

Building and Loan Associations - Stockholders' Privileges - Inspection of books

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RECENT DECISIONS

BUILDING AND LOAN ASSOCIATIONS—STOCKHOLDERS' PRIVILEGES—INSPECTION OF BOOKS.—The plaintiff, a stockholder in a building and loan association, sought by a mandamus proceeding to compel an examination of the books of the association on her behalf. Her right to such examination, she contended, was based on Section 182.10 of the Wisconsin Statutes (1935) which provides that the books of every corporation shall be open at all reasonable times to inspection by stockholders. The trial court found that no right for inspection of books existed for a stockholder in a building and loan association, and ordered that the alternative writ be quashed. On appeal, *held*, order affirmed; a building and loan association is subject neither to general corporation nor to banking statutes. *State ex rel. Schomberg v. Home Mut. Bldg. and Loan Ass'n.* (Wis. 1936) 265 N.W. 701.

Mutuality is the basic element of a building and loan association. *State v. Gopher Tire and Rubber Co.*, 121 Neb. 473, 237 N.W. 572 (1931); *Leahy v. National Building and Loan Ass'n.* 100 Wis. 555, 76 N. W. 625 (1898). Building and loan associations have no banking powers under Wisconsin law. *Leahy v. Nat'l. Building and Loan Ass'n.*, *supra*. The main purpose of a building and loan association is to encourage the building of small houses by poor people, and the payment for the same over a long period of time, secured by a mortgage. *Mercantile National Bank v. Hubbard*, 98 Fed. 465 (C. C. N. D. Ohio, 1899). A bank is purely commercial and the assets must be kept liquid, while a building and loan association is not commercial and has comparatively little need for liquid assets. Building and loan associations were created to answer a need which the banks could not satisfy. *Hoenig v. Huntington National Bank of Columbus*, 59 F. (2d) 479 (C. C. A. 6th, 1932). Regular corporation statutes are not applicable since building and loan associations are essentially different from ordinary business corporations. They have special powers which must be used as prescribed by statute, with due consideration for the contractual rights between shareholders and the association existing by reason of the state laws and the charter of the corporation. *State ex rel. Cleary v. Hopkins Street Building and Loan Ass'n.*, 217 Wis. 179, 257 N. W. 684 (1934). The paid up shareholder of a building and loan association is to be compared with a creditor of a corporation who has an interest in such corporation to the amount of his debt. *North Avenue State Bank v. Excelsior Mut. Bldg. and Loan Ass'n.*, 207 Wis. 260, 240 N. W. 175 (1932). A stock corporation is one having stock divided into shares; a building and loan association is a membership corporation in which the corporate entity discharge its duties by acting as trustee for funds contributed by its members to mature the shares, seeing that the moneys contributed by the members under their mutual agreements are used properly in maturing those shares, and each member must be held to his contract. *Preston v. Reinhart*. 96 N. Y. Supp. 851, 109 App. Div. 781 (1905). Where the statutes vested the right to examine books of a homestead association exclusively in the banking commissioner, it was held that a stockholder was not entitled to inspection as a matter of right. *State ex rel. Cotonio v. Italo-American Homestead Ass'n.*, 177 La. 766, 149 So. 449 (1933). The court in the instant case pointed out that the legislature has prescribed in Chapter 215 of the Wisconsin Statutes (1935) the administrative scheme to protect members of building and loan associations. The state administrative authorities are required to make periodic examinations at least once a year of each association's financial affairs. And a special examination may be held upon a written request of five or more members upon their agreeing to pay the expenses involved.

WILLIAM J. NUSS