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Criminal Law—Habitual Criminals Act—Prohibition Law Violation as Involving Moral Turpitude

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incorporation a by-law was adopted declaring that the preferred stock was to be cumulative. The plaintiff sued for his cumulative dividends. *Held*, " . . . the by-law here in question not only attempts to cover matters which the statutes provide shall be covered by the articles of incorporation, but, in stating that the preferred stock shall be cumulative, it is in direct conflict with the plain articles of incorporation, and to the extent of the conflict the language of the articles must prevail." 1 COOK, CORPORATIONS (8th ed. 1923) 4a; STOCKARD, MISSOURI CORPORATION LAW, 178; *Kahn v. Bank of St. Joseph* (1879) 70 Mo. 262.

As a general rule the by-laws of a corporation which are contrary to or inconsistent with its charter, articles of association, or governing statute are ultra vires and void, even though they have been unanimously assented to by the stockholders or members. 14 C. J. 362; *Chicago City R. Co. v. Allerton* (1873) 18 Wall. 233; *National Union v. Keefe*. (1914) 263 Ill. 453, 105 N. E. 319; *Kent v. Quicksilver Mining Co.* (1879) 78 N. Y. 159. The principal case follows this rule, the sound public policy of which can hardly be questioned. A contrary view would mean that the will of the stockholders could be substituted at any time for the articles of incorporation, and creditors and others dealing with a firm would have no definite information to rely upon.

The unique feature of the Missouri statutory provision is that it is unusual for state incorporation statutes to require the articles of incorporation in each particular case to state whether or not the preferred stock shall be cumulative. "When preferred stock is issued it is generally specified in the certificate itself whether it is cumulative or non-cumulative. . . . If preferred stock is issued without any mention of whether or not the dividends are cumulative, then the law makes them cumulative. . . . This is the well settled rule at common law in this country and in England." COOK, CORPORATIONS (8th ed. 1923) 273; *Englander v. Osborne* (1918) 261 Pa. 366, 104 Atl. 614; *Lockhart v. Van Alstyne* (1874) 31 Mich. 76; *Elkins v. Camden R. R.* (1882) 36 N. J. Eq. 233.

C. F. M., '31.

CRIMINAL LAW—HABITUAL CRIMINALS ACT—PROHIBITION LAW VIOLATION AS INVOLVING MORAL TURPITUDE.—A North Dakota statute provides for increased punishment for subsequent felony convictions involving moral turpitude. The appellant had been convicted of two other felonies in other states and here pleaded guilty to a charge of engaging in liquor traffic as a second offense. However, he challenged jurisdiction of the court to impose any further sentence on him according to the statute on the ground that the crime in question was not one involving moral turpitude. *Held*, violation of a state prohibition law does involve moral turpitude. *State v. Malusky* (N. D. 1930) 230 N. W. 735.

The concurring opinion in the instant case reasons that all felonies as such involve moral turpitude while the dissenting opinions point out that this could not have been the intention of the legislature, since leg-

islative history shows that this act would not have been passed without the proviso "involving moral turpitude." This case like the majority of others adopts Webster's definition that "moral turpitude involves an act of baseness, vileness, or depravity in the social duties which a man owes to a fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man." *In re Henry* (1909) 15 Idaho 755, 99 Pac. 1054. Bouvier says, ". . . moral turpitude is defined as anything contrary to justice, honesty, principle or good morals." 2 BOUVIER, LAW DICTIONARY (Rawle's 3d ed. 1915) 759; *Matter of Coffey* (1899) 123 Cal. 522, 56 Pac. 448; *Matter of Humphrey* (1917) 174 Cal. 290, 163 Pac. 60; *In re Williams* (1917) 64 Okla. 316, 167 Pac. 1149.

Before the adoption of the Eighteenth Amendment, a great number of the liquor laws were for the purpose of revenue or control, so that an imputation of a violation of such a law was not considered actionable per se. *Morgan v. Kennedy* (1895) 62 Minn. 348, 64 N. W. 912; note (1927) 75 U. of PA. L. REV. 357, 359. However, after the National Prohibition Act, "the traffic in intoxicating liquors has by fundamental law, been denounced as inherently wrong, a social evil, condemned by every standard of private and public morals." *Rudolph v. U. S.* (1925) 55 App. D. C. 362, 6 F. (2d) 487. It was here decided that unlawful possession and transportation of intoxicating liquor was a crime involving moral turpitude, warranting the discontinuance of a retired policeman's pension.

A similar violation of the Prohibition Law was held not to be sufficient to revoke the license of a physician under a statute allowing such revocation upon commission of a crime or misdemeanor involving moral turpitude. *Fort v. City of Brinkley* (1908) 87 Ark. 400, 112 S. W. 1084. The dissenting justice in the principal case says, "If there be any felony that involves less of moral turpitude than the possession of a few ounces of fermented grape juice, I know not what it is." But in an Oregon decision, even though the violation of the prohibition law was a misdemeanor, the court held it to involve moral turpitude. *State v. Edmunson* (1922) 103 Ore. 243, 204 Pac. 619. Numerous other decisions dealing with such violations of the liquor statutes but demonstrate the geographical variability of morals. Note (1929) 43 HAR. L. REV. 120.

Some courts attempt to make the determination of whether or not a crime involves moral turpitude turn on the circumstances attendant upon the commission of the offense, while others attempt to fix each crime in its respective category. *Rudolph v. U. S.*, above, *Bartos v. U. S. Dist. Ct.* (C. C. A. 8, 1927) 19 F. (2d) 722; note (1925) 35 YALE L. J. 237; note (1926) 4 N. Y. L. REV. 46. Most of the authorities seem to agree generally that moral turpitude means "very bad," getting no further than this, thereby leaving this "weird legal ghost, vague in its outlines and contour, to rock the complacency of the legal scholar who seeks for an understanding of the law." (1929) 3 So. CAL. L. REV. 46. H. R. S., '32.