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## Municipal Corporations—Powers of Town Trustees

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Powers of Town Trustees

Section 64 of the New York Town Law<sup>14</sup> gives the Town Board the power to acquire and convey real property; and section 81<sup>15</sup> provides that the Board shall upon petition submit at an election any proposition dealing with the acquisition of lands for a public parking place, a public playground, or which is concerned with the dredging of a waterway.

On May 15, 1951, at a special town meeting of Huntington, Suffolk County, Long Island, the voters approved the action of their Board of Trustees in acquiring property for a beach, in making lease-purchase agreements for parking areas and recreation fields, and in entering into a contract for the sale of gravel and sand, by the dredging of the town's bay and harbor. These three projects were combined in "Proposition Number One". In *Knapp v. Fasbender*,<sup>16</sup> the plaintiff-taxpayers had commenced an action seeking to have the proposition declared invalid for failure to comply with provisions of the Town Law<sup>17</sup> which prescribe that each proposition shall be separately numbered and stated and that the amount of any obligation to be incurred shall be stated. The plaintiffs had previously obtained a judgment<sup>18</sup> to the effect that the Trustees had no power to acquire the beach.

In a 4-3 decision the Court of Appeals affirmed Special Term's<sup>19</sup> dismissal of the complaint. The Court held that the Trustees, in the exercise of their proprietary powers, could acquire property and enter into these contracts without the necessity of a resolution of the Town Board and approval by the voters. By basing its decision on this ground, the Court found it unnecessary to pass on the validity of "Proposition Number One" — other adoption was needless. The Court traced the Trustees' power back to the Constitution of 1777 which ratified the original grants from the Colonial Governors; pointed to decisions which recognized the Trustees<sup>20</sup> and their power to acquire<sup>21</sup> and dispose<sup>22</sup> of property; examined a 1952 local law<sup>23</sup> passed after the instant action was started and entitled "an act to ratify and confirm the title of the

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14. N. Y. TOWN LAW §64 (2).

15. N. Y. TOWN LAW §81 (1) (d), (g).

16. 1 N. Y. 2d 212, 134 N. E. 2d 482 (1956).

17. N. Y. TOWN LAW §§82, 223.

18. *Knapp v. Fasbender*, 278 App. Div. 970, 105 N. Y. S. 2d 780 (2d Dep't 1951), *appeal withdrawn*, 303 N. Y. 803, 104 N. E. 2d 361 (1952).

19. *Knapp v. Fasbender*, 109 N. Y. S. 2d 294 (Sup. Ct. 1951), *aff'd mem.*, 281 App. Div. 893, 120 N. Y. S. 2d 517 (2d Dep't 1953).

20. *Trustees of Freeholders and Commonalty of Town of Southampton v. Jessup*, 162 N. Y. 122, 56 N. E. 538 (1900).

21. *Town of Islip v. Estates of Havemeyer Point*, 224 N. Y. 449, 121 N. E. 351 (1918).

22. *Beers v. Hotchkiss*, 256 N. Y. 41, 175 N. E. 506 (1931).

23. N. Y. Sess. Laws 1252, c. 816.

trustees . . . and to ratify and confirm the acts of its board of trustees . . ."; and found that the 1952 legislation confirmed these proprietary powers.<sup>24</sup>

Judge Van Voorhis writing for the minority felt that the only issue on appeal was the validity of "Proposition Number One". He reasoned that it was invalid because it combined three propositions — beach, parking and recreation, and dredging — into one which is contrary to the prescriptions of the town law. He also found the proposition to be invalid for its failure to state the amount of obligations which the Town was incurring. As regards the applicability of the 1952 legislation to the proposition and to the powers of the Trustees, the minority contended that its only purpose was to quiet title of the land held by and through the Trustees. In the minority's opinion, the provision stating that the Trustees had the power to acquire real and personal property was limited to those acquisitions incident to the disposition and conservation of property already held by the Trustees. And, though admitting the Trustees had the power to sell the sand and gravel in the harbor, the minority viewed the contract's primary purpose to be the improvement of navigation which is a governmental function<sup>25</sup> to be exercised by the Town Board subject to proper approval.

Doubtless the Court went behind the issue presented by this case in order to put an end to the attacks upon the acts of the Trustees. This writer wonders, however, whether in attempting to settle one controversy the Court has not planted seeds of others when it appears to be the purpose of the Town Law to have these functions initiated by the town board subject to the voters' approval.

## REAL PROPERTY

### Deeds—Right of Selection

*Lipton v. Bruce*<sup>1</sup> presented the Court of Appeals with two unusual and interesting problems. Firstly, whether a deed of "one acre of land out of the above described premises, or so much thereof as the party of the second part may require for a cottage lot . . ." was an attempted conveyance, void for uncertainty of description,<sup>2</sup> a conveyance of an undivided interest,<sup>3</sup> or the conferral of a right to

24. The Court also found that this legislation did not violate the requirements of the New York Constitution which provides that no special law shall embrace more than one subject which shall be expressed in the title, N. Y. CONST. Art. 111, §15 (1938); nor did it violate the Constitutional provision which states that an existing law is not to be made applicable by reference, N. Y. CONST. Art. 111, §16 (1938).

25. See *People v. Steeplechase Park Co.*, 218 N. Y. 459, 113 N. E. 521 (1916).

1. 1 N. Y. 2d 631, 136 N. E. 2d 900 (1956).

2. *Tierney v. Brown*, 65 Miss. 563, 5 So. 104 (1888).

3. *Morris v. Baird*, 72 W. Va. 1, 78 S. E. 371 (1913).