Michigan Law Review

Volume 46 | Issue 6

1948

ASSOCIATIONS-TITLE TO LAND CONVEYED TO CHURCH AFTER EXPIRATION OF CHARTER

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RECENT DECISIONS

ASSOCIATIONS—TITLE TO LAND CONVEYED TO CHURCH AFTER EXPIRATION OF CHARTER—The *X* Church was incorporated by special charter for a period of fourteen years from 1814. Subsequent charters extended its corporate existence until 1871, since which time, though the members have remained associated under the same name, there has been no attempt to re-incorporate. In 1922, land was conveyed to "*X* Church, its successors and assigns." Defendant contracted with the chairman and the warden of the Church to buy the land described in the deed of 1922. Subsequently, plaintiff, who had been elected minister of the Church in 1945, was authorized to execute and deliver the necessary deed of the land to defendant by a resolution unanimously adopted at a meeting of the members of the Church at which a "quorum" was present. Defendant declined to accept the proffered deed due to the uncertainty of the title and power of plaintiff to execute a valid conveyance of the land. Plaintiff petitioned for a declaratory judgment. *Held*, the deed offered is sufficient. The conveyance of 1922 vested title in the members of the Church as such, and the present members will be bound by a deed executed by plaintiff as their duly appointed agent. *Jeffery v. Ehrhardt*, (S.C. 1947) 43 S.E. (2d) 483.

According to the great weight of authority, an unincorporated association is incapable of taking or holding title to land, absent any statutory provision to the contrary.[1] Accordingly, deeds naming such associations as grantees have often been held void.[2] In some instances, where the named association has few members who are intimately associated with its name, such deeds have been upheld as valid conveyances to the individual members who take as co-owners on the reasoning that the association name is sufficient identification of the individuals.[3] A similar problem is raised when an unincorporated, charitable association is named as devisee in a will. Presumably, the requirements of capacity to hold land are the same here as in the case of an inter vivos conveyance, yet several courts have held the applicable statute of charitable uses to be of sufficient force to override the requirement of a competent devisee.[4] Legal title either remains in abeyance until the association becomes incorporated or else a trustee is appointed by the court to hold it for the charitable uses to which the association is devoted.[5] It is difficult to see that these cases are authority for the proposition that an unincorporated, charitable association has capacity to take and hold title to land. To be sure, the same results could have been reached by so reasoning, but it would seem more accurate to interpret the will cases as meaning

[1] 7 C.J.S., Associations, § 14.

[2] Schein v. Erasmus Realty Company, 194 App. Div. 38, 184 N.Y.S. 840 (1920); Tucker v. Diocese of West Missouri, (Mo. 1924) 264 S.W. 897.

[3] BURBY, REAL PROPERTY 374 (1943). Byam v. Bickford, 140 Mass. 31, 2 N.E. 687 (1885).

[4] 8 FLETCHER, CORPORATIONS, perm. ed., 376 (1931); 14 C.J.S., Charities, § 34; Harger v. Barrett, 319 Mo. 633, 5 S.W. (2d) 1100 (1928).

[5] The American Bible Association v. Wetmore, 17 Conn. 181 (1845).

that there need not be a competent devisee when the land is given to charity, rather than that an unincorporated, charitable association is competent to take title.[6] In at least one state, a decision that a devise to such an association does not fail stands side by side with a holding that a conveyance to the same type of group is a "conveyance to no one." [7] The court in the principal case, however, realizing that its decision was tantamount to a holding that an unincorporated church is capable of holding title to land,[8] cited as controlling a case wherein it was held that a *bequest* of personalty to a school did not fail for want of corporate capacity to take.[9] In addition to the general criticism leveled against cases of this class as authority for the proposition that charitable associations are legal entities, it should be noted that there are several decisions to the effect that such associations may take and hold personalty even though they cannot take title to land.[10] Thus, neither the reasoning used nor the authority cited is convincing support for the result announced, which seems clearly a departure from established principles. The rule here laid down is broader than the common statutory provision permitting unincorporated churches to hold land, in that the rationale of the decision is equally applicable to any charitable group. Hence, questions of title to land may be made to depend upon the nebulous question of whether or not a given group is or was charitable.[11] Also, if entity status for this purpose may be achieved by associating together for charitable ends, does it mean that such associations are legal entities for all purposes? It is evident that the court reached the result it felt to be desirable and it may be that public policy favors such treatment of charitable associations, yet this determination would seem to be a legislative function.

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[6] Contra: 14 C.J.S., Charities, § 72, relying on Mansfield v. Neff, 43 Utah 258, 134 P. 1160 (1913). The court makes this statement at p. 274: "The law is too well settled to require extended discussion . . . to show that unincorporated, voluntary charitable associations . . . are . . . held capable of taking, acquiring, and holding property both real and personal, by purchase, gift, bequest, or otherwise." It is submitted that an examination of the authorities there cited fails to show support for the broad statement of the court.

[7] Holding that a devise to an unincorporated charitable association does not fail are Schneider v. Kloepple, 270 Mo. 389, 193 S.W. 834 (1917), and Harger v. Barrett, 319 Mo. 633, 5 S.W. (2d) 1100 (1928). Holding that a conveyance to such an association is void is Tucker v. Diocese of West Missouri, (Mo. 1924) 264 S.W. 897 (1924).

[8] Though the court in the principal case said title to the land described in the deed of 1922 was in the members of the *X* Church, this seems indistinguishable from holding title to have been in the association when it is considered that the individuals gain or lose whatever 'title' they have by acquiring or relinquishing membership, and that a majority of them can appoint an agent who conveys in his own name.

[9] Snider v. Snider, 70 S.C. 555, 50 S.E. 504 (1905).

[10] In Hadden v. Dandy, 51 N.J. Eq. 154, 26 A. 464 (1893), the court upheld a bequest to an unincorporated charitable association, indicating that a devise to a similar group would have been invalid.

[11] See notes, 46 MICH. L. REV. 705, 707 (1948).