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CORPORATIONS-VOTING TRUSTS-PUBLIC POLICY

CORPORATIONS—VOTING TRUSTS—PUBLIC POLICY—Owning practically all the stock in two corporations, the decedent by will divided his holdings equally among his six children. To perpetuate the control of two sons who had

been in active management for ten or twelve years, the other children transferred their stock in trust to the two sons to hold during the lives of these two or the life of the survivor, to vote, and to collect and pay over dividends. In an action by beneficiaries representing one-third of the stock to have the trust instruments declared void, the court *held* that the trust was not against public policy, since no statute was contravened nor evidence produced of an illegal purpose. *Alderman v. Alderman*, (S. C. 1935) 181 S. E. 897.

In determining the validity of an arrangement whereby trustees hold legal title to corporate stock for the purpose of asserting voting control, a distinction is properly made between legality of the device per se and legality of its purpose.[1] Voting trusts are no exception to the rule that contracts and trusts in general with an illegal purpose are void or unenforcible, but in the instant case the court held there to be no evidence of illegal purpose. Aside from "conclusions unencumbered by reasoning" that voting trusts offend public policy,[2] objections are made that voting trusts, contrary to statute or common law, separate voting power from stock,[3] involve a proxy on terms prohibited by law,[4] constitute a restraint on alienation,[5] deprive stockholders of the right to have fellow stockholders exercise their judgment according to principles of majority control,[6] and violate provisions respecting the right to vote and stockholders' annual meetings.[7] The short answer to these objections is that they are without foundation in fact. With reference to separation of voting power, both legal title and the right to vote are vested in the trustees who vote as owners and not by proxy.[8] There is no illegal restraint on alienation, for in the present case the beneficial interests were freely alienable and the duration of the trust was limited to the lives of the trustees.[9] In regard to the right of one stockholder to the exercise of personal judgment by the other stockholders, the existence of such a doctrine has been denied by the courts both upon principle[10] and upon

[1] 5 FLETCHER, CYCLOPEDIA CORPORATIONS, § 2081 (1931), and, generally, c. 14; 22 COL. L. REV. 627 (1922); 40 HARV. L. REV. 106 (1926).

[2] CUSHING, VOTING TRUSTS 39 (1927).

[3] Harvey v. Linville Improvement Co., 118 N. C. 693, 24 S. E. 489 (1896); Shepaug Voting Trust Cases, 60 Conn. 553, 24 A. 32 (1890); Bache v. Central Leather Co., 78 N. J. Eq. 484, 81 A. 571 (1911); Warren v. Pim, 66 N. J. Eq. 353, 59 A. 773 (1904).

[4] Luthy v. Ream, 270 Ill. 170, 110 N. E. 373 (1915).

[5] Moses v. Scott, 84 Ala. 608, 4 So. 742 (1888); Canda v. Canda, (N. J. Eq. 1920) 113 A. 503.

[6] Shepaug Voting Trust Cases, 60 Conn. 553, 24 A. 32 (1890); Luthy v. Ream, 270 Ill. 170, 110 N. E. 373 (1915); Robotham v. Prudential Ins. Co., 64 N. J. Eq. 673, 53 A. 842 (1903); White v. Thomas Inflatable Tire Co., 52 N. J. Eq. 178, 28 A. 75 (1893).

[7] Warren v. Pim, 66 N. J. Eq. 484, 59 A. 773 (1911).

[8] Tompers v. Bank of America, 217 App. Div. 691, 217 N. Y. S. 67 at 75 (1926), citing CUSHING, VOTING TRUSTS (1927).

[9] Cf. Williams v. Montgomery, 148 N. Y. 519, 43 N. E. 57 (1896). Statutes providing for voting trusts usually limit their duration. See 33 MICH L. REV. 804 (1935).

[10] Non-voting stock, proxy voting, testamentary trusts of stock, pledged stock, and even voting by share instead of by membership, all militate against the doctrine. One

precedent.[11] The principal decision not only negatives the objection that public policy as expressed in any statute was violated, but states that in the absence of any positive law or rule of public morals public policy requires the enforcement of contracts. Besides the usefulness of voting trusts, a policy favorable to them has been declared by the legislatures in about one-fourth of the states.[12] The present case is in accord with what has been remarked as the modern tendency of courts to uphold voting trusts.[13]

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stockholder cannot compel another stockholder to vote nor even to register his stock so as to be in a position to vote. If the judgment of a particular stockholder prompted by self-interest and exercised personally or through his agent or trustee is beneficial to the corporation, it is submitted that the judgment of a trustee acting for the benefit of stockholders as a group would be of like effect.

[11] Brightman v. Bates, 175 Mass. 105, 55 N. E. 809 (1900); Greene v. Nash, 85 Me. 148, 26 A. 1114 (1892); Boyer v. Nesbitt, 227 Pa. 398, 76 A. 103 (1910); Carnegie Trust Co. v. Security Life Ins. Co., 111 Va. 1, 68 S. E. 412 (1910); Clark v. Foster, 98 Wash. 241, 167 P. 908 (1917).

[12] A list of states with such statutes appears in 5 FLETCHER, CYCLOPEDIA CORPORATIONS 286, note 4 (1931); PARKER, CORPORATION MANUAL (1936).

[13] Mackin v. Nicollet Hotel, Inc., (C. C. A. 8th, 1928) 25 F. (2d) 783.