, 8 FLETCHER, CYCLOPEDIA CORPORATIONS, § 4172 (1931); 10 CYC. 353 (1904); 14 C. J. 353 (1919); 2 THOMPSON, CORPORATIONS, 3d ed., § 1069 (1927).

[2] The purposes of this corporation were stated in article II of the articles of incorporation: "to conduct a hospital for the treatment, care and relief of the indigent sick . . . and for the study of the cause, nature, prevention and cure of the various diseases. . . ."

[3] Mich. Pub. Acts (1921), No. 84, pt. 4, c. 1, § 23; Comp. Laws (1929), § 10099.

"foundation."[4] The by-laws may be construed with the articles to determine the intent of the incorporators.[5] The court took the stand that this corporation was so like an express trust that those who affiliated subsequent to the organization were bound by the conditions imposed by the founders in so far as such conditions did not conflict with law or the articles of association.[6] This power to carry out the intent of the founders of such a trust can readily be sustained as an exercise of the cy pres power in relation to the administration of a charitable trust.[7] There was no real question concerning the public policy relating to the contested provisions because another corporation act,[8] in force at the time of incorporation, gave express permission for such provisions. The court could have reached the same conclusion without using the trust analogy as a justification by holding, as do most courts, that the articles, by-laws and all pertinent statutes constitute a contract between a corporation and its members[9] and are binding on both. And that a change in the contract, as was attempted here, would be "repugnant to law and illegal and void."[10]

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[4] Mich. Pub. Acts (1931), No. 327, § 168.

[5] Tennant v. Epstein, 271 Ill. App. 204 (1933), revd. on other grounds, 356 Ill. 26, 189 N. E. 864 (1934).

[6] Principal case, 290 Mich. 283 at 296.

[7] 2 BOGERT, TRUSTS AND TRUSTEES, §§ 431, 438 (1935).

[8] Mich. Comp. Laws (1915), §§ 10840-10848.

[9] Porter v. King County Medical Society, 186 Wash. 410, 58 P. (2d) 367 (1936); New England Trust Co. v. Abbott, 162 Mass. 148, 38 N. E. 432 (1894); 8 FLETCHER, CYCLOPEDIA CORPORATIONS, § 4198 (1931); 2 THOMPSON, CORPORATIONS, 3d ed., § 1080 (1927); 14 C. J. 346 (1919).

[10] McConnell v. Owyhee Ditch Co., 132 Ore. 128 at 132, 283 P. 755 (1930).