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Notice of Appeal.

Filed March 23, 1929.

Essex County Circuit Court.

LAWRENCE BROWN, Plaintiff, vs. GREEN BROOK COUNTRY CLUB, a corporation, Defendant.	}	Action at Law. Notice of Appeal.	10
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Please Take Notice, that the defendant, the Green Brook Country Club, a corporation of the State of New Jersey, appeals to the Court of Errors and Appeals, Last Resort in All Cases, from all of the judgment entered in the Circuit Court of the County of Essex in the above entitled action. 20

Dated: March 22, 1929.

FRAZER & TRIMBLE,
Attorneys for the Defendant. 30

Service of a copy of this Notice of Appeal is hereby acknowledged this 22nd day of March, 1929.

JOHN W. OCKFORD,
Attorney for Plaintiff.

Summons.

The State of New Jersey to
 GREEN BROOK COUNTRY CLUB, a
 corporation,
 (L.S.) Caldwell, N. J.

10 You are Hereby Summoned to answer the annexed complaint of Lawrence Brown in an action at law in the Essex County Circuit Court. And take notice that unless you file your answer to said complaint with the Clerk of the said Essex County Circuit Court, at Newark within twenty days after service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you.

20 Witness, HON. WILLIAM A. SMITH, Judge of the Circuit Court, at Newark, this 22nd day of December, nineteen hundred and twenty-seven.

JOHN H. SCOTT,
 Clerk.

JOHN W. OCKFORD,
 Attorney.

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Complaint.

ESSEX COUNTY CIRCUIT COURT.

<p style="text-align: center;">LAWRENCE BROWN, Plaintiff,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">GREEN BROOK COUNTRY CLUB, a corporation, Defendant.</p>	}	<p>Action at Law.</p> <p>Complaint.</p>	<p>10</p>
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Plaintiff, who resides at Montclair, Essex County, New Jersey, for his complaint, says:

1. The defendant, Green Brook Country Club, is a New Jersey Corporation (not for pecuniary profit). 20
2. In or about the month of February, 1924, plaintiff was a stockholder of the defendant corporation, and was the owner of a stock certificate of the defendant corporation, number 39.
3. At said time, plaintiff was also a member in good standing of the defendant Country Club.
4. In or about the month of February, 1924, plaintiff resigned as a member of the Green Brook Country Club, and his resignation as such member was duly presented and accepted. 30
5. In or about the month of April, 1924, plaintiff deposited with defendant, his stock certificate, and authorized the defendant to sell the same for the account of the plaintiff.
6. That thereafter and between the said time and the month of June, 1927, the defendant did 40

Complaint.

sell plaintiff's share of stock for the account of the plaintiff, and received therefor the sum of \$1,000.

7. On or about June 1, 1927, the defendant tendered payment to the plaintiff for his certificate of stock, the sum of \$400.00, which sum the plaintiff declined to accept as the same was less than the amount received by the defendant for his share of stock.

8. That no part of said sum of \$1,000.00 has been paid to plaintiff although payment has been duly demanded.

9. That defendant has had and received to plaintiff's use, the said sum of \$1,000.00 since on or about June 1, 1927.

20 Plaintiff demands judgment against the defendant for the sum of \$1,000.00 with interest from June 1, 1927, and costs of suit.

JOHN W. OCKFORD,
Attorney for Plaintiff.

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Answer.

Filed Feb. 25, 1928.

ESSEX COUNTY CIRCUIT COURT.

<p style="text-align: center;">LAWRENCE BROWN, Plaintiff,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">GREEN BROOK COUNTRY CLUB, a corporation, Defendant.</p>	}	<p>Action at Law. 10</p> <p>Answer.</p>
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The defendant, the Green Brook Country Club, a body corporate, having its principal office at No. 484 Bloomfield Avenue, in the Town of Montclair, County of Essex and State of New Jersey, in answer to the complaint filed by the plaintiff herein, says: 20

1. It admits the allegations contained in paragraph 1 to 4 inclusive of the said complaint.

2. It denies the allegations contained in paragraph 5 of the said complaint, and says that the plaintiff's stock certificate was deposited with the defendant on or about the month of April, 1924, to be sold by the defendant pursuant to the By-Laws of the defendant club, with their various amendments thereof and supplements thereto. 30

3. It denies the allegations contained in paragraph 6 of the said complaint.

4. It admits the allegations contained in paragraphs 7 and 8 of the said complaint. 40

Answer.

5. It denies the allegations contained in paragraph 9 of the said complaint.

SEPARATE DEFENSES.

The defendant will urge at the trial of the above stated cause the following separate defenses:

10 1. The defendant is organized under the provisions of the act entitled, "An act for associations not for pecuniary profit", provisions of 1898.

2. The share of stock to which reference is made in the said complaint represents the initial charge made by the defendant to each member at his initiation as a member of said club as provided by section 2 of Article 2 of the By-Laws of said defendant which reads as follows:

20 "Each Regular member shall be twenty-one years of age and the owner of a share in the Club. Such share shall be transferable on the books of the Club as provided in these By-Laws. The number of Regular members shall not exceed three hundred and fifty."

3. The plaintiff's stock certificate was deposited with the defendant on or about the month of April, 1924, to be sold by the defendant pursuant to the By-Laws of the defendant club with their various amendments thereof and supplements thereto.

30

4. The aforementioned By-Laws in effect during the period in which said plaintiff was a member of the club further provided as follows: Article III, sections 1, 2 and 3.

40 "Section 1. The shares of Green Brook Country Club shall be transferable on the

Answer.

books of the organization only to such persons as are approved by the Board of Directors. No person shall hold more than one share.

“Section 2. One such share shall be issued by the Club to each Regular member upon the payment to the Club of four hundred dollars (\$400.) and any prevailing premium. The Board of Directors, at their discretion, may accept from any individual, payment for a share by one hundred dollars (\$100.) in cash and the balance in interest-bearing notes extending over such period as the Board of Directors may determine. 10

“Section 3. When by reason of death, resignation, expulsion or otherwise, the membership of any person shall cease, the dues upon his share shall nevertheless continue to be charged until the membership certificate for such share be delivered to the Treasurer of the Club for sale, with proper transfer, or the share be sold or taken over by the Club on enforcement of its lien thereon, after which time such dues shall cease, The Board of Trustees may for proper cause extend for delivery in special cases. In the order in which the shares are delivered for sale they shall be sold to persons elected to membership, each of whom shall pay to the Treasurer of the Club for account of the owner of such share the sum of four hundred dollars (\$400.) and the prevailing premium, which amount—after deduction therefrom of all charges which the Club may have against such share whether for unpaid subscription, dues, house accounts, or otherwise, including not only charges incurred by the owner of such share but also those incurred by Family members eligible by virtue of relationship to such owner, or by other persons whose accounts are chargeable to him— shall be paid over to such owner. 20 30 40

Answer.

Country Club shall be transferable on the books of the organization only to such persons as are approved by the Board of Trustees. No person shall hold more than one share.

“Section 2. One such share shall be issued by the Club to each Regular member upon the payment to the Club of \$1,000. plus premium and/or assessments for capital account to date of issue. The Board of Trustees, at their discretion, may accept from any individual payment for a share by \$250. in cash and the balance in interest bearing notes extending over a period not exceeding 15 months. 10

“Section 3. When, by reason of death, resignation, expulsion, or otherwise, the membership of any person shall cease, a sum equivalent to the current dues upon his share shall nevertheless continue to be charged until the membership certificate for such share be delivered to the Treasurer of the Club for sale, with proper transfer, or the share be sold or taken over by the Club on enforcement of its lien thereon, after which time such charges shall cease. 20

“In the order in which the shares are delivered for sale they shall be sold to persons elected to membership, each of whom shall pay to the Treasurer of the Club the sum of \$1,000., plus premium and/or accumulated assessments for capital account. Thereafter, from the fund thus realized, and after deduction therefrom of all charges and assessments, if any, which the Club may have against such share, there shall be paid to the seller of such share an amount calculated as follows: 30

‘a. Until the regular membership of the club shall have reached the limit of three hundred and fifty members, the payment shall be on the basis of the price and assess- 40

Answer.

ments, without interest, which the owner shall have paid the Club for such share, the balance of the price realized on such sale becoming the property of the club.'

10 'b. After the regular membership of the club shall have reached the limit of three hundred and fifty members, and whether or not such membership shall then be filled, the payment to the owner shall be based on the entire balance, without interest, realized for the share.'

"All moneys and accounts owing to the Club from any members, whether incurred by him or by another, as provided in these By-Laws, shall be a charge against and a lien upon the share of such member.

20 "Section 4. In the event of the resignation or death of a Regular member, his share may, by his request, or that of his legal representative, be transferred to any eligible member of his immediate family theretofore eligible to family or Junior membership, provided the application of such nominee for regular membership shall be favorably acted upon by the Board. Such application shall be proceeded with forthwith, in accordance with Article II, Section 2 hereof, and shall take precedence over all other applications."

30 7. At the time of the surrender of said stock and the resignation of said plaintiff from the defendant, said shares of stock had the value of \$400.00 and were deposited with defendant by plaintiff for sale for said sum of \$400.00, and under the provisions of Section 5 of Article III of said original By-Laws at the time said shares of stock were delivered, said shares of stock might have been purchased by the Club for said sum of \$400.00.

40 8. At no time did the defendant undertake in

Answer.

the event of the sale of said stock to pay to plaintiff more than the sum of \$400.00 paid for said stock by the said plaintiff.

9. Nothing in said amendments to said By-Laws affected the relation of the defendant as agent for the sale of the plaintiff's stock of the sum of \$400.00.

10

10. Defendant has already tendered said sum of \$400.00 to the plaintiff for said stock.

11. At no time since the incorporation of said club in the year 1922 to the present, has the regular membership of three hundred and fifty been reached.

12. That all the money due and owing from the defendant to the plaintiff is the amount of \$400.00, which sum was tendered by the defendant to the plaintiff on or about June 1, 1927, and which the plaintiff declined to accept.

20

OBJECTION.

The complaint filed by the plaintiff herein does not set forth facts sufficient to constitute a cause of action against the defendant, and the defendant reserves the right to move to strike out the said complaint at or before the trial of above stated cause.

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FRAZER & TRIMBLE,
Attorneys for the Defendant.

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Reply.

Filed March 29, 1928.

ESSEX COUNTY CIRCUIT COURT.

10	<p style="text-align: center;">LAWRENCE BROWN, Plaintiff,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">GREEN BROOK COUNTRY CLUB, a corporation, Defendant.</p>	}	<p>Action at Law</p> <p>Reply.</p>
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Plaintiff denies the allegations of the answer and joins issue thereon.

20 With respect to the separate defenses, plaintiff says:

1. Paragraph 1 is admitted.
2. Paragraph 2 is admitted.
3. Paragraph 3 is denied.

30 4. Paragraph 4 is denied, except that plaintiff admits the provisions of the By-Laws to be in part as set forth in said paragraph, but plaintiff avers that the By-Laws of the defendant should be taken and read as a whole, and for greater particularity, reference is hereby made to all of the By-Laws of the defendant.

5. Paragraph 5 is admitted, but plaintiff again refers to the By-Laws of the defendant as a whole.

40 6. Paragraph 6 is denied, and plaintiff further says that he was not, and is not bound by any amendments to the By-Laws adopted without no-

Reply.

tice to him, in accordance with the By-Laws of the defendant.

7. Paragraph 7 is denied.

8. Paragraphs 8 and 9 are denied.

9. Paragraph 10 is denied, except that plaintiff admits that the defendant offered to pay him the sum of \$400.00, but plaintiff denies that such offer was a legal tender of such sum. 10

10. Plaintiff has no information as to Paragraph 11 and leaves defendant to proof thereof.

11. Paragraph 12 is denied, except that plaintiff admits that defendant offered to pay plaintiff the sum of \$400.00.

JOHN W. OCKFORD, 20
Attorney for Plaintiff.

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Decision.

Filed Jan. 10, 1929.

ESSEX CIRCUIT COURT.

10

LAWRENCE BROWN,
Plaintiff,

vs.

GREEN BROOK COUNTRY CLUB,
Defendant.Action at Law.
Decision.

Argued before the Court without a jury on an agreed statement of facts.

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JOHN W. OCKFORD, Attorney for Plaintiff, for the motion.

SPAULDING FRAZER, Attorney for Defendant, opposed.

SMITH, J.:

30

I find the facts to be as admitted in the pleadings and as agreed upon in open court, and that the plaintiff resigned from the club in February, 1924, and delivered his certificate of stock to the club and that action was in accordance with Article 3 of Section 3 of the by-laws which were in force at the time of the resignation and delivery of the stock certificate; that this created a contract between the resigned member and the club, and fixed the terms of compensation of the plaintiff for his stock certificate as though stated in Article 3, Section 3, of the by-laws then in force; that

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these by-laws, in so far as the plaintiff is concern-

Decision.

ed, could not be amended so as to change the method or amount of compensation to the plaintiff for his stock; and that the stock was sold in 1927, after the by-laws had been amended; no notice of the proposed amendment of which had been given the plaintiff.

The defendant tendered the sum of \$400 to the plaintiff on June 1, 1927, when he was entitled to receive the sum of \$1,000, that being the amount for which the defendant sold the plaintiff's certificate of stock. The plaintiff was, therefore, entitled to recover the sum of \$1000, together with interest from June 1, 1927, to date. 10

Counsel may submit appropriate findings of fact and the court will sign a rule for judgment.

January 9, 1929.

WILLIAM A. SMITH,
Judge. 20

30

40

Findings of the Court.

Filed Jan. 24, 1929.

ESSEX COUNTY CIRCUIT COURT.

10

LAWRENCE BROWN, Plaintiff,	}	Action at Law Findings of the Court.
vs.		
GREEN BROOK COUNTRY CLUB, a corporation, Defendant.		

20

This case was tried before Judge William A. Smith without a jury at the Essex Circuit on January 9th, 1929.

After hearing the evidence and John W. Ockford, counsel for the Plaintiff, and Spaulding Frazer, counsel for the Defendant, the Court finds:

30

1. The defendant Green Brook Country Club is a New Jersey corporation (not for pecuniary profit).

2. In or about the month of February, 1924, plaintiff was a stockholder of the defendant corporation and was the owner of a stock certificate of the defendant corporation, number 39.

3. At the same time, the plaintiff was also a member in good standing of the defendant Country Club.

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4. In or about the month of February, 1924, plaintiff resigned as a member of the Green Brook Country Club and his resignation as such member was duly presented and accepted.

Findings of the Court.

5. In or about the month of April, 1924, plaintiff deposited with defendant his stock certificate, and authorized the defendant to sell the same for the account of the plaintiff.

6. That thereafter and between the said time and the month of June, 1927, the defendant did sell plaintiff's share of stock for the account of the plaintiff, and received thereafter the sum of \$1,000.00. 10

7. On or about June 1, 1927, the defendant tendered payment to the plaintiff on account of the sale of his certificate of stock the sum of \$400.00 which plaintiff declined to accept.

8. At the time of the plaintiff's resignation from the defendant club, and at the time of the delivery of his certificate of stock to the defendant club, such account on his part was in accordance with Article 3 of Section 3 of the By-Laws which were then in force, the said By-Laws being Exhibit P-1. 20

9. The Court finds that this created a contract between the plaintiff and the defendant and fixed the terms of the plaintiff's compensation for his stock certificate as stated in the aforementioned By-Laws then in force. 30

10. The Court finds that insofar as the plaintiff is concerned, these By-Laws could not be amended after his resignation so as to change the method or amount of compensation to the plaintiff for his stock.

11. The Court finds that the amendment of the By-Laws as shown by Exhibit P-2 did not affect the plaintiff, and that the plaintiff had no notice 40

Findings of the Court.

of the proposed amendment and that the stock was sold in 1927 after such amendment.

10 12. The Court finds that when the tender of payment of \$400.00 on June 1, 1927 was made, the plaintiff was entitled to receive the sum of \$1,000.00, that being the amount for which the defendant sold the plaintiff's certificate of stock.

13. The Court finds for the plaintiff and against the defendant for the sum of \$1,000.00, together with interest from June 1, 1927, to date and awards, damages to the plaintiff and against the defendant for the said sum.

Dated, Newark, New Jersey, January 22, 1929.

20 WILLIAM A. SMITH,
Judge.

Final judgment entered same day, January 22, 1929. #45394.

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Rule for Judgment.

Filed Jan. 24, 1929.

ESSEX COUNTY CIRCUIT COURT.

10	<p style="text-align: center;">LAWRENCE BROWN, Plaintiff,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">GREEN BROOK COUNTRY CLUB, a corporation, Defendant.</p>	}	<p>Action at Law.</p> <p>Rule for Judgment.</p>
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20 This case having been duly tried before Judge William A. Smith without a jury by consent at the Essex Circuit Court on January 9, 1929, and the Court having found in favor of the plaintiff and against the defendant, and having determined the plaintiff's damages,

It is, Ordered that judgment final be entered against the defendant in favor of the plaintiff for the sum of \$1,000.00 with interest from June 1, 1927, to date, amounting to the sum of \$98.50 with costs to be taxed.

30 January 22, 1929.

WM. A. SMITH,
Judge.

On motion of
JOHN W. OCKFORD,
Attorney for Plaintiff.

Clerk's Certificate.

State of New Jersey, }
 County of Essex, } ss.:

I, John H. Scott, Clerk of the County of Essex
 in the State of New Jersey,

Do Hereby Certify that the foregoing is a true
 and correct copy of all the records in the Case of
 Lawrence Brown, Plaintiff vs. Green Brook Coun- 10
 try Club, together with a copy of the Judgment
 Record entered in the Circuit Court Judgment
 Record Book 106, page 400,

and the same is taken from and compared with
 Essex County Circuit Court Judgment Record
 Book 106, page 400, as the same now remains on
 the files of said office.

In Testimony Whereof, I have hereun-
 to set my hand and affixed the offi- 20
 (Seal) cial seal of said County at Newark,
 N. J., this Fifth day of April, A.
 D., 1929.

JOHN H. SCOTT,
 Clerk.

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Case.

ESSEX CIRCUIT COURT.

Wednesday, January 9, 1929.

10	LAWRENCE BROWN, vs. GREEN BROOK COUNTRY CLUB,	} Action at Law.
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Before HON. WILLIAM A. SMITH, *J.*, without a jury.

For Plaintiff appears JOHN W. ACKFORD.

For Defendant appears SPAULDING FRAZER.

20 Mr. Ackford: I desire to offer in evidence first, the pleadings in the case; and with respect to the paragraphs not exactly in accord with the pleadings, Mr. Frazer and I have agreed as to what the facts are and I will endeavor to state them briefly, and if I am wrong I can be corrected.

The plaintiff was a member of the Green Brook Country Club, a corporation of New Jersey, organized not for pecuniary profit.

30 The Court: I read the pleadings.

Mr. Ackford: Yes. The sole question involved is how much the plaintiff is entitled to receive out of the proceeds of the sale of his one share of stock after his resignation.

The Court: You said there were some questions of fact that you wanted to outline.

40 Mr. Ackford: The fact is that at the time the plaintiff resigned and turned in his certificate of stock, the by-laws of the Country Club were in the form that I offer as an exhibit.

Case.

(Received and marked Exhibit P-1 of this date).

Mr. Ackford: At the time of the sale of the share of stock the by-laws had been amended, and the amended by-laws are shown by Exhibit P-2.

(Received and marked Exhibit P-2 of this date). 10

(Discussion while the Court consults Exhibit P-2).

The Court: The first is the resignation?

Mr. Ackford: Yes.

The Court: Are they different in reference to this point?

Mr. Ackford: Yes. The amendment was made without any notice to the plaintiff, he having previously resigned as a member. The defendant Country Club realized for the sale of the— 20

The Court: You were going to say what the change was. Do you want to put the facts in first?

Mr. Ackford: Yes, I want to put the facts in first. The defendant realized, out of the sale of the share of stock which had been deposited with it by Mr. Brown, the sum of, I think, \$1,000—I think we agree it was \$1,000—and that sale was in May, 1927; and for the purpose of calculating interest, if the plaintiff is entitled to recover, we agree that interest should run from June 1, 1927. In other words, on June 1, 1927, the defendant tendered to the plaintiff the sum of \$400; and if they were correct in their offer at that time, the plaintiff is only entitled to recover \$400, without interest; but if the plaintiff is correct in his contention that he would be entitled to \$1,000 instead of \$400, 30 40

Case.

that would carry interest from June 1, 1927. The dates I think are set forth in the pleadings.

Mr. Frazer: That is satisfactory to me, June 1st, for the computation of interest if the plaintiff is entitled to recover.

10 Mr. Ackford: The plaintiff resigned in February, 1924, and turned in his certificate of stock in April, 1924. The amendment was in April, 1925, and the sale was in May, 1927.

The Court: Does that cover the facts?

Mr. Ackford: That covers the facts.

Mr. Frazer: There is one other thing. At the time of the sale, the membership of the club had not reached 350.

The Court: Is that right?

20 Mr. Ackford: Yes, that is correct. Now, the plaintiff's contention is that at the time he resigned as a member and turned in his certificate of stock under the by-laws at that time, that amounted to a contract, the terms of which were as set forth in the by-laws at that time, and that no change to his detriment could thereafter occur without his consent.

30 My argument will be very brief, but the real point is whether the provision in the original by-laws, which was that where a member resigned and he turned in his stock for sale, he was to receive thereafter for the sale the price of \$400 and any prevailing premium at that time due to increase of assessment or increase of charge to members. The amendment subsequently provided, on the contrary, that on the sale of the share of a retiring or retired member, the member was only entitled to get what he had paid and if there was any in-

40 Now, the question is either, it seems to me, one

Case.

of contract or perhaps principal and agent; at any rate, this share of stock was the property right—in fact, could be transferred perhaps somewhat the same way that a seat in the Stock Exchange can be sold; a man who buys it might, of course, find that he could not qualify and could not get any benefit unless he could be elected; but, nevertheless, he is recognized as having a property right; and particularly here where it is actually a share of stock of a corporation, so that here it was a tangible right. He did not sell it to the club. The club did not see fit to buy it—they could have but did not—having accepted it for the purpose of reselling—and they did, in fact, resell; and the plaintiff's contention is that he is entitled to receive what they got for it, on that theory of principal and agent or contract, because the contract was made, so far as the parties were concerned, under the rules in force at the time the stock was delivered for sale.

I think there is no case in point, so far as I have been able to find. The only case that I might refer your Honor to that has a bearing is the case of *Order of Red Men vs. The Mohican Tribe*, 92 Equity, 593; also in 114 Atlantic, 440, where the members of an association agreed to form a corporation, and did so. The Court held that that would not affect the property rights of members of the original association who did not join in the new plan—in other words, who did not acquiesce in it; in other words, they could not be deprived of their rights by the inaction of other members in doing something. In other words, the right depends originally on the membership in the association plus the ownership of the share of stock, and at the time it was turned in, the plaintiff, our con-

Case.

tention is, had a right to rely on the agreement then in force and which was created by the by-law then in force.

10 Now, it may be that the parties themselves could have mutually modified that. The club did not have to sell this share. They could have done anything they pleased. They could have returned it to him and said, "We cannot sell it"; but, having sold it for a price of a thousand dollars, we cannot see how they are entitled to take the difference.

The Court: It is disputed that under the original by-laws the stockholder resigning would be entitled to whatever they got for the stock?

Mr. Frazer: There was a provision in the original by-laws that he should receive \$400.

20 The Court: No mention about its being sold for anything more?

Mr. Frazer: No.

The Court: That does not seem to be in contemplation of the by-laws.

30 Mr. Frazer: No; \$400 was the fee at that time for the stock; and then they have an expression which I am sure I do not know what it means: "The prevailing premium", although in one place it is referred to in connection with the word "assessment"; if a share of stock had been bought for \$400 and an assessment later assessed upon the members for \$50, the stock would be worth \$450 if it was turned over to the club to be sold.

The Court: The difficulty arises that they did not contemplate that it was going to have more value when they were trying to sell it originally.

40 Mr. Ackford: The fact that they found it necessary to amend and specifically say that the retiring member only gets what he put in, indicates that prior to the amendment the member would be en-

Case.

titled to the entire amount rather than the amount that he had put in. In other words, this is a corporation not for profit; and, of course, under their by-laws they can provide that their retiring members shall lose all that they put in, and that would be binding upon him if they all agreed to it; but the fact is that the by-law does say that the member depositing his share shall receive the \$400 and the premium. Now, the premium may be an increase in value or may have some other significance, but that is the language and the question that is before your Honor. 10

Mr. Frazer: I might just say—as I understand Mr. Ackford's arguments—the contract existed when this share was turned over to the club. If that were a contract, then under the existing by-laws he was entitled to \$400 whenever it was sold. 20

Mr. Ackford has made a suggestion that there was an amendment to the by-laws of which, on account of his resignation, the plaintiff had no notice and therefore was not binding on him. I might say that the one-thousand dollar rate was established by that amended by-law, and as part of that amended by-law there was the condition that there should be paid to retired members, whose stocks the club sold, only the amount they had paid in until the membership of the club should have reached 350. Now, had the club had 350 members when Mr. Brown's stock was sold, then he would have been entitled to the thousand dollars which was received. 30

I think it is a fair inference, from the whole scheme, that what the club was trying to do was to increase its capital account, and that the old stock which had been turned in at \$400 was en- 40

Case.

titled to have \$50 paid on it, and anything more that the club realized should go to the increased capital fund of the club, the same way that the new stock was being sold for \$1,000 was having for the same purpose.

10 I do not see how Mr. Brown can claim both; under the amended by-law raising the price to a thousand, and then trying to escape the limitations of a membership of 350.

The Court: You have not any authorities on it?

Mr. Frazer: No.

The Court: I will take the matter under advisement.

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Stipulation.

Filed July 11, 1929.

NEW JERSEY COURT OF ERRORS AND APPEALS.

<p style="text-align: center;">LAWRENCE BROWN, Plaintiff-Respondent,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">GREEN BROOK COUNTRY CLUB, a corporation, Defendant-Appellant.</p>	}	<p>10</p> <p>Action at Law. Stipulation.</p>
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It is stipulated and agreed between the parties hereto that the following extracts from the original by-laws, exhibit P-1, and amended by-laws, exhibit P-2, contain all of the relevant provisions of said respective by-laws and that said extracts from said by-laws may be printed in lieu of the full text of said by-laws from exhibit P-1. 20

“ARTICLE II.

Election to Membership.

Section 5. All applications for membership shall be in the form determined by the Board of Trustees, shall be signed by the applicant, and filed with the Secretary and the applicant shall thereby pledge himself to abide and be bound by these By-laws, and all subsequent amendments and additions thereto or alterations thereof. * * * 30

“Qualifications.

Sec. 6. Candidates for membership when elected shall become members of the Club 40

Stipulation.

upon paying the entrance fee and annual dues of the class to which they were elected, as provided in these By-laws and if elected to Regular membership, paying also the purchase price of one share in the Club, as herein provided.

"ARTICLE III.

Shares.

Section 1. The shares of Green Brook Country Club shall be transferable on the books of the organization only to such persons as are approved by the Board of Directors. No person shall hold more than one share.

Sec. 2. One such share shall be issued by the Club to each Regular member upon the payment to the Club of four hundred (\$400) and any prevailing premium. The Board of Directors, at their discretion, may accept from any individual, payment for a share by one hundred dollars (\$100) in cash, and the balance in interest-bearing notes extending over such period as the Board of Directors may determine.

Sec. 3. When by reason of death, resignation, expulsion, or otherwise, the membership of any person shall cease, the dues upon his share shall nevertheless continue to be charged until the membership certificate for such share be delivered to the Treasurer of the Club for sale, with proper transfer, or the share be sold or taken over by the Club on enforcement of its lien thereon, after which time such dues shall cease. The Board of Trustees may for proper cause extend the time for delivery in special cases. In the order in which the shares are delivered for sale they shall be sold to persons elected to membership, each of whom shall pay to the Treasurer of the Club for account

Stipulation.

of the owner of such share the sum of four hundred dollars (\$400) and the prevailing premium, which amount—after deduction therefrom of all charges which the Club may have against such share whether for unpaid subscription, dues, house accounts, or otherwise, including not only charges incurred by the owner of such share but also those incurred by Family members eligible by virtue of relationship to such owner, or by other persons whose accounts are chargeable to him—shall be paid over to such owner. 10

All moneys and accounts, liquidated and unliquidated, owing to the Club from any member, whether incurred by him or by another as provided by these By-Laws, shall be a charge against and a lien upon the share of such member.

Section 5. The Club may at any time purchase a share which may be delivered to it for sale, and whenever there is no waiting list shall purchase shares that shall be offered for sale up to a total of five (5) shares to be held by the Club at any one time. Shares shall not be issued or sold by the Club when shares of individuals are registered for sale. 20

*“ARTICLE X.**Amendments.*

Section 1. These By-Laws and as well any Rule or Rules of the Club may be amended by the vote of two-thirds of those present at any regular or special meeting of the shareholders, provided the proposed amendment shall have been filed with the Secretary twenty (20) days in advance of such meeting and that the Secretary at least ten (10) days before such meeting shall have posted the same upon the bulletin board and mailed a copy thereof to each share holder.” 30 40

Stipulation.

Thereafter, and on or about April 23, 1925, the By-laws were amended, the relevant amendments being the following:

"ARTICLE IV.

Shares.

10 Section 1. The shares of Green Brook Country Club shall be transferable on the books of the organization only to such persons as are approved by the Board of Trustees. No person shall hold more than one share.

20 Section 2. One such share shall be issued by the Club to each Regular member upon the payment to the Club of \$1,000., plus premium and/or assessments for capital account to date of issue. The Board of Trustees, at their discretion, may accept from any individual payment for a share by \$250. in cash and the balance in interest-bearing notes extending over a period not exceeding 15 months.

30 Section 3. When, by reason of death, resignation, expulsion, or otherwise, the membership of any person shall cease, a sum equivalent to the current dues upon his share shall nevertheless continue to be charged until the membership certificate for such share be delivered to the Treasurer of the Club for sale, with proper transfer, or the share be sold or taken over by the Club on enforcement of its lien thereon, after which time such charges shall cease.

40 In the order in which the shares are delivered for sale they shall be sold to persons elected to membership, each of whom shall pay to the Treasurer of the Club the sum of \$1,000., plus premium and/or accumulated assessments for capital account. Thereafter, from the fund thus realized, and after

Stipulation.

deduction therefrom of all charges and assessments, if any, which the Club may have against such share, there shall be paid to the seller of such share an amount calculated as follows:

"a. Until the regular membership of the club shall have reached the limit of three hundred and fifty members, the payment shall be on the basis of the price and assessments, without interest, which the owner shall have paid the club for such share, the balance of the price realized on such sale becoming the property of the club." 10

"b. After the regular membership of the club shall have reached the limit of three hundred and fifty members, and whether or not such membership shall then be filled, the payment to the owner shall be based on the entire balance, without interest, realized for the share." 20

All moneys and accounts owing to the Club from any member, whether incurred by him or by another, as provided in these By-Laws, shall be a charge against and a lien upon the share of such member.

Section 4. In the event of the resignation or death of a Regular member, his share may, by his request, or that of his legal representative, be transferred to any eligible member of his immediate family theretofore eligible to family or Junior membership, provided the application of such nominee for regular membership shall be favorably acted upon by the Board. Such application shall be proceeded with forthwith, in accordance with Article II, Section 2 hereof, and shall take precedence over all other applications. 30

Section 5. The Club may at any time purchase a share which is delivered to it for sale but whenever there is no waiting list of applicants for Regular membership, the 40

Stipulation.

number of shares thus purchased and held undisposed of by the Club shall at no time exceed five.

10 Section 6. The lien of the Club upon any share held by a Regular member not in good standing may be enforced by the Club after 30 days' notice in writing, by private sale of the share at the price of \$1,000., and premium and/or accrued assessment for capital account, to any person eligible to membership, or the Club may, at its option, take title to such share at such price. After deducting all charges against said share the balance shall be distributed in accordance with (a) or (b) of Section 3, preceding, as the case may be. In such case of enforcement of lien, neither the signature of the holder, nor the delivery of the certificate shall be requisite to perfect title. The Secretary of the Club, at the time being, is hereby authorized, as the attorney in fact of the owner of such share, to make any transfer authorized by these By-Laws and requisite to carry out their meaning.

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30 Section 7. Upon the distribution of the balance of the price realized by the Club upon the sale or acquisition of the share of any member, as in this Article provided, his interest in such share, and its proceeds, shall forthwith cease.

"ARTICLE XVI.

Amendments.

40 Section 1. These By-Laws may be amended by the vote of two-thirds of those present at any annual or special meeting of the Regular members, provided the proposed amendment shall have been filed with the Secretary 20 days in advance of such meeting and that the Secretary at least 10 days before such meeting shall have posted the

Stipulation.

same upon the bulletin board and mailed a copy thereof to each Regular member."

JOHN W. OCKFORD,
Attorney for the Plaintiff-Respondent.

FRAZER & TRIMBLE,
Attorneys for the Defendant-Appellant.

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Grounds of Appeal.

Filed July 11, 1929.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

LAWRENCE BROWN,
Plaintiff-Respondent,

vs.

GREEN BROOK COUNTRY CLUB,
a corporation,
Defendant-Appellant.

20

Action at Law.

Grounds
of Appeal.

To: JOHN W. OCKFORD, ESQ., Attorney of Plaintiff-Respondent, or To Whom It May Concern:

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Sir:

Please Take Notice that the following are the grounds upon which the defendant appeals to the Court of Errors and Appeals, last resort in all cases, from all of the judgment entered in the Cir-

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Grounds of Appeal.

cuit Court of the County of Essex, in the above-entitled action.

1. Because the court found that plaintiff's resignation from the defendant Club and the delivery of his certificate of stock to the defendant Club in accordance with Article 3 of Section 3 of the by-laws then in force, fixed the terms of the plaintiff's compensation irrespective of subsequent modification in the terms of said by-laws by amendments made in accordance with the provision thereof.

2. Because the court found that the plaintiff was entitled to receive the sum of \$1,000.00 upon the sale of his certificate of stock for that sum by the defendant Club, notwithstanding the provisions of Section 3 of Article 3 of the by-laws in effect at the time of plaintiff's resignation and delivery of said certificate of stock to the Club, said by-laws providing for the sale for the account of the owner of any such shares so deposited for the sum of \$400.00 and the prevailing premium.

3. Because the court found that insofar as the plaintiff was concerned said by-laws could not be amended after his resignation so as to change the method or amount of compensation to the plaintiff for his stock.

4. Because the court found that the plaintiff was entitled to the sum of \$1,000.00 provided for as the price of deposited stock by the amended by-laws.

5. Because the court found that plaintiff was entitled to the increased price for said deposited stock provided for in the new by-laws without be-

Grounds of Appeal.

ing subject to the conditions of sale fixed by said amended by-laws.

6. Because the court found that plaintiff was entitled to the full sum of \$1,000.00 received by the Club for said deposited stock without proof that the membership of said Club at the time of such sale had attained at any time the number of \$350 as provided for in said amended by-laws. 10

7. Because the court found that the by-laws as amended did not affect the plaintiff by reason of the fact that the plaintiff had no notice of said proposed amendment to said by-laws despite the fact that said plaintiff was no longer a member of said Club.

8. Because the court found generally that insofar as the plaintiff was concerned the by-laws of said Club could not be amended after his resignation so as to change the method or amount of compensation to the plaintiff for his stock. 20

9. Because the court found that when the tender of payment of \$400.00 on June 1, 1927 was made the plaintiff was entitled to receive the sum of \$1,000.00, the amount received by defendant for said certificate. 30

10. Because the court found for the plaintiff and against the defendant for the sum of \$1,000.00 together with interest from June 1, 1927, notwithstanding the tender by defendant of said sum of \$400.00.

FRAZER & TRIMBLE,
Attorneys for Defendant-Appellant.

New Jersey Court of Errors and Appeals

LAWRENCE BROWN,
Plaintiff-Respondent,

vs.

GREEN BROOK COUNTRY CLUB,
a corporation,
Defendant-Appellant.

Action at Law.

BRIEF FOR DEFENDANT-APPELLANT.

The facts in this case are very simple. The Plaintiff was in February, 1924, a member of the defendant club and as such member the holder of a certificate of stock in the club for which under the by-laws he had paid the sum of \$400.00. In the month of February, 1924, he resigned as a member and again in accordance with the by-laws turned over to the club the certificate of stock to be sold by the club for the sum of \$400.00 in its turn with other shares which might be in the hands of the club for like purposes. After this surrender of his stock, and before the sale of it, the club amended its by-laws increasing the price of stock to new members to \$1,000.00 and providing that until the club shall have reached a membership of 350 any shares of stock surrendered should be sold at the new figure of \$1,000.00 of which \$400.00, the original price, should be paid to the former owner and the balance into the club treasury.

Thereafter, in June, 1927, the club sold the plaintiff's share of stock for the sum of \$1,000.00 and

tendered in accordance with the amended by-laws the sum of \$400.00 to the plaintiff which he refused, demanding the whole \$1,000.00. None of these facts are in dispute, nor is the fact that the club at the time of this sale had not attained a membership of 350. The only question then is one of the construction of the plaintiff's contract with the defendant and whether the plaintiff was bound by the amendment of the defendant's by-laws, the trial court having held that the plaintiff was not bound by the amendment and that the plaintiff was entitled to the full sum received for the stock.

LAW.

I. If Plaintiff is not bound by the amended By-laws he is entitled to no benefit accruing therefrom.

The trial court held the plaintiff not to be bound by the amended by-laws. If this be the case plaintiff can recover only to the extent of his contract of deposit, to wit, the sum of \$400.00, the purchase price of his stock to which he was entitled under the original by-laws upon its resale by the club. It was only by virtue of the amended by-laws that the new price of \$1,000.00 for which the stock was sold was established.

II. The Plaintiff's right to the sum of \$1,000.00 can only be established through the amended By-laws and is conditioned by them.

Since until the amended by-laws were adopted the plaintiff was entitled only to the \$400.00 he must rely only upon the amended by-laws for his claim of \$1,000.00 for which his stock was sold. However the very amendment by which this increased sales price was established contained a condition that until the club had attained a membership of 350, which it is admitted was never attained, the plaintiff's rights were precisely as they had been prior thereto. It is obvious therefore that the plaintiff may not claim the advantage of the new by-laws and at the same time deny the restrictions imposed thereby. If he claim under the unamended by-laws he is entitled to the sum of \$400.00 there provided for. If he claim by the amended by-laws he is entitled to the sum of \$400.00 unless he show that the club had at the time of the sale attained a membership therein provided for, to wit, 350.

Whether then the plaintiff claim under the original or the amended by-laws he was entitled to but the sum of \$400.00 which was duly tendered to him.

III. The Plaintiff was bound by the Club's action in amending the By-laws.

Article X of the original by-laws to which the plaintiff was subject provided that the by-laws must be amended by a vote of two-thirds of those present at any meeting of the shareholders. Under Article III upon resignation, all obligations of membership ceased upon the delivery of the certificate for the share to the Treasurer of the club for sale, with proper transfer, and upon such delivery the former member ceased to be either a member or a shareholder in the club. At the most he had a claim upon the club for any moneys to which he might be entitled upon the sale.

It is not disputed that these by-laws were amended subsequent to the delivery of the stock for sale and therefore subsequent to the time at which the plaintiff ceased to be a member and shareholder of the club. The question then is whether the action of amendment was binding upon the plaintiff especially in view of the fact that the plaintiff had no notice of the proposed amendment.

It is elementary that every corporation has the right to make by-laws and that these by-laws bind and form a part of the contract with the members. As is stated in *State vs. Overton*, 24 N. J. L. 435 at page 440,

“The by-laws of a private corporation bind the members only by virtue of their assent.”

also as is stated in *Baunohl vs. Goldstein*, 124 Atl. 118,

“The right of a stockholder to sell his stock cannot be defeated by any by-law provision, but the stockholder may divest himself of any

right to dispose of his property except to the corporation.”

and at page 119 the Court says,

“The by-laws of a corporation may be enforced as a contract between the corporation and the stockholders, and between the latter inter sese. 14 Corp. Jur. 346; *Miller v. Hillsborough, etc. Ass'n*, 42 N. J. Eq. 459, 7 Atl. 895.”

This elementary rule in the case at bar was strengthened by the specific provision of Section 5 of Article II in relation to the election of members requiring all applications for membership to be signed by the applicant pledging him to abide by and be bound by these by-laws and by subsequent amendments and additions thereto or alterations thereof, and by the specific provisions of Article IX, Section 1 of the old by-laws, which provide that,

“By-laws and rules now or hereafter in force or adopted shall be an essential part of the *contract of membership* and of investment between the Club and member.”

Article IX, Section 2 of the old by-laws, which provide that,

“The board of trustees have sole power to interpret these by-laws and their decision shall be final and conclusive.”

Article XV, Section 1 of the amended by-laws provides that,

“Only regular members are entitled to vote and only holders of shares have any interest in the property of the Club. The rights and interests of such Regular members are subject to all By-Laws and Rules

now or hereafter from time to time in force, and all such By-Laws and Rules whenever adopted are and at all times shall be an essential part of the contracts of membership and of investment between the Club and every member and shareholder. The Club has the absolute right to alter and amend these By-Laws, increase dues, assess members, or otherwise alter the rights and obligations of its members and shareholders, subject only to the limitations in these By-Laws from time to time contained."

Moreover the Act to incorporate associations not for pecuniary benefit I Compiled Statutes, 125 of Section 3 thereof, specifically grants to such associations the power "to make by-laws not inconsistent with the laws of the State, or the United States, for the managements of its property and the regulation of its affairs." Moreover, the right to make by-laws implies the right from time to time to amend them, *In re Griffing Iron Company*, 63 N. J. L. 257.

Such indeed is the definite language of the New Jersey Corporation Act which in so many words grants both the power to make and to alter, this statement being but a mere reannunciation of the well known doctrine of the right inherent in every corporation to make and amend its by-laws so long as they are not in conflict with higher law.

We therefore respectfully submit,

1. That the defendant had full right to amend its by-laws without notice to the plaintiff after the plaintiff had ceased to be a member and stockholder of the association by his resignation, and delivery of his certificate with proper transfer for sale.
2. That this right to amend in the manner pro-

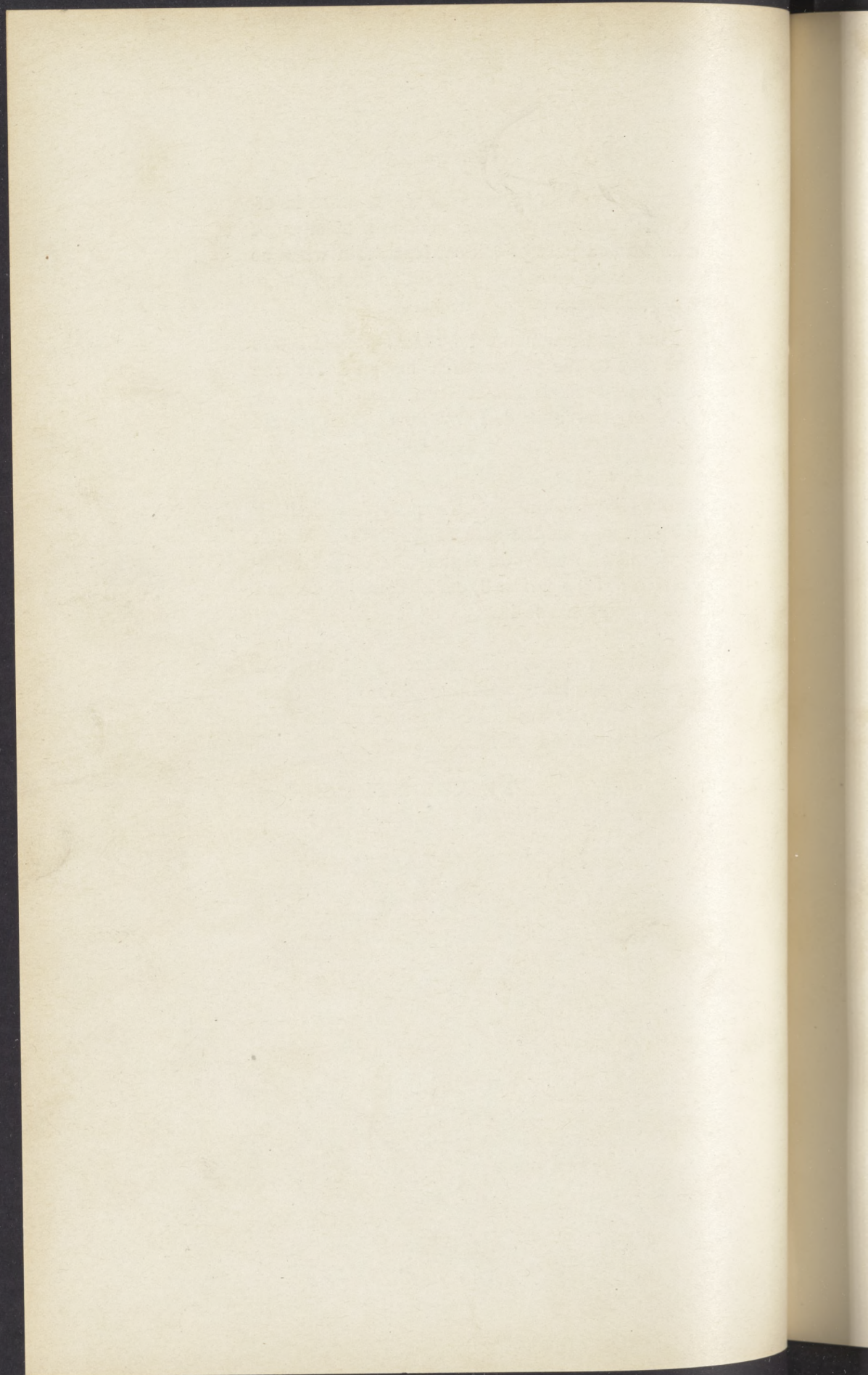
vided in the by-laws themselves which were in effect at the time the plaintiff became a member of the club formed part of his contract, and when so amended became binding upon him as though originally in such form.

3. That by the amended by-laws plaintiff was entitled only to the price which he paid for the stock and any assessments thereon, Article IV, Section 3a, of the amended by-laws. This would amount to but the sum of \$400.00.

4. If it be held that the amended by-laws are not applicable the original by-laws provide definitely for the payment of the sum of \$400.00 at which figure the club itself was under the original by-laws, Article III, Section 3, entitled under certain conditions to purchase it.

We therefore respectfully submit that the trial court erred in holding that the plaintiff was entitled to the sum of \$1,000.00 instead of the sum of \$400.00 tendered to him.

FRAZER & TRIMBLE,
Attorneys for the Defendant-Appellant.



New Jersey Court of Errors and Appeals

LAWRENCE BROWN,
Plaintiff-Respondent,

vs.

GREEN BROOK COUNTRY CLUB, a
corporation,
Defendant-Appellant.

On Appeal
from Essex
County Cir-
cuit Court.

BRIEF FOR PLAINTIFF-RESPONDENT

This case was tried in the Essex County Circuit Court before Judge William A. Smith, without a jury on January 9, 1929; the decision (Case, pages 14 and 15), was that the plaintiff was entitled to recover the sum of \$1,000, with interest from June 1, 1927. The defendant now appeals to this court.

The plaintiff-respondent contends that there was no error in the court below and that the judgment should be affirmed.

Statement of Facts

The defendant, Green Brook Country Club, is a corporation, not for pecuniary profit. The plaintiff, Lawrence Brown, was a member of this club, and was also the owner and holder of a share of stock for which he paid \$400.00. In February, 1924, the plaintiff resigned and, in accordance with the then by-laws, turned in his certificate of stock to be sold by the club for his account. In April,

1925, the by-laws were amended without notice to the plaintiff. The change in the by-laws was that when a member withdrew and turned in his share for sale, the member should only receive as result of such sale, the amount which he had paid in, and, should the share be sold for a greater amount, the club should receive the difference between the amount originally paid in and the amount realized by the sale. This provision, however, was not in force until the amendment of April, 1925, and plaintiff's contention is that he was not bound by an amendment of which he had no notice and which was passed after he had turned in his share of stock. At the time he turned in his share of stock he was entitled, as the by-laws then stood, to whatever sum his share might bring.

In May, 1927, the club sold the plaintiff's share of stock for \$1,000, and on June 1, 1927, the club tendered Mr. Brown its check for \$400.00. The plaintiff declined to accept the amount offered and insisted that he was entitled to \$1,000 and the decision of the court was that he was so entitled to the sum of \$1,000 with interest from June 1, 1927 (Case, page 15).

The findings of the court (Case, pages 16, 17 and 18), may be summarized as follows:

In February, 1924, plaintiff was the owner of a share of stock, numbered 39, of the defendant club, and was a member in good standing. He resigned and his resignation was duly accepted, and he deposited with the defendant his stock certificate and authorized its sale for his account. The defendant sold the plaintiff's stock for his account and received \$1,000. On June 1, 1927, defendant tendered plaintiff \$400.00, which offer was declined. At the time plaintiff resigned the by-law then in force was as follows:

“Article III, Sec. 3. When by reason of death, resignation, expulsion, or otherwise, the membership of any person shall cease, the dues upon his share shall nevertheless continue to be charged until the membership certificate for such share be delivered to the Treasurer of the Club for sale, with proper transfer, or the share be sold or taken over by the Club on enforcement of its lien thereon, after which time such dues shall cease. The Board of Trustees may for proper cause extend the time for delivery in special cases. In the order in which the shares are delivered for sale they shall be sold to persons elected to membership, each of whom shall pay to the Treasurer of the Club for account of the owner of such share the sum of four hundred dollars (\$400.00) and the prevailing premium, which amount—after deduction therefrom of all charges which the Club may have against such share whether for unpaid subscription, dues, house accounts, or otherwise, including not only charges incurred by the owner of such share but also those incurred by Family members eligible by virtue of relationship to such owner, or by other persons whose accounts are chargeable to him—shall be paid over to such owner.”

The court thereupon found that this provision of the then by-laws created a contract between the plaintiff and defendant and that the by-laws could not therefore be amended so as to change the method or amount of compensation to the plaintiff for his stock. The amendment of April, 1925, was

not binding upon the plaintiff, not only because he had previously resigned, but also because it was had without notice to him and, his rights having been fixed, could not thereafter be changed without his consent. The amendment (Case, page 9, lines 17-40; page 10, lines 1-15), entirely changed the status of a resigning member with respect to his ownership of stock.

Argument

Ten grounds of appeal are presented (Case, pages 36 and 37). Apparently these grounds of appeal may be conveniently grouped so that they may be said to contend that the court below was in error in holding that the plaintiff was not bound by the amendment and that, if he was not bound by the amendment, he should only receive the amount of the original purchase price of his stock. The latter point does not seem to be seriously pressed but the real point of the appeal is that the plaintiff was bound by the amendment, notwithstanding his prior resignation and notwithstanding the lack of notice to him of the proposed amendment. Grounds of Appeal, numbered 1, 3 and 8, appear to be concerned with the proposition that the plaintiff was bound by the amended by-laws. Grounds, numbered 2, 4 and 5, appear to relate to the proposition that the plaintiff should only receive the original purchase price in the event that he was not bound by the amendment. Grounds, numbered 9 and 10, are merely formal. Ground number 6, in so far as it is argued at all, relates to the proposition that plaintiff was bound by the amendment.

The plaintiff-respondent contends that the judgment is fully sustained by the facts and the law.

The plaintiff was entitled to recover the sum of \$1,000 with interest because under the by-laws in force at the time his resignation was accepted, he was entitled to receive for his share of stock whatever price was obtained by the club upon its sale of the stock.

He was likewise entitled to recover because in depositing the stock with the club a relationship of principal and agent was established and the plaintiff, as the principal, was entitled to any amount that his agent might obtain for him by reason of the sale by the agent of the principal's property.

He was likewise entitled to recover because the deposit of stock in the circumstances created a definite contract under the terms of which plaintiff was entitled to receive whatever amount the club realized upon the sale of his stock.

He was likewise entitled to recover upon the principal of money had and received because the club itself did not purchase the stock and never had title to it and in selling it had and received to plaintiff's use the amount of money realized.

I.

A member of an association is not affected by a change in the by-laws not consented to by him.

The ownership of a share of stock in a corporation not for pecuniary profit is a property right. The limitations of the membership does not change the character of this property right. The membership gives the member not only certain privileges with respect to making use of the facilities afforded by the association but he also, as a mem-

ber, is interested as a beneficial owner of the assets of the association. A well known example is a seat upon a stock exchange. A member of a stock exchange being entitled to a seat owns a valuable property right which is taxable and salable. It is perfectly true that in the event of a sale, the purchaser must bring himself within the requirements for admission to membership, but this condition does not change the character of the property right; *Zell vs. Baltimore Exchange*, 102 Md., 489, s. c. 62, Atl. 808, s. c. 4, A. L. R., n. s. 435. In the case of *Order of Redmen vs. The Mohican Tribe*, 92 N. J. E., 593, s. c. 114, Atl. 440, the court held that the members of an association could not be deprived of their rights because other members saw fit to reorganize. In that case certain members of an association agreed to form a corporation and did so, but certain members did not acquiesce in the new plan and the court held that such members could not be deprived of their property rights as members of the original association.

It would also appear plain on principle that the rights of a member could not be cut off by an amendment of which he had no notice and to which he did not give his consent.

II.

The transaction between plaintiff and defendant created a binding contract.

At the time plaintiff resigned he owned a share of stock of the defendant corporation. The by-law then in force provided that the certificate should be deposited with the treasurer of the club for sale. The by-law further provided that such share of stock should be sold to a person subsequently elected to membership, who should pay to the

treasurer of the club for account of the owner of such share the sum of \$400 and the prevailing premium. The by-law further provided that the amount realized "shall be paid over to such owner." There was a further provision, that has no application here, giving the club no right to deduct against the amount received any unpaid dues or house accounts.

At the time Mr. Brown turned in his share of stock the club undoubtedly could have purchased it for the sum of \$400.00 or such sum as might be agreed upon, but the club did not elect to do so and did not acquire ownership of the stock but held it and subsequently sold it. The additional amount realized, although due to an increase in the price of the shares, was nevertheless "the prevailing premium" at the time, and the by-law in force at the time his resignation was accepted, and provided for the possibility of there being a higher price at the time of sale than at the time of the original purchase. A definite contract was created and gave rise to a definite enforceable right; *Parish vs. New York Produce Exchange*, 169 N. Y., 34, s. c. 61, N. E. 977, s. c. 56, L. R. A 149. Had the club seen fit to purchase the share at the time Mr. Brown resigned, the club would have made a profit on the re-sale. The club, however, did not see fit to invest any of its money and preferred to let Mr. Brown assume all the risk of the possibility of a re-sale. Had the club been unable to sell the share of stock, its owner, Mr. Brown, would never have had any claim against the club. Because it so happened that the share was sold at an advance is no legal reason why the club should seek to deprive Mr. Brown of any part of the money obtained for the sale of his property.

The club saw fit to assume no responsibility and agreed to act only as Mr. Brown's agent. It is rather a startling claim for an agent to insist that he is entitled to a part of the money realized upon the sale of his principal's property because the principal has been fortunate enough to obtain a better price for such property than was anticipated.

III.

An amendment of a by-law does not bind a member whose resignation has previously been accepted, nor is it binding upon a member who has no notice of the proposed amendment or who does not acquiesce therein.

It is apparently conceded that the by-laws of a private corporation bind the members only by virtue of their assent; *State vs. Overton*, 24 N. J. L., 435 (cited by appellant).

It is also conceded that the by-laws created an enforceable contract; *Miller vs. Hillsborough*, 42 N. J. E., 459. It is perfectly true that the by-laws provided that they might be amended and undoubtedly while the plaintiff was a member the by-laws could have been amended as they were subsequently, even though he might vote against the amendment, and he would be bound by the amendment if he had been given the notice of the proposed amendment as required by the by-laws. This, however, is not the case, and the amendment having been made long subsequent to his resignation and without any notice to him, it is difficult to see how it can be argued that the plaintiff can be held to be bound by the amendment.

IV.

The provision in the amended by-laws with respect to the membership of the club reaching the limit of 350 members is neither binding on the plaintiff nor is it material to the issues herein.

This amendment provided that until the membership reached the limit of 350, the owner of a share turned in should only be entitled to the amount which he had paid. This provision was not binding upon the plaintiff because, as above pointed out, it is an amendment adopted without either notice or consent and after resignation; nor is the provision material because in the first place the provision had no application to members who had paid \$400.00, and in the second place the price obtained for the plaintiff's share was for an original share, issued at \$400.00, and the club, having sold, as the plaintiff's agent, can make no claim for any part of the price.

V.

The judgment should be affirmed.

Upon the merits of this case, upon the facts and the principles of law applicable, the judgment should be affirmed.

Respectfully submitted,

JOHN W. OCKFORD,
Of Counsel with Plaintiff-Respondent.



