

DANIEL SASS (PLAINTIFF) APPELLANT;

AND

ST. NICHOLAS MUTUAL BENEFIT }
 ASSOCIATION OF WINNIPEG, }
 UKRAINIAN MUTUAL BENEFIT }
 ASSOCIATION OF SAINT NICHOLAS }
 OF CANADA, THEODORE }
 STEFANIK AND OTHERS (DEFEND- }
 ANTS) }
 RESPONDENTS.

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* Mar. 1, 2.
* April 21.

ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA

Fraternal benefit society—Society incorporated under Charitable Associations Act, R.S.M. 1913, c. 27—Action brought by member attacking acts done in contemplation of or in connection with incorporation of a Dominion society, the establishment of lodges outside the province, and transfer of moneys to Dominion society—Powers of the provincial society—Manitoba statute, 1917, c. 12 (An Act respecting the Capacity of Companies), s. 1—Status of plaintiff to bring the action.

The plaintiff sued as a member of the defendant provincial society, incorporated in 1915 under the Manitoba *Charitable Associations Act* (R.S.M. 1913, c. 27), claiming declarations that certain by-laws of the society, passed (as alleged) in contemplation of extending its objects and powers throughout Canada and obtaining a Dominion charter, were invalid, as were also the establishment of lodges or branches outside of Manitoba, the method of electing trustees or directors, the use of moneys of the society to obtain a Dominion charter, and the application of its funds to the objects and purposes of the defendant Dominion society (incorporated by Dominion Act, 1930, c. 71, revived or continued by amending Act, 1933, c. 64), and asking for injunctions, accountings and restitution.

* PRESENT:—Duff C.J. and Rinfret, Davis, Kerwin and Hudson JJ.

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The powers of the provincial society included (*inter alia*) powers "to pass by-laws to regulate the powers and duties of the officers of the association, the amount and manner of the payment of contributions * * * the manner of choosing officers * * * and * * * of admission of new members, and generally such other by-laws as may be necessary for the purpose of effectually carrying out the objects of the association" and "to amalgamate or affiliate with any other society existing at the date hereof or which may be incorporated or formed in the future, and whose aims and purposes are similar" to those of said provincial society.

Held: (1) Ch. 12 (s. 1) of the Statutes of Manitoba, 1937 (*An Act respecting the Capacity of Companies*) applied to the provincial society. Though that statute was repealed by the *Consolidated Amendments, 1924*, it was then re-enacted, by s. 24 of c. 35 thereof, in exact terms. Said s. 24 of c. 35, though included in a chapter entitled *An Act to amend "The Companies Act,"* cannot be said to have been repealed by the *Companies Act, 1932*. In any event, most of the things of which plaintiff complained were done prior to the coming into force of the *Companies Act, 1932*, and the proceedings leading up to amalgamation of the provincial society with the Dominion society were under way, and defendants invoked s. 31 of the *Manitoba Interpretation Act, R.S.M. 1913, c. 105*.

- (2) Under its charter and the above provisions of the statutes of Manitoba, the provincial society had power to pass the by-laws attacked by plaintiff, and also to establish branches outside the province and to amalgamate with or transfer its assets to another body having similar powers. The only provision in the Dominion incorporating Act claimed to be dissimilar from the powers held by the provincial society—a certain restriction in qualification for future membership—was not a sufficient departure from the purposes of the provincial society as to prevent it from amalgamating with or transferring its assets to the Dominion society.
- (3) As it was not suggested that plaintiff's case rested upon fraud or oppression attempted against the minority of the society's members, plaintiff's right to sue as a member of the provincial society in respect of its acts was limited to the purpose of preventing it from commencing or continuing the doing of something which was beyond its powers.
- (4) In view of the above and for reasons aforesaid the plaintiff had no status to bring the action.
- (5) Further, in view of the fact that all of the assets of the provincial society were actually transferred to the Dominion society, which had been in full operation for over three years with the approval of governmental authorities, both federal and provincial, the judgment appealed from dismissing the action should not be interfered with under the circumstances.

Judgment of the Court of Appeal for Manitoba, 44 Man. L.R. 280, dismissing the plaintiff's action, affirmed in the result.

APPEAL by the plaintiff from the judgment of the Court of Appeal for Manitoba (1) dismissing his action. He brought the action as a member of the defendant provincial society, incorporated in 1915, under the *Manitoba Charit-*

able Associations Act, R.S.M. 1913, c. 27, and (as so alleged) on behalf of himself and all members of the defendant provincial society other than the individual defendants; in which action he claimed declarations that certain by-laws of the society passed (as alleged) in contemplation of extending its objects and powers throughout Canada and obtaining a Dominion charter, were invalid, as were also the establishment of lodges or branches outside of Manitoba, the method of electing trustees or directors, the use of moneys of the society to obtain a Dominion charter, and the application of its funds to the objects and purposes of the defendant Dominion society (incorporated by Dominion Act, 1930, c. 71, revived or continued by amending Act, 1933, c. 64), and he asked for injunctions, accountings and restitution.

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The plaintiff's claims and the facts and issues appear more extensively in the reasons for judgment now reported and are discussed at some length in the reasons for judgment delivered in the Court of Appeal for Manitoba (1). By the judgment now reported the appeal to this Court was dismissed with costs.

H. A. Bergman K.C. and *Wasyl Swystun* for the appellant.

F. Heap K.C. and *J. W. Arsenych K.C.* for the respondents.

The judgment of the court was delivered by

HUDSON J.—The plaintiff brings his action as a member of St. Nicholas Mutual Benefit Association of Winnipeg, hereinafter referred to as the "Provincial Society," and in this action he has joined a number of individuals as well as Ukrainian Mutual Benefit Association of Saint Nicholas of Canada, a body incorporated by Dominion statute for the purpose of taking over the assets and liabilities and carrying on the work of the Provincial Society. The plaintiff claims—

(a) a declaration that certain by-laws passed by the Provincial Society are invalid;

(b) a declaration that the acts of the said society in establishing lodges or branches outside of Manitoba were *ultra vires* of the society;

(1) 44 Man. L.R. 280; [1936] 3 W.W.R. 305; [1936] 4 D.L.R. 474.

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- (c) a declaration that the method of electing trustees or directors of the society is and always has been illegal;
- (d) an accounting of moneys spent by the said society in securing a charter under the Dominion Companies Act;
- (e) an injunction against the expenditure of further moneys for such purposes;
- (f) an accounting of moneys transferred by the Provincial Society to the Dominion Society;

(g) an injunction restraining the Dominion Society from further use of the moneys transferred;

(h) an injunction restraining the defendants from surrendering the charter of the Provincial Society, except in accordance with the statutes in that behalf.

The defendant, the Provincial Society, in its defence set up various defences, among others, objections to the plaintiff's status to bring the action, alleging in particular that he was a party to such acts and, further, that by reason of laches and delay the situation has been so changed that it would be inequitable and unjust to grant the relief claimed. Subsequently, an order was made by the Referee in Chambers

that all personal objections against the plaintiff to commence, maintain and prosecute this action and of the issues more particularly set out in paragraphs 18, 19 and 21 of the defence of the defendants be tried before the other issues herein.

The issues so set forth were tried before Mr. Justice Taylor of the Court of King's Bench and, as usually happens in cases of a partial trial, nearly all of the facts relating to the cause of action were explored. Mr. Justice Taylor held that the plaintiff was entitled to bring the action but expressly disclaimed any disposition of the question of *ultra vires*, holding that this was a matter which could only be properly settled when the action was tried out on its merits.

From this decision the defendants appealed to the Court of Appeal and that court allowed the appeal, set aside the judgment of Mr. Justice Taylor and dismissed the action (1). From this decision the plaintiff now appeals to this Court.

The St. Nicholas Mutual Benefit Association of Winnipeg was incorporated in 1915 under the *Charitable Associa-*

(1) 44 Man. L.R. 280; [1936] 3 W.W.R. 305; [1936] 4 D.L.R. 474.

tions Act of Manitoba. It was given powers, two of which require special mention. The first was a power—

To pass by-laws to regulate the powers and duties of the officers of the association, the amount and manner of the payment of contributions, dues and assessments to be paid by the members of the association, the payment of sick, funeral or other benefits by the association to its members, the manner of choosing officers to succeed the present officers and trustees and the manner of admission of new members, and generally such other by-laws as may be necessary for the purpose of effectually carrying out the objects of the association.

and secondly—

To amalgamate or affiliate with any other society existing at the date hereof or which may be incorporated or formed in the future, and whose aims and purposes are similar to the above.

The charter did not otherwise limit the powers of the association to make by-laws in regard to membership or otherwise.

The Statutes of Manitoba, 1917, chap. 12, sec. 1, applied to this corporation and provided that:

unless otherwise expressly declared in the Act or instrument creating it, have and be deemed to have had from its creation the capacity of a natural person to exercise its powers beyond the boundaries of the Province to the extent to which the laws in force where such powers are sought to be exercised permit, and to accept extra provincial powers and rights and shall, unless otherwise expressly declared in the Act or instrument creating it, have and be deemed to have had from its creation the general capacity which the common law ordinarily attaches to corporations incorporated by Royal Charter under the Great Seal.

In *Bonanza Creek Gold Mining Co. Ltd. v. The King* (1), Lord Haldane, in referring to a corporation created by charter, states:

In the case of a company created by charter the doctrine of *ultra vires* has no real application in the absence of statutory restriction added to what is written in the charter. Such a company has the capacity of a natural person to acquire powers and rights. If by the terms of the charter it is prohibited from doing so, a violation of this prohibition is an act not beyond its capacity, and is therefore not *ultra vires*, although such a violation may well give ground for proceedings by way of *scire facias* for the forfeiture of the charter.

The 1917 Statute of Manitoba was repealed by the *Consolidated Amendments* of 1924, but then re-enacted in exact terms: chapter 35, section 24. It is said that this provision was repealed by the *Manitoba Companies Act*, 1932. We are not of this opinion. Although section 24 of chapter 35, Consolidated Amendments, is included in a chapter entitled *An Act to Amend "The Companies Act,"* it is not stated anywhere specifically to be part of the *Companies*

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(1) [1916] 1 A.C. 566, at 583-584.

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Act; nor does it appear to have been repealed by implication. In any event, most of the things complained of in the plaintiff's statement of claim were done prior to the coming into force of the *Companies Act*, 1932, and the proceedings leading up to amalgamation of the Provincial Society with the Dominion Society were under way and the defendants invoked the aid of section 31 of the *Manitoba Interpretation Act*, chapter 105, R.S.M. 1913, as follows:

All things lawfully done and all rights acquired and liabilities incurred under any repealed Act shall remain valid and may be enforced, and all proceedings and things lawfully commenced under any repealed Act may be continued and completed under the repealing Act.

We are of opinion that under its charter and the above provisions of the Statutes of Manitoba the Provincial Society had power to pass the by-laws attacked by the plaintiff in his action, and also to establish branches outside the province of Manitoba and to amalgamate with, or transfer its assets to, another body having similar powers. It is not contended that the Dominion Act, Chapter 71, Statutes of Canada, 1930, gave the Dominion Society any powers dissimilar from those held by the Provincial Society, except in one particular, viz., that by section 5 of the Dominion Act

Only persons considered by the Society to be of Ukrainian origin and who are of the Greek-Catholic faith, in communion with the Holy See of Rome, shall be admitted as members of the Society. Provided that the Society shall, upon the conclusion of any agreement such as provided for in section 17 hereof, admit as members all persons who are then members in good standing of the Provincial Society as at that time constituted.

In our opinion this restriction on future membership is not a sufficient departure from the purposes of the Provincial Society as to prevent the Provincial Society from amalgamating with, or transferring its assets to, the Dominion Society.

The plaintiff's right to sue as a member of the society in respect of its acts is limited to cases—

(a) to prevent the corporation from either commencing or continuing the doing of something which is beyond its powers;

(b) to prevent the corporation carrying out something which purports to be a corporate act but which is in fact an attempt by the majority of its members to practise fraud or oppression against the minority.

It was not suggested that the appellant's case rested upon fraud or oppression.

We are of opinion that the plaintiff has no status to bring this action. Having come to this conclusion, we do not think it necessary to consider the objections to the plaintiff's status on the ground of his acquiescence, which objections were dealt with in the court below.

In view of the fact that all of the assets of the Provincial Society were actually transferred to the Dominion Society, which society has been in full operation for a period of over three years with the approval of governmental authorities, both federal and provincial, we ought not now to interfere with the judgment appealed from under the circumstances. The appeal is dismissed with costs. There will be no costs of the motion to quash.

Appeal dismissed with costs.

Solicitors for the appellant: *Lamont, Layton & Swystun.*

Solicitors for the respondents: *Heap, Arsenych & Murchison.*

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