IN THE

SUPREME COURT OF THE STATE OF ALABAMA

FAIRHOPE SINGLE TAX CORPORATION ET AL.,
Appellants,

VS.

ALEXANDER J. MELVILLE, Appellee.

Brief of Amici Curiae in Behalf of Contentions of Appellants

ROBERT S. KEEBLER

A. B. PITTMAN,
ALEX Y. SCOTT,
BOLTON SMITH,
OF COUNSEL.

MEMPHIS LINOTYPE PRINTING CO.

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BRIEF OF AMICI CURIAE IN BEHALF OF CONTENTIONS OF APPELLANTS.

This is an appeal from the decree of the Honorable Thomas H. Smith, Chancellor of the Southwestern Chancery Division of the State of Alabama, sitting in and for the Thirteenth District of said Division, in which the Chancellor overruled appellant's demurrer to appellee's bill praying for a dissolution of the Fairhope Single Tax Corporation, or in the alternative, an injunction.

The facts of the case are these: On August 9, 1904, the Fairhope Single Tax Corporation was incorporated under an act approved October 1, 1903, and now embraced in Section 3573 of the Code of Alabama. That act reads as follows:

"AN ACT to provide for the organization and regulation of corporations not for pecuniary profit in the sense of paying interest or dividends on stock, but for the benefit of its members through their mutual co-operation and association.

Section 1. *Be it enacted by the Legislature of Alabama,* That ten or more persons desiring to associate themselves together, not for pecuniary profit, in the sense of paying interest or dividends on stock, but for mutual benefit through the application of co-operation, single tax or other economic principles, may become a body corporate in the manner following:

Sec. 2. The parties proposing to form such corporation shall file with the Probate Judge in the county in which it proposes to establish itself, a declaration in writing, setting out the name of said proposed corporation, the names of the charter members and the purposes of said corporation.

Sec. 3. Upon the filing of such declaration the Judge of Probate shall issue to such corporation a charter, which shall be perpetual, subject to revocation at any time by the Legislature of Alabama.

Sec. 4. It may elect such officers as it may deem necessary, in such terms as it may provide, and remove the same at any time, and adopt such constitution and by-laws as it may see fit not in conflict with the constitution and laws of this State.

Sec. 5. Such corporation shall have the power to buy, sell and lease and mortgage real estate, to build and operate wharves, boats and other means of transportation and communication, build, erect and operate waterworks, electric lighting and power companies, libraries, schools, parks, and do any other lawful thing incident to its purpose, for the mutual benefit

of its members, and may admit such other persons to participate in its benefits as it may see fit and upon such conditions as it may impose."

In its declaration of incorporation pursuant to this act, the Fairhope Single Tax Corporation stated its purpose as follows:

> "The purpose of said corporation is to demonstrate the beneficiency, utility and practicability of the single tax theory, with the hope of its general adoption by the governments of the future. In the meantime, securing for ourselves and our children and associates the benefits to be enjoyed from its application as fully as existing laws will permit, and to that end to conduct a model community, free from all forms of special privileges, securing to its members therein equality of opportunity, the full reward of its individual efforts and the benefits of co-operation in matters of general concern, holding all land in the name of the corporation and paying all taxes on the same and improvements and other personal property of lessees thereon, charging the lessees the fair rental value, and in the prosecution of its plans for the general welfare of its members to do and perform all the acts and exercise all the powers permitted under Section 5 of said Act."

The corporation took over the lands formerly owned by the Fairhope Industrial Association, comprising about 140 acres, at Fairhope, in Baldwin County, Alabama, and adopted a constitution, under which eighty-four people became members of the corporation. Thirty-six of the members reside in Fairhope. Philanthropists interested in the adoption of the single tax theory by the governments of the world made donations to the corporation, notably

Joseph Fels, of London, who contributed 2,200 acres of land. The total land holdings of the corporation are now about 4,000 acres, of which some 1,500 acres are leased to members and non-members indiscriminately. Altogether there are about 266 leases. The corporation embraces the town of Fairhope and outlying territory. It has undertaken a number of public enterprises. The underlying principle of the organization is that the corporation shall own the lands and lease them to members and non-members for the rental value of the land, the corporation assuming all the taxes levied by the county and State upon the lands, improvements and all personal property held upon the lands (except moneys and credits).

Appellee Alexander J. Melville, a member and lessee of the corporation, brought a bill of complaint, alleging these grievances:

> That the corporation is charging all its tenants rentals far in excess of the true rental value of the use of the land, and that the rentals are constantly increasing.
>
> That the corporation is contributing from its general funds to pay the cost of maintaining the telephone lines of the Home Telephone Company, thus imposing a burden on those disinclined or unable to have a telephone.
>
> That the corporation is operating a waterworks system at a substantial loss, the benefit of which inures only to those so situated as to avail themselves of the water supply.
>
> That those members and lessees not living in the town of Fairhope are forced, through the system of taxation, to share such of the public burdens of those who do live therein as are incident to municipal government.
>
> That the corporation's efforts to enforce the single tax theory in this jurisdiction are, and

> must continue to be, not only impossible of accomplishment, but entirely absurd.
>
> That the corporation's activities are contrary to the settled policy of this State and are ultra vires and beyond any power which it could possess.
>
> That the situation must continue to grow worse as the community develops, and that the lessees must abandon their improvements or pay whatever rents may be exacted.

The appellee amended his bill, alleging the following matters:

> That the Act of October 1, 1903, insofar as it purports to authorize the organization of a corporation for mutual benefit through the application of single tax principles is offensive to the Constitution of the United States and of the State of Alabama.
>
> That the attempt at incorporation was therefore abortive and that the organization which resulted was in the nature of a partnership, which was dissolved by the death of Joseph Fels, one of its members, and by the withdrawal of complainant.

As a relief from these ills the complainant prayed that

> A receiver be appointed to wind up the corporation; that the lessees be allowed to purchase their holdings, as contemplated in the leases upon a dissolution, and that the net assets of the corporation be divided among the members according to their several interests and rights.
>
> As an alternative remedy, in case dissolution could not be had, complainant prayed that the corporation and its officers be enjoined from fixing the rents at any other than the actual rental value of the land, and from paying from

said rents any taxes upon the corporation's unproductive lands (about 2,500 of the 4,000 acres) or for other than mutually beneficial purposes.

The respondents demurred to the bill. The complainant's main contention was that the law under which the corporation was organized was unconstitutional. The learned Chancellor took complainant's view of the law and overruled the demurrer.

On this appeal, therefore, the main issue is whether the Fairhope Single Tax Corporation is a lawful corporation, and incidentally whether, even if it were an unlawful corporation, complainant can be heard to urge this contention.

(For convenience, the appellee will be referred to in this brief as complainant, and the Fairhope Single Tax Corporation as respondent.)

I.

This is not an appropriate case for the granting of an injunction.

Before discussing the drastic remedy of dissolution, which the complainant invokes, it is well to consider the alternative remedy which he seeks, namely an injunction (1) against the corporation fixing the rents at any rate other than the actual rental value of the land, and (2) against the corporation's devoting any of the rents to purposes other than those mutually beneficial to all the lessees, and against paying from said rents any taxes upon the corporation's unrented and unproductive land.

As to (1) the complainant asks no more than the law of the respondent's being requires, and no more than is demanded by the terms of the leases under which the corporation distributes its lands.

The charter of the corporation states that "the purpose of said corporation is to demonstrate the beneficiency, utility and practicability of the single tax theory, * * * charging the lessees the fair rental value." The leases contain this stipulation:

> "The said lessee, his heirs or successors, shall pay to the said Fairhope Single Tax Corporation, its successors or assigns, the annual rental value of said land, exclusive of his improvements thereon, to be determined by the said corporation through its executive council or board of directors, under its avowed principle of so fixing the rentals of its lands as to equalize the varying advantages of location and natural qualities of its different tracts and convert into the treasury of the corporation for the common benefit of its lessees all values attaching to such lands, exclusive of improvements thereon."

The complainant in effect, therefore, merely asked the court to declare that the law is the law and that a contract is a contract. He alleged no specific facts indicating that the corporation was charging more than the fair rental value of the land, and he asked for no specific relief. Suppose that the court should decree that the corporation charge only the rental value. The appellee would be no nearer to relief than at the outset. The law and the contract have already decreed that only such rentals shall be charged, and equity would scorn to do that which has already been done.

Complainant below was seeking specific performance of the contract and exact observance of the law. His allegations, therefore, should have been specific. He merely states that:

> "It (the corporation) is charging all of its tenants rentals far in excess of the true value of the use of the land."

If appellee had brought an action at law to recover the excess charged as rentals and had merely alleged:

> "The corporation has charged me too much. I want my money back,"

would any one suppose for a moment that such an indefinite declaration could stand against a demurrer? When the complainant goes into equity, is one required to be less specific when seeking the exact performance of a contract? Complainant's bill in this particular is demurrable.

But there are deeper objections. If we should concede, for the sake of argument, the soundness of complainant's fundamental fallacy, that this is a species of illegal taxation, equity still would not grant relief, since no multiplicity of suits is to be prevented nor any irreparable injury forestalled.

1 *Pomeroy Eq. Jur.*, Secs. 265-266.
Eq. Guar. & T. Co. v. Donohue (Del.), 45 Atl. 583.
Youngblood v. Sexton, 32 Mich. 406.

In this case Cooley, J., said:

> "We venture to say that it would not be seriously suggested that a common interest in any such question at law, when the legal interests of the parties were wholly distinct, could constitute any ground of equitable jurisdiction, where the several controversies affected by the question were purely legal controversies. Suits do

> not become of equitable cognizance because of their number merely."

The law of Alabama on this matter is indicated in the following cases:

Strenna v. Montgomery, 86 Ala. 340.

Held, a court of equity will not, by injunction, interfere with the collection of taxes unless, in addition to illegality, hardship or irregularity, some recognized ground of equity jurisdiction is shown, nor will it interfere in any case on account of the illegality of the tax, mere errors or excess of valuation, hardship or injustice, or other causes which can be redressed at law.

Ala., etc., Ins. Co .v. Lott, Tax Collector, 54 Ala. 499.
Elyton Land Co. v. Ayers, 62 Ala. 413.
Mayor v. Baldwin, 57 Ala. 61.

As a matter of fact, however, this is not a case of taxation at all, much as complainant may argue that the corporation has usurped the functions of government and is therefore unconstitutional. The situation, so far as complainant is concerned, is neither more nor less than would be presented if a large number of customers contracted with a merchant to pay a certain fee and purchase goods at cost. If the merchant charged some or all of the customers excessive prices, would equity entertain a suit at the instance of one of the overcharged customers to restrain the merchant from overcharging? Because one customer has been overcharged 10 per cent. is no reason that another has been likewise overcharged, when the prices are separately fixed for each

customer. Each would have a right of action to recover back the overcharge, and such, we submit, is the only right of action which the complainant has in this case, even admitting that there was an overcharge.

As to (2), in which complainant asks that the corporation be enjoined from paying out its funds for other than mutually beneficial purposes, it may again be remarked that the corporation is committed to this course, both by its charter and by its leases. The leases provide as follows:

> "The said Fairhope Single Tax Corporation further agrees, in consideration of the covenants of the said lessee, herewith evidenced, that no part of the rents paid by him upon the land herewith leased shall be appropriated as dividends to its members or any other persons, but that all shall be administered as a trust fund for the equal benefit of those leasing its lands."

The complainant alleged two abuses in the expenditure of the corporation's funds—the maintenance of a telephone line and the operation of a primitive and unsuccessful waterworks system. If these expenditures are not mutually beneficial to people living in as close contiguity as respondent's lessees, one's conception of mutual benefit must be more contracted than that of any municipal corporation in America. To parallel complainant's allegations one would have to contend that the taxes of a poor man should not go into any municipal fund which maintains boulevards and speedways, or that a bachelor should not be forced to contribute to the public school fund. Our public thought has advanced beyond such narrow views, and we have fortunately arrived at the position where public institutions and improvements may legally be maintained out of the common fund, irrespective of whether any particular citizen derives a peculiar benefit.

If a corporation has a right to maintain a waterworks system at all, it has the right to do so regardless of whether it is at the time profitable. Otherwise no corporation could ever make a venture until success was assured.

Complaint was also made of expenditures upon highways and public schools, but this may be disregarded.

In short, complainant's allegations that the moneys of the corporation are being misapplied betray the narrowest conception of mutual well-being, and are entirely out of trend with our modern idea of social welfare. In this particular, therefore, the bill was properly demurrable.

II.

The complainant is estopped from seeking a dissolution of the corporation.

We pass to complainant's prayer that the corporation be not merely enjoined from improper levies and disbursements, but that it be dissolved and its assets distributed. This is a drastic remedy and should be applied only for the gravest reasons. Such reasons the complainant claims to have discovered. His contentions are these: That the corporation is attempting the impossible; that it is not applying and never can apply, under our present system of laws, the principles of the single tax, and that the law under which the respondent corporation purported to be incorporated is unconstitutional and void.

Complainant's counsel argue these two propositions:

(a) That the single tax is indivisible, covering the whole field of taxation and necessarily involving the abolition of all other forms of taxation; that if the Legislature cannot, under our present Federal and State constitutions, pass a statute applying the principle of the single tax, it cannot authorize the creation of a corporation to apply such principle. In counsel's own words:

> "We are here concerned with an organization which was created and exists for the declared purpose of applying a governmental theory utterly contrary and opposed to the fundamental and statutory law of this jurisdiction. * * * It is idle and foolish to talk of any application of any principle of taxation except as such application may be by and through the Legislature."
>
> Brief for Complainant, pp. 11, 12.

(b) That

> "Nothing relating to taxation is shown * * * or can be shown * * * by any results, good, bad or indifferent, which may follow or flow from such renting, no matter how low the rents or what may be done with the same by the landlord. * * * For it to be held that Fairhope Single Tax Corporation has done, or can do, anything to demonstrate or apply any single tax theory, it must also be held that any land owner who sees fit to rent his lands at the reasonable value of the use of the land without improvements, to pay from the rents the taxes of his tenants and to devote the remainder of the rents to the use and benefit of the tenants, is thereby demonstrating or applying some principle of single tax."
>
> Brief for Complainant, pp. 11, 12.

Perhaps it has not occurred to the learned counsel that these arguments are diametrically opposed, the first being based on the assumption that the corporation is exercising a governmental function which the Legislature had no power to give, and the second on the contrary assumption that the corporation is doing only that which any landlord might equally do. We shall leave it to the learned counsel to choose between their arguments, but we shall answer the first argument, upon which counsel mainly rely, because we conceive it to be grossly erroneous. The view set forth in the second argument is, we concede and maintain, entirely correct.

Whether or not the statute is in reality unconstitutional and void, and whether or not the purported corporation is in effect a partnership, subject to ready dissolution, the complainant is not in a position to raise these objections. Upon two distinct grounds he is estopped to question the corporate being and conduct, first, because he is a lessee of the corporation, and secondly, because he is a stockholder.

(1) *As a lessee, complainant is estopped to deny the validity of the lease and the sufficiency of his landlord's title.*

Before taking a lease from the corporation, complainant signed the following form of application:

> "To the Executive Council, Fairhope Single Tax Corporation:
>
> I, the undersigned, hereby make application for lease of.....upon the terms and conditions set forth in the leases given by you.

I make this application with the full knowledge that I will be required to pay your corporation the full rental value of the land, exclusive of my improvements thereon. I understand that the rental values will increase as demand for the land increases, whatever the cause; that said values will be determined by the corporation in the manner set forth in its constitution and lease contracts; that out of the land rentals the corporation will pay the State and county taxes on the land, improvements and personal property of its lessees held thereon, moneys and credits excepted; and that the balance will be spent for the public good in local improvements and services.

I have read your constitution and pledge myself that while I hold lease of Fairhope land I will not oppose the full application of the principles set forth therein and contracted in your leases."

The lease contains, among others, the following stipulation:

"(1) The said lessee, his heirs or successors, shall pay to the said Fairhope Single Tax Corporation, its successors or assigns, in equal payments, on the first days of January and July of each year, the annual rental value of said land, exclusive of his improvements thereon, to be determined by the said corporation through its executive council or board of directors, under its avowed principle of so fixing the rentals of its lands as to equalize the varying advantages of location and natural qualities of its different tracts, and convert into the treasury of the corporation, for the common benefit of its lessees, all values attaching to such lands, exclusive of improvements thereon. And the said lessee, for himself and his heirs, hereby expressly agrees that the said annual rent shall be determined by the said corporation upon the principle just stated, and shall be expended by said corporation subject to the conditions hereinafter stated."

By accepting this lease the complainant admitted the corporate capacity of respondent and validity of its title. It is entirely inconsistent with this admission that he should now claim that the land was in fact held in partnership and that the purported corporation, as such, had no authority to execute the lease. That an estoppel arises under such circumstances is well-recognized law.

"A tenant is estopped as against the landlord to deny the lessor's title. * * * The preclusion of the lessee (or of one claiming under him) to assert a defect in the lessor's title has invariably been regarded as independent of the nature of the defect."

1 *Tiffany Landlord and Tenant,* pp. 435-6.

Lessee cannot show that lessor claimed under a void execution sale.

Leshey v. Gardner, 3 Watts & S. (Pa.) 314, 38 Am. Dec. 764.

Or that lessor was merely a mortgagee.

Alderson v. Marshall, 7 Mont. 288, 16 Pac. 576.

Or that conveyance under which lessor claimed was in fraud of creditors.

Palmer v. Melson, 76 Ga. 803.
Randolph v. Carlton, 8 Ala. 606.
Russell v. Fabyan, 27 N. H. 529.
McCurdy v. Smith, 35 Pa. 108.

Or that there was an outstanding lease to another.

Phipps v. Sculthorpe, 1 Barn. & Old. 50.

Or that the land had, previous to the lease, been sold to a third person.

Wood v. Turner, 26 Tenn. 517.

Or that two lessors in common may not sue jointly.

Oakes v. Munroe, 62 Mass. 282.

Or that lessor, a religious society, had no power to hold the land.

First English E. L. Church v. Arkle, 49 W. Va. 92, 38 S. E. 486 (1901).

In the last case defendant leased a lot from the trustees of a church. In an action of unlawful detainer by them for recovery of possession, he sought to set up that the church held the land in violation of a State statute limiting the ownership of real estate by a church to so much as may be necessary as a place of public worship, a burial place or residence of a minister. The Court said:

> "If the church violated the statute in holding this property, which likely it did not, only the State, not an individual, can complain. *Bank v. Poiteau,* 3 Rand. 136. * * * It is settled that corporations cannot be deprived of their real estate or denied capacity of ownership in merely collateral proceedings. The State can alone attack their ownership. *Rivanna Nav. Co. v. Dawson,* 3 Grat. 19; *Wroteen v. Armat,* 31 Grat. 228; *Angell Corp.,* Sec. 152; *Reorganized Church of Latter Day Saints v. Church of Christ,* 60 Fed. 973.

> "Another reason decisive of the case against Arkle is that he leased the property from the church and its trustees and held under them as their tenant, and the old doctrine that a tenant cannot deny his landlord's title, forbids him to impeach the title of his lessor. *Voss v. King,* 38 W. Va. 608; *Allen v. Paul,* 24 Grat. 232."

(2) *Not only is complainant estopped as a lessee, but he is also estopped as a member of the corporation from disputing the validity of the corporation's charter and its right to carry on the operations which its charter purports to authorize.*

Complainant filled out and signed the following application for membership, which was accepted by the corporation:

> "To Executive Council of Fairhope Single Tax Corporation:
>
> Having carefully read your constitution, heartily approving thereof, and desiring to participate in the work you are doing, I hereby make application for membership in your association.
>
> I particularly state that I understand and approve of your policy of collecting from holders of your land the full annual rental value of their holdings, and in consideration thereof, assuming the payment of all taxes assessed upon their improvements and personal property thereon (moneys and credits excepted), and that I understand and agree that the certificate of membership I shall receive, if accepted, will not entitle me to any dividends or profits from the operations of the corporation, and will be transferable only with the consent of the corporation and to persons acceptable to it as members."

In simple justice, should the complainant, who understood, heartily approved and participated in the project, be now allowed to repudiate and to disrupt it? Can he, like the satyr in the fable, blow both hot and cold? Can he say: "This is a good corporation. I heartily endorse it. Let me become a member," and then, when he becomes a member, say: "This is an illegal corporation. I shall seek to dissolve it?"

One cannot thus disown the child of his creation or his solemn adoption. As a member of a corporation his identity becomes merged in the corporation, and in all matters relating to the declared scope of the corporate undertakings, the will of the corporation becomes his will.

That a stockholder is estopped to contest the validity of the corporate charter is recognized by all the authorities.

> "Only the attorney general can institute a suit to forfeit a corporate charter. Such unquestionably is the law. It is for the State alone to withdraw the charter which the State has given. A stockholder cannot institute the suit. * * * Moreover, the stockholder, by being a stockholder, is estopped from complaining, and is presumed to have had knowledge of the facts from the time that he became a stockholder."

2 *Cook on Corporations,* Sec. 532, and cases cited.

Stockholders who have accepted the benefits of a special act incorporating the company by organizing, issuing stock and doing business as a corporation un-

der it, are estopped from asserting the unconstitutionality of the act as a defense.

> *Gardner v. Minneapolis & St. L. Ry. Co.* (1898), 73 Minn. 517, 76 N. W. 282; affirmed (1900) 177 U. S. 332, 44 L. Ed. 793.

One who deals with a corporation as a building and loan association, becoming a stockholder and a borrower from it, is estopped to deny its charter as such an association to avoid liability on his contract.

> *Manship v. New South Bldg. & Loan Assn.,* 110 Fed. 845.

A promoter and stockholder of a company which was incorporated in good faith, though in fact under the wrong statute, so that its charter was a nullity, is estopped, where the company has acted as a corporation and induced others to contract with it as a corporation, from denying its existence, by an action treating it as a partnership, notwithstanding the corporation may be a nullity as to third persons.

> *Anderson v. Thompson,* 51 La. Ann. 727, 25 So. 399.

Where it was alleged that a corporation organized for the purpose of purchasing and holding stock in other corporations was illegal as organized to create a monopoly, but such monopoly, if any existed, arose from the exercise of the powers conferred on the corporation by its charter or certificate of organization, such question could not be determined in a court of equity at the suit of a stockholder, but could only be considered on *quo warranto,* or rela-

tion of the attorney general, to oust the corporation from its franchises.

Dittman v. Distilling Co. of Amer., 64 N. J. Eq. 537 (1903).

A corporation cannot be thrown into the hands of a receiver on the application of a few dissatisfied stockholders on the ground that the stock subscription, by which the corporation was organized and has existed for two years, was illegal, where the dissatisfied stockholders approved of the stock subscription when it was made, and accepted benefits arising thereunder.

Mulqueeney v. Shaw, 50 La. Ann. 1060, 23 So. 915.

Mandamus lies to compel the secretary and treasurer of a corporation, who has resigned, to turn over to the corporation books and papers received by him by virtue of his office. He cannot set up the illegality of the corporation.

Coldwater Copper Mining Co. v. Gillis, 135 N. W. 901 (Mich. 1912).

A stockholder in a corporation cannot sustain a bill to have the charter forfeited and the corporation wound up on the ground that it was formed to purchase and combine various competing linseed oil mills for the purpose of forming a monopoly. The State alone can ask for such a forfeiture. Moreover, the stockholder, by being a stockholder, is estopped from complaining and is presumed to have had knowledge of the facts from the time that he became a stockholder.

Coquard v. National Linseed Oil Co., 171 Ill. 480, 49 N. E. 563 (1896).

Whether a corporation is exercising a franchise or right within legislative authority is a question to be inquired into by the State.

Potter v. Saginaw Union St. Ry., 83 Mich. 285, 10 L. R. A. 176.

To the same effect see:

Baker v. Bachus, 32 Ill. 79.
C. H. & D. R. Co. v. Duckworth, 2 Ohio Cir. Ct. R. 518.
Strong v. McCagg, 55 Wis. 624, 13 N. W. 895.
LeWarner v. Meyer, 38 Fed. 191.
Lincoln Park Chapter R. A. M. v. Swatek, 204 Ill. 228.
Benedict v. Columbus Const. Co., 49 N. J. Eq. 23, 23 Atl. 485.
Fish v. Smith, 73 Conn. 377, 47 Atl. 711.
Torras v. Raeburn, 108 Ga. 345, 33 S. E. 989.
Central Plank Road Co. v. Clemens, 16 Mo. 359.
Ohio & M. R. Co. v. McPherson, 35 Mo. 13, 86 Am. Dec. 128.
March v. Mathias, 19 Utah 350, 56 Pac. 1074.
Gilman v. Druse, 111 Wis. 400, 87 N. W. 557.
American Alkali Co. v. Campbell, 113 Fed. 398.
Callahan v. Chilcott Ditch Co., 37 Col. 331, 86 Pac. 123.
Gilman v. Sugar Co., 61 Barb. 9.
Rice v. National Bank, 126 Mass. 300 (statutory).

On reason and on authority, therefore, the complainant cannot be heard to say that the corporation's charter is invalid.

This is not a situation where the complainant, in spite of his being a member of the corporation, can bring a bill for its dissolution.

There are rare circumstances under which a minority stockholder may bring about the dissolution of a corporation by a bill in equity. Such suits are generally regulated by statute. At common law the circumstances must be very conclusive against the possibility of continuing the corporation before such a suit can be maintained by a minority stockholder. Thus:

The fact that a corporation has small chance of realizing its expectations of making money for its stockholders, and that its venture has not shown evidence of success within a reasonable time, is not in the absence of bad faith on the part of the officers or majority stockholders, ground for the premature termination of the corporation's existence on the complaint of a minority stockholder.

Manufacturers' Land & Improvement Co. v. Cleary, 28 Ky. Law R. 359, 89 S. W. 248.

If the directors of a corporation misuse its funds, as by a fraudulent purchase, "such fraud is, per se, no ground for dissolving the corporation. The vacation of such a transaction, for the fraud, is a proceeding by the corporation, or if it, on proper request, refuse to take steps to procure a rescission of the contract, then by some one or more of the stockholders. Brought in either form, the suit is for the

benefit of the corporation, as an existing artificial person, not for its dissolution."

Tutwiler v. Tuskaloosa Coal, Iron & Land Co., 89 Ala. 391.

In *North Mfg. Co. v. Bingham*, 116 Fed. 785 (1902), the Court said:

> "The bill * * * charges that for a number of years after its organization the Worth Manufacturing Company was managed with a fair measure of success, but that now it has become insolvent, or if not insolvent, so unproductive and embarrassed as to be in imminent danger of insolvency, utterly unable to continue its business and carry out the purposes of its organization, and if allowed to continue in business, the corporation will become hopelessly and irretrievably insolvent. * * *
>
> "We have then this condition of affairs: In a private corporation all the directors and a large majority of stockholders, in the exercise of their judgment, purchase a piece of property, believing it to be for the best interest of the enterprise. A minority object. Does this authorize the dissolution of the corporation, the cessation of all of its business, the taking away of all of its property out of the hands of the corporation and putting it in the hands of receivers? The question answers itself. Even were it a fraud, or an act ultra vires, the Court cannot be asked to destroy the whole enterprise in order to correct a wrong done to the enterprise. Other remedies will be applied. *Cook Corp.*, Sec. 863. The purchase could be set aside.
>
> "Considering all the facts disclosed in the record, we are of the opinion that this is not a case for the appointment of a receiver, or for the destruction of the corporation; that the stockholders themselves are the best judges of

what is for their interest. It is ordered that the decree of the Circuit Court be reversed and that the receivers be discharged, and the property of the Worth Manufacturing Company be restored to the possession of the corporation and its officers, and that the injunction be dissolved."

Cook, in his standard work on Corporations, says:

"It is an unquestioned rule that all the stockholders, by unanimous consent, may effect a dissolution of the corporation by the surrender of the corporate franchise. * * * It has been held that the majority in interest of the stockholders of a corporation may dissolve it by a voluntary surrender of its franchises, even though a minority of the stockholders are opposed to the dissolution. Such, undoubtedly, is the case where the corporation is insolvent or is doing a failing business, and is manifestly unable to accomplish the purposes of its organization. But where such is not the case, and where the term during which the corporation was to exist has not expired * * * it has been held that the majority cannot dissolve the corporation in opposition to the wishes of the minority. Stockholders owning only a minority of the stock cannot, at common law, compel a dissolution before the expiration of the time limited in the charter for the existence of the corporation."

2 *Cook on Corporations*, Sec. 629.

A court of equity has no jurisdiction to appoint a receiver of and dissolve a solvent beneficial assessment association on the ground of mismanagement, fraud and the abuse of corporate powers.

Mason v. Equitable League, 77 Mo. 483 (1893).

A stockholder cannot file a bill for the dissolution of an insolvent corporation.

Heap v. Heap Mfg. Co., 97 Mich. 147 (1893).

In the absence of statutory authority, a court of equity has no jurisdiction to dissolve a corporation.

Wheeler v. Pullman Iron, etc., Co., 143 Ill. 197 (1892).

A receiver will not be appointed for a benevolent society in a suit by a member.

Crombie v. Order of Solon, 157 Pa. St. 588 (1893).

See also:

Waterburg v. Exp. Co., 50 Barb. 157, holding that misconduct of the corporate officers is no cause for dissolution at the suit of the minority.

Bryne v. New York Brick Co., 16 Week. Dig. 139 (1882), holding that a stockholder has no right to bring an action for the dissolution of the corporation.

Denike v. New York, etc., Co., 80 N. Y. 599.

Folger v. Ins. Co., 99 Mass. 267.

Croft v. Lumpkin, etc., Min. Co., 61 Ga. 465.

U. S. Trust Co. v. N. Y. R. R., 101 N. Y. 478.

Oldham v. Imp. Co., 45 S. W. 779 (Ky., 1898).

Hinckley v. Pfister, 83 Wis. 64 (1892).

Decker v. Gardner, 124 N. Y. 334 (1890).

Briggs v. Cape Cod Ship. Canal Co., 137 Mass. 71.

City of Topeka v. Topeka Water Co., 58 Kan. 349, 49 Pac. 79.

An instance where the circumstances have been held sufficient to justify a dissolution of the corporation at the suit of a *majority* of the stockholders is as follows:

The corporation, though solvent, was unable to get capital to continue in operation, and had been idle for about a year. It was apparent that no agreement could be reached by the officers of the corporation.

Prince v. Holcomb, 89 Iowa 123 (1893).

In order to justify a dissolution of the corporation at the suit of a single member or stockholder, there must be an entire failure of the corporate purpose. An instance of such failure is the case of *Moore v. Whitcomb,* 48 Mo. 543 (1871), where the seizure and sale of a railroad under a State lien extinguished the railroad company, since such seizure and sale destroyed the objects for which the corporation was established.

Thompson on Corporations, Sec. 6504.
39 L. R. A. (N. S.) 1044, note.

The law of Alabama is in accord with the above authorities. The Code (Art. 7, Secs. 3510-3515) provides for the dissolution of corporations under certain circumstances, none of which. it is sufficient to say, are manifested in this case. Under the common law of Alabama, when a private business corporation has failed of its purposes, a single stockholder may sue for its dissolution and the distribution of its assets among those entitled thereto, whether the corporation be solvent or insolvent.

Ross v. Amer. Banana Co., 150 Ala. 268.

In *Decatur Land Co. v. Robinson* (1913), 63 So. 522, it was but a question of time when the annual expense would absorb the entire assets of the company, and there was no reasonable probability of an increase of the assets or of an income in excess of the current expenses.

In *Cement Co. v. Reese,* 167 Ala. 485, the corporation was a non-going concern. "The bill further alleges that the corporation has wholly failed of the purpose for which it was organized, and sets forth matters as facts which, if true, show that the objects held in view by the promoters and organizers of the corporation have become impossible of accomplishment, and that it is impossible to proceed further with the work or business proposed."

It is apparent that in this case we do not have a non-going concern, which has wholly failed of its purpose, nor yet a corporation whose assets are rapidly depreciating. Indeed, the whole tenor of complainant's bill indicates that the corporation is in a very prosperous condition, and that instead of imminent stagnation there is every prospect of increased development.

The bill alleges that:

> * * * "Through and because of the many gifts which it has received, and its above described land tenure system, it has acquired and been able to hold a valuable landed estate, which ultimately must inure to the direct pecuniary profit of its members, for that there is no one else to take the same when the inevitable dissolution comes; that this profit is increased by the improvements of *each tenant, who finds that he must abandon his lease because of excessive rents.*
>
> * * * Even the poorest of the lessees, who have substantial improvements upon the

property, can arrange to purchase enough thereof to save their improvements; that the situation above pointed out is daily growing worse and must continue to grow worse, in that, as the community grows in the natural and necessary development of this section, there will be more and more of improvements in and around the town and an ever-increasing amount of personal property upon which taxes must be paid and the running expenses of the corporation, which is now approximately 15 per cent. of its entire income, will increase, while the actual rental value of the ground itself will increase only very slowly, because in the locality under consideration there are hundreds of thousands of acres of unoccupied land, altogether as good as those owned by the said corporation, and affording a supply which will not be exhausted for many generations to come.

* * * Because of the improvements which they have placed upon the lands, *they cannot afford to cancel their leases.*"

It is apparent that the corporation is at present prosperous, and it is but an empty allegation on the part of complainant to speak of "the inevitable dissolution."

So far as may be gathered, complainant bases his prophecy on two assertions, namely: That the experiment is against the established policies of the State and must therefore fail; and that, as the population and improvements increase, the rental value of the lands will not increase in sufficient ratio to pay the expenses of the corporation. As to the first assertion, we have already seen that the complainant is estopped to maintain it. As to the second, he is merely borrowing trouble from the future. If "your orator is an earnest advocate of the theory of single tax," as he alleges, he should realize that the greater

the improvements, the more successful will be the operation of the single tax. Quoting C. B. Fillebrown, president of the Massachusetts Single Tax League:

> "The farmer today, whose land values are so small—almost insignificant—but whose labor values, his buildings and improvements, such as drains, fences, trees, crops, reclamation and fertilization of land, and his personal property, which is, of course, a labor value—are seen and known of all men, he it is who is bearing in great degree the evaded burden of the owner of stocks and bonds. Such discrimination finds illustration on every hand. For instance, with the value of the buildings and improvements of the Berkshire, Mass., farmer far in excess of the site value of his land, while in Boston, Winter street buildings have only one-thirteenth the value of Winter street land, it is easily seen, as a matter of simple proportion, how the taxation of buildings bears more than thirteen times as heavily on the Berkshire land holder as it does on the Winter street landlord."
>
> "The A B C of Taxation" (Doubleday, Page & Co., 1909), pp. 123-4.

The development of the corporation's lands, which complainant contemplates (although he likewise contemplated their abandonment on account of the excessive rents), will greatly simplify the problem confronting the corporation. With only one lessee the corporation would be doomed to failure; with a thousand its likelihood of success would be immeasurably superior, and with ten thousand its success would be conclusively assured. Whatever depressive effect the excessive rents may have upon the success of the enterprise may be removed by an

action at law, as has been suggested. No lessee is required to pay more than his contract requires.

Even if the corporation should dissolve, the complainant could not make booty of its assets.

It is apparent that the complainant will not be content with the remedies that the law provides. He seeks to destroy the whole corporate fabric. Why this ruthless desire? The answer is near at hand. The bill itself sets forth:

> "That while the law under which said corporation is organized contemplates that no profit shall inure therefrom to its members, except such benefits as they may realize from 'the application of co-operation, single tax or other economic principles,' yet through and because of the many gifts which it has received, and its above described land tenure system, it has acquired and been able to hold a valuable landed estate, which ultimately must inure to the direct pecuniary profit of its members. (Sixth.)
>
> "That in and by each of said leases it is provided and contemplated that should the said corporation be dissolved, such lessees as are members may take as a part of their share of the assets the lands embraced in their respective leases, and such lessees as are not members may acquire title to the land leased to them, respectively, by paying its actual value, exclusive of improvements. (Eighth.)
>
> "That the only investment that the members as such have in the said corporation is a membership fee of $100.00 each; that because of the large donations which have been made to the said company, it has assets of such value that upon a dissolution thereof each of the members would receive many times the aforesaid sum; that the land of the said company, consisting of

> about 1,500 acres under lease and about 2,500 acres not leased, represents a large asset, and a sale thereof would produce many thousands of dollars, even though the land under lease be sold to the lessees at its value, exclusive of improvements; * * * that many of the non-resident members of said company are philanthropists, who have contributed their membership fee, and possibly other donations, for the purpose of ascertaining whether or not the experiment undertaken by the said company would demonstrate that its theories are sound and beneficent; * * * that the most of the said non-resident members have made their aforesaid contribution and gone their way." * * * (Eleventh).

The complainant seeks to disrupt the corporation and receive a share of the spoils. But he is too eager. He has been ill advised. Even if occasion should ever arise for the dissolution of the corporation complainant could, as a lessee, share only on the same terms with the other lessees, and as a member he could only take his part of the profits derived from the operation of the common enterprise (which if we are to believe complainant would not be "many times the aforesaid sum" of $100.00). The form of lease used by the corporation contains this clause:

> "(7) The Fairhope Single Tax Corporation agrees that in case of its dissolution, either by voluntary act of its members or otherwise, and the division of its assets among its members, the said lessee, if a member, shall be entitled to have the land herein described and leased—or so much of it as he may designate—included in his portion at its actual value at the time, exclusive of improvements thereon, and if it exceed in value such portion, to purchase the excess at such valuation. If not a member, the lessee may at such time acquire title to the land here-

in leased by paying to the corporation its actual value, exclusive of improvements upon it."

It is no doubt very gratifying to the complainant to contemplate that upon a division of the spoils—"the inevitable dissolution"—he will share in the bounties which Joseph Fels and other high-minded philanthropists have heaped upon the corporation. Such is a beautiful reverie, but it is not the law. The law places no such premium on the disruption of a charitable or other public corporation.

The rule of the common law as to the disposition of property held by an eleemosynary or public institution upon its dissolution was this: The land reverted to the grantor, the personalty to the king or State, and the choses in action were extinguished.

Saltmarsh v. P. & M. Bank, 14 Ala. 675.
Coke on Littleton, 13b.

This harsh rule of the common law has been modified by modern courts to suit the ends of justice. Thus in *Mobile Temperance Hall Assn. v. Holmes,* 65 So. 1020 (Ala., 1914), it was held that in the absence of statute, the assets of a corporation, organized to promote temperance among its members and the community, should be, on dissolution, distributed among the surviving members, the common law rule with respect to eleemosynary corporations not prevailing. The Court quoted with approval the case of *Wilson v. Leary,* 120 N. C. 90, 26 S. E. 630, 38 L. R. A. 240, and held as follows:

"The true, modern rule, arising out of the development in importance and variety of corporate organizations and enterprises, and the principle which will be found running through nearly all modern judicial thought and expression, is that, on dissolution of any corporation,

the corporate assets, both real and personal, including debts due to the corporation, should be regarded as belonging to a trust estate in the hands of those who happen to have their custody, to be disposed of by the court of equity according to the equitable rights of interested parties. * * * The property (involved in the suit) was paid for and the building on it erected by the contributions of the * * * Sons of Temperance, and there is no person before the Court having any equitable claim, except those who were members of the order at the date of dissolution. It follows that such persons and their representatives are entitled to the property, to the exclusion of the heirs of the grantor."

What are the equitable rights of the interested parties in this case? Is it right that the lands which Joseph Fels gave the corporation for the purpose of testing out the principle of the single tax should be made the booty of a discontented member of the corporation? In the cases just cited the property was paid for out of the funds of the order. No persons before the Court had any equitable claim except the members of the order, and they were manifestly entitled to the property. But here the lands of the corporation were derived in large measure by pure gift; they can in no wise be attributed to the thrift or contributions of the members, and to the donors the lands should in equity revert upon the dissolution of the corporation, should that fatality ever ensue.

Gray on Perpetuities, Sec. 45 (a), Sec. 47.
Mott v. Seminary, 129 Ill. 403.
Acklin v. Paschal, 48 Tex. 147.
Church of Jesus Christ v. U. S., 136 U. S. 1, 35 L. R. A. (N. S.) 895, note.

III.

The purposes of the corporation are not contrary to public policy, nor is the act under which the corporation was organized unconstitutional.

What we have already set forth, if sound, is conclusive of the issues involved in this case. If the complainant has set forth no state of facts justifying an injunction, if he is estopped to attack the validity of the charter, and has shown no lawful reason for a dissolution of the corporation, the decree of the learned Chancellor below should be reversed and the suit dismissed.

But the Fairhope Single Tax Corporation does not desire to justify the theory of the single tax and to vindicate its existence upon an estoppel. If the act under which it derived its charter is unconstitutional, if this application of the principle of the single tax is "offensive to and in contravention of" the Constitution of the United States and of the State of Alabama, as counsel for complainant contend, then the corporation spurns its existence and gladly relinquishes its assumptions.

Departing from the niceties of technical argument, we shall here discuss the fundamentals of American government. What are the ideals of this republic? What result is our Federal Constitution designed to attain? The preamble sets forth its purpose:

> "We, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America."

The Constitution of Alabama is no less explicit:

> "Preamble.
>
> We, the people of the State of Alabama, *in order to establish justice,* insure domestic tranquillity, and secure the blessings of liberty to ourselves and our posterity, * * * do ordain and establish the following Constitution and form of government for the State of Alabama.
>
> Article I. Declaration of Rights.
>
> That the great, general and essential principles of liberty and free government may be recognized and established, we declare:
>
> Sec. 35. That the sole object and only legitimate end of government is to protect the citizen in the enjoyment of life, liberty and property, and when the government assumes other functions it is usurpation and oppression."

Is the principle of the single tax in contravention of these lofty declarations? Let its own exponents speak for it.

Quoting from Chapter III., Book VIII., of "Progress and Poverty," by Henry George, the apostle of the single tax:

> "The value of land does not express the reward of production, as does the value of crops, of cattle, of buildings, or any of the things which are styled personal property and improvements. It expresses the exchange value of monopoly. It is not in any case the creation of the individual who owns the land; it is created by the growth of the community.
>
> Tax manufactures, and the effect is to check manufacturing; tax improvements, and the effect is to lessen improvement; tax commerce, and the effect is to prevent exchange; tax capital, and the effect is to drive it away. But the whole value of land may be taken in taxation,

and the only effect will be to stimulate industry, to open new opportunities to capital, and to increase the production of wealth.

The tax upon land values is, therefore, the most just and equal of all taxes. It falls only upon those who receive from society a peculiar and valuable benefit, and upon them in proportion to the benefit they receive. It is the taking by the community, for the use of the community, of that value which is the creation of the community. It is the application of the common property to common uses. When all rent is taken by taxation for the needs of the community, then will the equality ordained by nature be attained. No citizen will have an advantage over any other citizen save as is given by his industry, skill and intelligence, and each will obtain what he fairly earns. Then, but not till then, will labor get its full reward, and capital its natural return."

That Mr. George's theories are not mere vagaries and heresies is made evident by the writings of the foremost economists whom the world has produced.

"Both ground rents and the ordinary rent of land are a species of revenue which the owner, in many cases, enjoys without any care or attention of his own. Though a part of this revenue should be taken from him in order to defray the expenses of the State, no discouragement will thereby be given to any sort of industry. The annual produce of the land and labor of the society, the real wealth and revenue of the great body of the people, might be the same after such a tax as before. Ground rents, and the ordinary rent of land are, therefore, perhaps the species of revenue which can best bear to have a peculiar tax imposed upon them.

Ground rents seem, in this respect, a more proper subject of peculiar taxation than even

the ordinary rent of land. The ordinary rent of land is, in many cases, owing partly at least to the attention and good management of the landlord. A very heavy tax might discourage too much this attention and good management. Ground rents, so far as they exceed the ordinary rent of land, are altogether owing to the good government of the sovereign, which, by protecting the industry either of the whole people or of the inhabitants of some particular place, enables them to pay so much more than its real value for the ground which they build their houses upon; or make to its owner so much more than compensation for the loss which he might sustain by this use of it. Nothing can be more reasonable than that a fund which owes its existence to the good government of the State should be taxed peculiarly, or should contribute something more than the greater part of other funds toward the support of the government." (Adam Smith, "Wealth of Nations," Book V., Chapter II., Part 2, Art. 1.)

See also:

John Stuart Mill, "Principles of Political Economy," Book V., Chapter II., Sec. 5, Par. 2.

Andrews, "Institute of Economies," p. 168 and footnote.

Bullock, "Introduction to the Study of Economics," p. 116.

Adams, "Science of Finance," pp. 504 and 380.

C. B. Fillebrown, in the *"A B C of Taxation,"* speaks thus of the obstacles to an inauguration of the single tax:

"What are the obstacles that today so impede a thorough consideration of the basic

economic principle of the single tax by pulpit, press and legislator?

The answer to this apparently puzzling question is, after all, a simple one:

First is the notion that the single tax contemplates public ownership of land, which is not true; second, the impression that it would disturb present land titles, which is not true; third, the charge that it would take for the community what belongs to the individual, which is not true; fourth, the poisoning misapprehension that, right or wrong, it would amount today to taxing into the public treasury practically the whole rental value of one species of property.

All men are agreed as to the ethics of the single tax, that the earth was made for all men and not for a few. This is what Mr. George calls an instinct, an intuition of the human mind, a primary perception of the human reason. If we were today starting anew, the single tax would be manifestly wise as a method of taxation; if it could today be put in operation without injustice to any one, it would still be a manifestly wise plan of taxation. Can it be done?

The single taxer is firmly of the opinion that it is no part of God's economy that justice to one man can work injustice to another; that for every alleged injustice to one man there would be a far greater injustice wrought to hundreds and to thousands; that the vacant lot which is his only all is not the poor man's universe; that his individual loss or benefit will be measured, not by his relation to that vacant, unproductive lot, but by his relation to the social fabric into which he is woven and to the universe of which he is a part; and that for every alleged confiscation there would be a score of compensations." (Pages 119-120.)

Can it be charged against the single tax, which has

for its prime object that each man shall obtain what he fairly earns, and no more, that it is "not only inherently unjust and oppressive, but it tends to retard progress and create stagnation," and is "offensive to and in contravention of" the Federal and State constitutions? Is it not rather true that the single tax is in perfect harmony with the real essence of our American ideals, and that any system of taxation which results in a distribution of wealth disproportionate to the labors of those who toil, is thus far wrong and contrary to the real end which our government was designed to establish?

We turn for a moment to the authorities.

In none of the cases in which the affairs of societies possessing communistic features have come before the courts does the scheme of such organization seem to have been regarded as open to objection as contravening either any express statutory or constitutional provision, or public policy generally.

A covenant exacted by a society of Shakers, providing that all members have equal privileges in the use of all property of the society, was held legal, not being inconsistent with their constitutional rights as depriving members of the power of acquiring, possessing and protecting property, nor contrary to the genius and principles of a free government, nor against morals nor public policy.

Waite v. Merrill, 4 Me. 102, 16 Am. Dec. 238.

A Shaker organization was declared valid and seceding members were held not entitled to any share in common property thereof.

Gass v. Wilhite, 2 Dana 170, 26 Am. Dec. 446.

Harmony Society was organized to restore primitive Christianity. The members surrendered to the

association their property, to be held in common for the benefit of all. It was held by Gibson, Chief Justice, to be a lawful organization.

> "An association for the purposes expressed is prohibited neither by statute nor the common law, *and it is clear that, except for the amount of its income, this society would be entitled to a charter by our statutes, for self-incorporation.* It may be true that the business and pursuits of the present day are incompatible with the customs of the primitive Christians, but that is a matter for the consideration of those who propose to live in conformity to them." * * *

Schriber v. Rapp, 5 Watts 351, 30 Am. Dec. 327.

Same association. Above decision approved. Held that the adoption by the members of a communistic society of a plan by which all contributions were to be irrevocable was not the creation by the members of a trust in property for the benefit of the society as such, which on the doctrine of resulting trusts conferred on the descendants of the members who contributed no property to the society any such proprietary right or interest as entitled them, on the dissolution of the society, to share in its property or assets, or to have an accounting.

Schwartz v. Duss, 187 U. S. 10, 47 L. Ed. 53, 23 Sup. Ct. Rep. 4.

No legal objection was held to exist to a society known as Separatists, the members of which were required to disclaim all individual ownership to the property acquired by their labor.

Goesele v. Bimeler, 14 How. 589, 14 L. Ed. 554.

Held that a declaration in trespass on the case for damages for deceit, alleging that the plaintiff, who was a man of ordinary understanding, was induced to join a religious community, one of whose tenets was that all property should be held in common, but that the professed principles of the community were not fully put into practice, did not state a proper cause of action.

Ellis v. Newbrough, 6 N. M. 181, 27 Pac. 490.

Held that a contract between the members of an unincorporated association, by which the property of each was to become an inseparable part of the capital held in common by the members of the community as one large family, no part of which could be demanded by the member on withdrawal, was not in contravention of any law regulating the possession, ownership or tenure of property.

Burt v. Oneida Community, 137 N. Y. 346, 19 L. R. A. 297, 33 N. E. 307.

Held that the common ownership of property by a religious corporation, in accordance with the religious belief of the members, does not render it subject to dissolution, under a statute permitting such corporations to own property for purposes appropriate to their creation, and forbidding its distribution, by dividend or otherwise, prior to dissolution, although the property consists of farms and manufacturing and business enterprises, and the income of it is used for the support of the membership and the improvement of the property. Communistic life by members of a religious corporation is not contrary to public policy.

State of Iowa v. Amana Society (Iowa, 1906), 109 N. W. 894.
See 8 L. R. A. (N. S.) 909.

It is true that the objects of some corporations are against public policy, as where the design is to create a monopoly, and they should therefore be dissolved.

State v. Standard Oil Co., 49 Ohio St. 137, 15 L. R. A. 145.
People v. Chicago Gas Co., 130 Ill. 268, 8 L. R. A. 497n.
In re Milholland Ben. Soc., 10 Phila. (Pa.) 19.
1 *Thompson on Corp.*, Sec. 38.

But in the present instance the object is in no sense vicious or against public policy.

Complainant's counsel has cited *Detroit Schuetzenbund v. Detroit Agitations Verein* (1880, Mich.), 6 N. W. 676. In this case the defendant in error brought action to recover a sum of money loaned to plaintiff in error. The Verein declared as "a body corporate, organized and existing under the laws of the State." The Court said:

> "We have not been referred to any statute of this State under which the plaintiff had or could have organized as a corporation, nor do we know of any under which a corporation with such objects and aims could be formed. * * * There may be cases where organization and 'agitation' would be proper for the purpose of effecting the modification or repeal of some obnoxious or oppressive law. *That the organization in question was designed to and did go further than this, the record clearly shows.* It is alleged therein that the society had collected

> from its members and received from other similar societies considerable sums of money and had disbursed large sums of money in furtherance of the objects prescribed by the (its) constitution, i. e., in defending prosecutions under the prohibitory law, in testing the validity of the liquor law and of some ordinances against saloonkeepers, influencing legislation and in some cases in paying the fines of those who were convicted under the laws and ordinances which the society was organized to oppose. * * * No corporation can exist except by force of express law. * * * Finding no law for the incorporation of this society, the judgment must be reversed. This would be the necessary result, even if the purpose of the society were one in the propriety or usefulness of which every citizen concurred, since the law does not authorize an unincorporated society to bring suit in its society name."

With this decision we are in hearty accord. The legislature had passed no act providing for the incorporation of such associations. Whether in such an instance the legislature shall permit incorporation is a mere question of legislative expediency, and no constitutional question is involved.

The legislature is the exponent of public policy as to all matters within the purview of legislation. As Chief Justice Chase said in the License Tax Cases (5 Wall. 462, 469):

> "This Court can know nothing of public policy, except from the constitution and the laws, and the course of administration and decision. It has no legislative powers. It cannot amend or modify any legislative acts. It cannot examine questions, as expedient or inexpedient, as politic or impolitic. Considerations of that sort must, in general, be addressed to the legisla-

ture. Questions of policy determined there are concluded here."

See also:

Vidal v. Girard, 2 How. 127.
Carroll v. City, 67 Ill. 568, 16 Am. R. 632.

The fundamental error of complainant's counsel lies in their failure to appreciate the fact that a corporation is a mere legal fiction introduced for business convenience.

The legislature may, at its discretion, create a corporation for any legitimate object. If five men may legitimately meet together to discuss law reform or a change of government, the legislature may, if it choose, incorporate them for that purpose. There is nothing magical about a corporation; it is merely a business convenience. If a group of men may buy lands and lease them under terms similar to the leases at Fairhope (and who can doubt that a group of men may not do so?) then the legislature may, if it sees fit, incorporate them for this purpose.

To say that such a corporation is unconstitutional and void is the most incomprehensible nonsense. The complainant might as well say that an incorporated law reform league, having for its object the change of our constitution so that it will conform more nearly to the ideal of human justice, is unconstitutional, or that an incorporated institution of learning which disseminates the principles of the single tax or socialism is unconstitutional. The complainant forgets that a corporation may, if the legislature so creates it, do anything which an individual may lawfully do. If an individual may not lawfully kill his neighbor, a corporation cannot be lawfully organized for that purpose. If an individual may take his private lands and lease them under a plan whereby he attempts to charge as nearly as possible the rental value of the land, a corporation may be organized for the same purpose.

If the legislature cannot create a corporation to apply the principles of the single tax (of course, a perfect application of those principles is impossible, either by an individual or a corporation, under our existing institutions, and the Alabama Legislature must be taken to have had sense enough to know so), then a private individual cannot use his land for the same purpose, because the purpose is illegal. If a society cannot be incorporated to preach the single tax (i. e., in the discretion of the legislature), an individual cannot preach the single tax. Where, then, is American liberty? The complainant's attitude leads to the sheerest despotism and a subversion of the most sacred ideals of our republic. It would mean that America stifles free speech, dethrones idealism, stays all progress and sets up what now is as the inflexible standard of the future.

This fact is fundamental, that a corporation is only a convenient business device, and the legislature may create a corporation to carry on any enterprise which an individual may carry on. The only absolutely essential attribute of a corporation is the capacity to exist and act within the powers granted, as a legal entity, apart from the individual or individuals who constitute its members.

Andrews Bros. Co. v. Youngstown Coke Co.,
86 Fed. 585, 30 C. C. A. 293.

In 1848 the Legislature of Alabama passed an act authorizing the incorporation of organizations

known as the "Order of the Sons of Temperance of the State of Alabama," whose object was to promote temperance among its members and the community. (Acts of 1847-1848, p. 235.) Was this act unconstitutional? Would it have been any the less constitutional if the legislature had foreseen that the activities of these and similar organizations would ultimately result in the abolition of the legalized liquor traffic in Alabama?

We submit for the judicious reflection of complainant's counsel the constitutionality of a corporation chartered in 1895 under the laws of New York State and known as the "George Junior Republic Association" (see Sec. 40, Membership Corporations Law of New York). Under its charter the corporation has maintained for twenty years, at Freeville, New York, a model republic for boys and girls. It has a president, a legislature, courts and all the institutions associated with public life. It has a court house, a jail and a bank. It issues warrants of arrest and all other forms of legal process. The legislature makes the laws of the republic. Although New York State has constitutional manhood suffrage, this little republic allows its girls to vote and to hold office. Is this republic unconstitutional and offensive to our fundamental institutions? On February 1, 1908, the National Association of Junior Republics was formed in New York City, and under its auspices junior republics are being incorporated in the other states. ("The Junior Republic," Wm. R. George. D. Appleton & Co., 1911.) If the ingenuity of complainant's counsel is to prevail, these republics are unconstitutional, they are subversive of the established policies of our government, and this generous movement must be checked.

The specific flaw which the counsel for complainant discover in the constitutionality of the corporation is that it provides for a system of taxation at odds with the methods of taxation provided for by the State and Federal constitutions. In reality the State and national taxation schemes are in active operation at Fairhope. Complainant's counsel admit that the corporation is doing no more than any benevolent land owner might equally do. By a system of rents the corporation seeks to try out the principles of the single tax. It would be unconstitutional for the legislature to enact a single tax law as a governmental policy; it is not unconstitutional for a corporation to adopt the single tax as a contractual policy. The corporation is not a governmental, but a business unit, and in confusing these two conceptions, counsel for complainant have been led into ludicrous error. By the creation of this corporation the legislature in no wise violated the provision of the Alabama Constitution, that:

> "The power to levy taxes shall not be delegated to individuals or private corporations or associations." (Sec. 212.)

The corporation is exercising no power of taxation, but merely a right of contract—namely, to fix the rents of its lands, after the manner authorized by its charter. The term "single tax," as used in the Act of 1903 (Code, Sec. 3573), refers to a business and not to a governmental policy. In strict logic, the act was not intended to authorize the application of the single tax, but the application of a rental system analogous to the single tax. What intelligent purpose could be served by such a system? Just this: It has long been contended that a system which

turns into the public treasury merely the rental value of the land will not furnish revenue sufficient to meet the expenses of government. How could the truth or falsity of this contention be demonstrated? Simply by providing a system of land tenure similar to that which would prevail if the single tax were adopted, so as to see if the revenues derived therefrom would be sufficient to meet the tax levies of the government. If the rent fund should prove sufficient to cover State taxation and the cost of local improvements, the experiment would be very persuasive in proving that the single tax system, if adopted, would provide abundant revenues for all the purposes of government.

Single taxers contend that the single tax will not only provide sufficient funds for the government, but that it will also eliminate the unearned acquisition of wealth, thus enabling each man to reap the full reward of his own labor. The truth or falsity of this proposition is also capable of approximate demonstration by a system of land tenure similar to that which would prevail under the single tax. This demonstration can only approximate the result which would be reached under the application of the single tax as a governmental policy, for this reason: A corporation holding lands under such a system must, as a matter of practical necessity, have some lands which are vacant. On these lands it must pay taxes to the State, and this tax money must come out of the rents derived from its productive lands, or must be secured from some outside source. If the tax money is taken from the rent fund, the result follows that the rent payers do not receive from the State an adequate return for all the money which they pay into the State treasury. They do

not pay more money in rent than they would pay under the single tax system, for by hypothesis they pay in either instance merely the rental value of the land. But under the rental system a greater share of this rent fund might go to the State for general purposes and a less share remain with the corporation for local purposes than would result under the single tax system. In this respect, therefore, the private rental system only approximates the genuine single tax system; but as a community grows in size and the ratio of its vacant to its occupied lands becomes less and less, the approximation becomes closer and closer.

The Act of 1903 was designed to authorize the organization of these quasi single tax corporations for the purpose of experimentation to see, approximately at least, if the single tax was adequate and beneficent. This was the declared purpose of the Fairhope Single Tax Corporation. That experimentation has been going on for more than a decade since the founding of the corporation, and it has amply demonstrated that the single tax is adequate for the needs of government and, as the number of lessees increases, will demonstrate more and more clearly the beneficence of the system.

The Fairhope Corporation is a landlord pure and simple, and by no fair implication can the legislature be held to have intended the creation of anything more than this. Is it illegal in Alabama for a landlord to collect of his lessees full ground rent for the legal privilege of occupancy, and having collected the rent, to pay his own and the lessees' taxes, using the surplus upon public improvements in connection with the estate? The theory of complainant's counsel is that the corporation is attempting

to create a state within the State, whereas it is in fact only playing the part of a benevolent landlord. Does Alabama stand for the doctrine that landlordism ceases to be legal when it ceases to be selfish?

If this system of rents is unconstitutional, then the provision in the corporation's constitution, allowing women to vote and hold office in the corporation is also repugnant to the Alabama Constitution. Likewise as to the provisions in the corporation's constitution providing for the initiative, referendum and recall. If the legislature could not create this corporation, it can create no corporation in whose government women shall have a voice.

But we shall not pursue further the illusion of complainant's counsel. The State of Alabama has made no self-assumption of virtue nor arrogated to itself the acme of perfection. It recognizes that its instrumentalities of government are imperfect, and it has been willing to create a laboratory in which one of those instrumentalities may be tested, so far as is possible, under our existing institutions. It is not true that America can establish research laboratories for the development of the mechanical arts, but that a laboratory designed for the purification of governmental institutions shall find no resting place here.

Shall physicians and metaphysicians be barred from their laboratories? Shall we write articles and make speeches about "The New Freedom" and be unable to test it out by the laboratory process?

Granted that the laboratory facilities are imperfect. Granted that this colony, encrusted with the faulty taxation schemes of state and nation, cannot exhibit the virtues of the single tax in all their fullness. All laboratories are imperfect. We can only

approximate actualities. This the legislature knew when it created the corporation; this the complainant knew when he became a member. Because the ideal must make compromises with the real, shall we therefore abandon our ideals and subject ourselves to things as they are? Is it unconstitutional to pursue a political ideal upon American soil?

The object of the Fairhope Single Tax Corporation is no more impossible today than it was in 1903, when the legislature of Alabama, in its discretion, passed the act under which the corporation came into being, and its impossibility of attaining its entire object lies only in this, that it is an ideal object and can only be consummated when our entire structure of government becomes ideal. To dissolve the corporation because its object transcends the sordid plane of things easily achieved is to sacrifice American idealism upon the altar of the most barbarous materialism.

Conclusion.

In summary, the complainant's bill entitles him to no measure of relief, for these reasons:

(1) This is no situation for the application of an injunction, in that no multiplicity of suits is to be prevented nor any irreparable injury forestalled.

(2) The complainant is estopped to contest the right of the corporation to conduct the activities which it has assumed, for the double reason that he is both a lessee and a member of the corporation. The object of the corporation has not become impossible of attainment, nor is the corporation hopelessly insolvent, so as to justify a suit by a member for its dissolution.

(3) The act under which the charter of the cor-

poration was granted is not unconstitutional, but is consonant with the highest ideals of our republic.

We therefore ask the Court to reverse the Chancellor's decree and to dismiss complainant's bill, in that it discloses no reason why either an injunction should issue or the corporation should be dissolved.

Respectfully submitted,

ROBERT S. KEEBLER.

A. B. PITTMAN,
ALEX Y. SCOTT,
BOLTON SMITH,
Of Counsel.