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David Maynard et al v. Fractional School District, & c.

Thomas M. Cooley
University of Michigan Law School

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RECENT AMERICAN DECISIONS.

Supreme Court of Michigan.

DAVID MAYNARD ET AL. v. FRACTIONAL SCHOOL DISTRICT, &c.

A bequest to the members composing the School District Board by name, and to their successors in office, of moneys to be expended in the purchase of books for a district library—they being the officers designated by law to perform similar duties for the district—is in effect a bequest to the district.

A school district may receive a gift of money to be expended in books for a district library, at the unrestricted discretion of its officers, notwithstanding that by statute the purchase of books for a district library, with district moneys, is subject to various limitations. Such a general gift is not foreign to the purposes for which districts exist, but in the direct line of furthering those purposes; and therefore the corporation may act as trustee in expending it under the general rules which confine the action of corporations within the purposes of their creation.

LUCY M. MAYNARD by her last will directed the residue of her estate, real and personal, not otherwise disposed of, to be sold and converted into money and applied under the following provisions:

"The effects thereof I give to David A. Woodard, Harmon Allen, and Thomas Richards, District Board for Fractional School District No. 1, in Milan, and No. 1 in York, and their successors for ever, in trust for the following named purposes: I direct that the funds so placed at the disposal of the said district board shall be placed at interest by them, and the interest be annually used for purchasing and adding to a school library, the said library to be selected and cared for by the said District Board or their legal representatives. And it is my wish that such books be selected as will be suitable for people of all ages and classes within the said district, and so used by them under proper rules and directions of said board as shall best promote the interests of education, general literature and morality."

The validity of this bequest was attacked by two of the heirs at law. The Circuit Court of Wastenaw county, affirming the order of the Probate Court, held the provisions to be valid; and the conclusions from the facts found were, "That the fair result of the bequest is to constitute the school district referred to, acting through its district board, trustees; and that the residue now remaining in the hands of the executors should be assigned to the persons constituting the district board of said school district and their successors for ever, for the uses and purposes expressed in said will."

From this order two of the heirs, David and John Maynard, appeal.

The opinion of the court was delivered by

CAMPBELL, J.—In order to determine the questions raised by the appeal it is necessary to consider the legal position of school districts and school boards.

Every school district is a corporation and the technical corporate name of this district is, Fractional School District No. 1 in Milan and No. 1 in York.

The district board have custody and care of all of the property and moneys of the district (except such as may be confided under certain circumstances to the director) and are required to apply and pay over all school moneys belonging to the district in accordance with law. Where there are district libraries, these are under the care and management of the district board, whose control is general, and who make selections and purchases, and provide for the safe-keeping and use of the books.

It is manifest, therefore, that both the intended beneficiary and the managers are persons known to the law as competent to take and use all property destined for the legitimate uses of school districts when sufficiently designated and granted.

The object of the will is entirely plain. It proposes to appropriate money to be used and managed permanently for the purposes of a district school library. The books are to be selected by the board for the time being, and the selection is with a view to promote the interests of "education, general literature and morality."

The ordinance of 1789 under which this region was first set apart for its future creation into states, which have been organized under its sanctions, declared that religion, morality and knowledge were necessary to good government and the happiness of mankind, and provided that for these expressed purposes, "schools and the means of education shall for ever be encouraged." It is somewhat strange, therefore, to have it suggested that libraries are not within the proper range of school apparatus, or that the purposes set forth in this will are in conflict with public school purposes. When schools cease to be used for such purposes they will cease to be worthy of support or toleration. Nothing but poverty can make it proper for any school district to deprive itself of the valuable aid of libraries, which enlarge and supplement the work of the teachers, and educate people of all ages as no other instrumentalities can educate them. The bequest in controversy, if invalid, must be so held because of some infirmity in the legal constitution of the district or in some defect in the declaration of the trust.

The bequest is for a purpose coming within the range of charities. But it is not one which requires any consideration of the doctrines which apply under the English system to imperfectly defined gifts and trusts. The property and the trusts are definite, the beneficiary is definite, and the trustees or managers are definite. If no managers were named, the administration of the trust would devolve on those officers who manage district business, and the board designated perform that function. The discretion involved, therefore, is the discretion of the lawful administrators of the district, and is a corporate discretion. There is no room for technical criticism upon the question whether the bequest is to the district or to the board. The intention of the will is not obscure, and the testatrix has directed the money to be paid just as she would have paid it in person had she desired during life to make a gift to the district.

There is really but one question of any importance on the record. That is, whether the corporation is legally capable of administering such a trust, which the appellants claim is not within the statutory powers; and they insist these bodies have none but statutory powers, and cannot go beyond them.

Upon this point the diligence of counsel has collected much learning, but it seems to have been overlooked that the subject has already been disposed of in this court, and we do not care to enlarge upon it.

In *Stuart* v. *School District No.* 1 *in Kalamazoo*, 30 Mich. 69, there was an examination into the powers of school districts to enlarge and extend their course of instruction and it was held the statutes cannot be narrowly construed without doing violence to their intent. In *Hathaway* v. *Sackett*, 32 Mich. 97, the contest was over a bequest to a village of fifteen thousand dollars to be used in the erection of a building for a high school. The objection was made there which is made here, that the purpose was foreign to the objects of the corporation. It was held, however, not to be repugnant, on the ground that education was a recognised factor in all civilization, and that schools were as important instruments of public advancement as municipal institutions, and neither foreign nor incongruous elements in municipal affairs.

Whether school districts could, without statutory authority, raise money for any library not meant for the purposes of the schools, is a very different question from whether a district library, if obtained without taxation, would be foreign to the educational interests of the

district. We are not disposed to regard the present library law as having any especial bearing on this matter. The argument which in the absence of such a law would exclude a library, would possibly stand in the way of keeping up any library not in all things patterned after the statute and supported in the same way. But we have no hesitation in holding, in accordance with the previous decisions, that there is nothing in our laws which cuts off public corporations from accepting benevolent offerings to enable them to extend their usefulness, and benefit their people, by enlarging their opportunities for culture and refinement, without multiplying or increasing their burdens. We do not hold that they may not reject such gifts if they have not intelligence enough to appreciate them. But we think the acceptance of such a bequest as this by a school district is in the direct line of corporate authority.

The judgment of the court below must be affirmed with costs of both courts, and the order be remitted for further proceedings.

All the judges concurred.

The objection to the bequest in the principal case was not based upon any inability on the part of the district authorities to establish and maintain a district library, for that authority was fully conferred by the statute, which authorized the township to vote moneys for district libraries for the use of residents of the district, and empowered the district board to expend them. But the statute also required that the books should be unsectarian in character and suitable for a district library. The power of the board was therefore carefully limited and confined within definite bounds. If now the board could be empowered by a private donor to purchase books in its discretion, it was said that books sectarian in character might be procured, and books not suitable for a district library, and thus the library be made up of books not sanctioned by law, but virtually prohibited, and the whole character of the library contemplated by law be changed. The trust would consequently, it was argued, be for a purpose not contemplated in the corporate organization, and any action in furtherance of it would be *ultra vires*.

It will appear from the opinion that the court did not deem it necessary to give much attention to this objection, considering it covered by the previous decisions, especially that of *Hathaway* v. *Sackett*, 32 Mich. 97, in which an incorporated village was held competent to take a bequest for the establishment of a high school. In explanation of that decision it should be stated that village corporations under the statute of Michigan do not establish schools; that power being conferred upon school districts, which are independent corporations, and the boundaries of which in a village may or may not be identical with those of the village itself. The court held in that case that the village had power to accept the bequest, and that if further powers were needed to enable the trust to be executed they might be conferred afterwards. A somewhat similar case is that of *First Parish in Sutton* v. *Cole*, 3 Pick. 232, in which there was a devise of lands to a parish "to be applied to the use of schools,

and to be kept by the inhabitants for ever." Towns, and not parishes, are the proper organizations in Massachusets for the creation of schools at the expense of their corporators, and they are compelled under penalty to establish and support them. And the objection was there made that "parishes are corporations with limited powers, relating only to parochial objects, such as providing for public worship, and having no authority to hold property for themselves or other persons to any other trust or purpose; at least not for schools, which is not a duty required of them by law." But it appeared that by statute parishes were *permitted* to raise money for the support of schools for their children, and the objection was therefore held unsound, though it is inferrible from what is said that it would have been overruled had no such statute existed. In *Phillips Academy* v. *King*, 12 Mass. 546, a question arose that may be compared to the question made by the appellants in the principal case, upon the discretionary authority conferred upon the school board by the bequest in the selection of books. In that case a bequest was made to an academy established with the design of propagating "Calvinism as containing the important principles and distinguishing tenets of our holy Christian religion, as summarily expressed in the Westminster Assembly's shorter catechism;" and the bequest which was contested proposed to add to this "the distinguishing principles of Hopkinsianism, a union or mixture inconsistent with the original design." But the court put aside the objection as unfounded, holding that the original design was the propagation of the Christian religion, and the bequest was in furtherance of that design and in nothing inconsistent with it.

The case of *First Congregational Society of Stonington* v. *Atwater*, 23 Conn. 34, was one in which a bequest to a corporation required action which in one particular went clearly beyond the contemplation of the law in its foundation. It was a gift to a school society of a town for the establishment and support of schools, but it required the trustees to be selected from two named religious organizations. In this regard it was quite as objectionable as was the conferring of general powers upon the school board to purchase books where the statute had only given restricted powers; but the gift was supported. In *Sargent* v. *Cornish*, 54 N. H. 19, it is decided that a municipal corporation may receive and hold money in trust for an object not foreign to its general purposes, even though the statute had withheld from it the powers to raise money by taxation for the same object. The gift there was to a town for the purpose of a yearly display of United States flags, and it was sustained. In *The Dublin Case*, 38 N. H. 459, a gift to a town for religious purposes was sustained, though towns had then lost their power to make contracts and raise taxes for those purposes. These cases cover the general subject. It is conceded that corporations cannot be trustees for purposes not germane to the purposes for which they are created: *Jackson* v. *Hartwell*, 8 Johns. 422; *Trustees, &c.*, v. *Peasly*, 15 N. H. 317; Perry on Trusts, sects. 42, 43, and cases cited; but where the purposes are germane they may be such trustees: *Philadelphia* v. *Fox*, 64 Penna. St. 169; *Webb* v. *Neal*, 5 Allen 575; *Heuser* v. *Harris*, 42 Ill. 425; *Vidal* v. *Girard's Executors*, 2 How. 61; *McDonough's Executors* v. *Murdock*, 15 How. 367. Even though other purposes are added which are not germane: *Matter of Howe*, 1 Paige 214. And we take it that when the law forbids public moneys to be expended in the purchase of sectarian books for district libraries, it does not thereby condemn them, or declare them foreign to the purposes of such libraries. The object in the re-

striction is merely to prevent an abuse; but if every religious denomination were inclined to make presents of its books to any public corporation connected with public instruction, it would be extraordinary if the corporation should be found lacking in authority to receive them. There is no policy of the law that would exclude from any public library any book which is not vicious and immoral in aim or tendency.

Another point not touched upon in the principal case is of interest, namely: Conceding that the authority of the corporation to execute the trust is doubtful, can the heirs raise the question? It has been decided that if the trust is valid in itself, as this clearly was, being a charity, only the state and not the heirs or other private parties could inquire into or contest the right of the corporation as trustee: *Wade* v. *Colonization Society*, 15 Miss. 663. And see *Vidal* v. *Girard's Executors*, 2 How. 61, 191; *Kinnaird* v. *Miller*, 25 Grat. 107; *First Congregational Society* v. *Atwater*, 23 Conn. 34; *Jackson* v. *Phillips*, 14 Allen 539; *Hathaway* v. *Sackett*, 32 Mich. 97. T. M. C.

Supreme Court of Rhode Island.

CHARLES W. LYNCH v. JOHN FALLON.

A broker employed by A. to negotiate an exchange of properties between him and B., cannot recover commissions of B., although after the exchange was effected he expressly promised to pay.

ASSUMPSIT heard by the court, jury trial being waived.

Henry B. Whitman, for plaintiff.

B. N. & S. S. Lapham, for defendant.

The opinion of the court was delivered by

DURFEE, C. J.—This is an action of assumpsit to recover $2500 for commissions for the plaintiff's services as a broker in negotiating an exchange of real estate. The two estates exchanged were a hotel estate, belonging to the defendant, situated in Worcester, and valued by the defendant at $125,000, on one side, and a tract of land belonging to the West Elmwood Land Company, situated in Providence, on the other side. There was, subject to mortgages, an even exchange. The plaintiff claims that the defendant made him an express promise to pay him the regular commissions before the exchange, and after the exchange promised to pay him $2500. The defendant denies this. We think the agreement is proved. The defendant contends that, if proved, it is not binding upon him, the plaintiff having been previously employed by the West Elmwood Land Company to sell their land, and being in their employ throughout the transaction. We think this is proved. The plaintiff has