

1953

## Corporations

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knew that the plans and specifications had been drawn by architects. The court of appeals, in affirming the trial court's judgment in favor of the plaintiffs, stated that where a contract is silent in regard to a matter of so much importance to both parties it is not to be presumed that it was intended to imply an agreement upon that point, and that in the absence of such implication the plaintiffs were only required under their contract to perform their work in the common and usual manner at the place where the work was done — which the trial court found that the plaintiffs had done.

ROBERT C. BENSING

## CORPORATIONS

The cases in this field deal with a variety of problems ranging from the rights of a shareholder in an Ohio building and loan association which has voted to convert to a federal savings and loan association to the liability of a successor corporation for the debts of its predecessor.<sup>1</sup>

In *Opdyke v. Security Savings & Loan Co.*<sup>2</sup> the Ohio Supreme Court dealt with the rights of dissatisfied shareholders who objected to the conversion of a local building and loan association into a federal savings and loan association. The plaintiff stockholders asked that the conversion be enjoined and in the alternative that they be given the fair cash value of their shares. In denying the shareholders' claims, the court concluded that Sections 693-1, 8623-15, 8623-15a, 8623-63 and 9665 of the Ohio General Code, regarding dissolutions, amendment of articles and the sale of the entire assets of a corporation, did not limit the right of an Ohio building and loan association to convert into a federal savings and loan association pursuant to Section 9660-2 of the Ohio General Code. The court also construed a limitation on the right of dissolution in the articles of association

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<sup>1</sup> A related problem regarding proper parties in suits against unincorporated associations was considered by the Ohio Supreme Court in *Damm v. Elyria Lodge*, 158 Ohio St. 107, 107 N.E.2d 337 (1952). While the major emphasis of this case is on the capacity of the wife to sue the husband in tort (which is discussed elsewhere in this survey), the capacity of the wife to sue an unincorporated association of which her husband is a member is involved. After determining that the sections of the code defining the rights of the husband and wife and those granting a married woman the right to "sue and be sued as if she were unmarried" abolished the common law doctrine of the legal identity of the husband and wife, the court held that the action could be maintained against the association even though the plaintiff's husband and all other members thereof were brought in by representation as parties. OHIO GEN. CODE §§ 8002-1 *et seq.*, 12245. See 4 WEST. RES. L. REV. 83 (1952).

<sup>2</sup> 157 Ohio St. 121, 105 N.E.2d 9 (1952)

as applicable only to the statutory powers described in Section 9665 of the General Code, and as not applicable to the exercise of a power to convert into a federal savings and loan association pursuant to provisions of Section 9660-2.

In addition, the supreme court held that the right of a dissenting stockholder to receive the fair cash value of his shares is strictly a statutory right which the General Assembly has sometimes provided in the event of certain major corporate changes for the purpose of protecting the rights of minority stockholders. No such provision has been made in a case of conversion from a state to a federal savings and loan association; and, accordingly, a dissenting shareholder has no right to a fair cash value for his shares where the conversion takes place pursuant to Section 9660-2 of the Ohio General Code.<sup>3</sup>

In *Leyman Co. v. Piggly-Wiggly Corp.*<sup>4</sup> the court of appeals held that an unknown creditor of a corporation which had sold all of its assets to the defendant corporation and then dissolved could hold the defendant liable on this obligation. It appeared that the defendant had undertaken to assume every obligation of whatever nature or description owing by the former company. Two theories were used by the court. First, the court looked upon this understanding between the defendant and the former company as a third-party beneficiary contract which was designed for the plaintiff's benefit. Secondly, the defendant, because it had taken possession of and title to all the assets of the Piggly-Wiggly Stores, Inc. without payment therefore, became a constructive trustee of the assets for the benefit of all those having enforceable claims against the former company.

In *Mayer v. Cincinnati Economy Drug Co.*,<sup>5</sup> the court of appeals considered the perennial problem of a stockholder's right to inspect the books of the corporation and construed the phraseology "save and except for unreasonable or improper purposes" found in Section 8623-63 of the Ohio General Code. The court decided that under the circumstances of this particular case there was no "improper purpose." It pointed out that there is a presumption that the demand for inspection was made in good faith and followed the rule announced in *William Coale Development Co. v. Kennedy*<sup>6</sup> that the burden of going forward with the evidence on the

<sup>3</sup> The dissent, which took the position that the legislation authorizing the conversion abdicates legislative power and leaves all the applicable law regarding the conversion to enactments by Congress and the rules and regulations of federal agencies, relied upon *Cleveland v. Piskura*, 145 Ohio St. 144, 60 N.E.2d 919 (1945) and contended that this legislation was an unconstitutional delegation of legislative power to the federal government.

<sup>4</sup> 90 Ohio App. 506, 103 N.E.2d 399 (1951).

<sup>5</sup> 89 Ohio App. 512, 103 N.E.2d 1 (1951).

<sup>6</sup> 121 Ohio St. 582, 170 N.E. 434 (1930).