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CORPORATIONS — STOCK AND STOCKHOLDERS — TRANSFER OF STOCK — RIGHT TO VOTE—Upon the decease of the record owner of shares of the common stock of Canal Construction Company petitioner caused the stock to be transferred upon the books of the corporation to his name as administrator. Certificates were indorsed for transfer and delivered to the distributees of the estate. The recipients of certain of the certificates neglected to present them for transfer on the stock books of the corporation. When a contest subsequently developed over the election of directors, the petitioner attempted to vote the shares standing in his name as administrator. The ballot was rejected and petitioner brought the proceeding to review the election. *Held*, petitioner by delivery of the certificates duly indorsed parted with all beneficial interest in the stock and will not be permitted to vote it contrary to the wishes of the true

owners although there has been no registration on the books of the corporation. *In re Canal Construction Co.*, (Del. 1936) 182 A. 545.

The transfer of legal title to shares of corporate stock and the right to vote involves two conflicting interests: the owner's right to freely sell and use it as security for loans¹ and the corporation's necessity of determining who are stockholders.² Since at common law any transfer of legal title gave the transferee the right to vote,³ most states have adopted some statutory form authorizing and approving registration. In some states registration on the books of the corporation is a condition upon the right to vote, while in others the books are conclusive or the only evidence of stock ownership.⁴ Compliance with statutory requirements is usually necessary to entitle the transferee to vote.⁵ The courts agree that the purpose of such a provision is to benefit the corporation and construe it so as not to limit the alienability of stock as between the parties.⁶ A difficult situation occurs, however, when the registered owner who has parted with stock attempts to vote it. It would seem that the corporation must allow him to vote for it is generally held that the stock books are conclusive upon the election inspectors, but a court of equity in a statutory proceeding to review the

¹ 2 COOK, CORPORATIONS, 8th ed., 1437 (1923). The author expresses the view that the trend of modern decisions has been to encourage the free circulation of stock certificates by removing all restrictions on the theory that they are a valuable aid to commercial transactions.

² 12 FLETCHER, CYCLOPEDIA CORPORATIONS, perm. ed., 302 (1932). Practical necessity demands that a corporation have some means of knowing who are its stockholders entitled to vote and participate in the management of the corporation. *Masury v. Arkansas Nat. Bank*, (C. C. A. 8th, 1899) 93 F. 603; *Allen v. Stewart*, 7 Del. Ch. 287, 44 A. 786 (1895); *Hoppin v. Buffum*, 9 R. I. 513 (1870).

³ 5 FLETCHER, CYCLOPEDIA CORPORATIONS, perm. ed., 122 (1932); 12 *ibid.*, c. 58, § 5480.

⁴ For a classification of the various types of provisions relating to registration and the right to vote stock, see 5 FLETCHER, CYCLOPEDIA CORPORATIONS, perm. ed., 124 (1932).

⁵ "A person who has purchased stock, and who desires to be recognized as a stockholder, for the purpose of voting, must secure such a standing by having the transfer recorded upon the books." *Morrill v. Little Falls Mfg. Co.*, 53 Minn. 371 at 379, 55 N. W. 547 (1893); *Scripture v. Frankestown Soapstone Co.*, 50 N. H. 571 (1871); *State ex rel. White v. Ferris*, 42 Conn. 560 at 568 (1875). But see *Allen v. Hill*, 16 Cal. 113 (1860); *State v. Smith*, 15 Ore. 98, 14 P. 814 (1887), presenting the view that the true owner should be allowed to vote although not registered as a stockholder on the books of the corporation.

⁶ It is generally held that observance of statutory formalities is not necessary to passing of legal title as between the parties. 2 N. C. L. REV. 118 (1924); *Masury v. Arkansas Nat. Bank*, (C. C. A. 8th, 1899) 93 F. 603; *Dennistoun v. Davis*, 179 Minn. 373, 229 N. W. 353 (1930); *Drug, Inc. v. Hunt*, (Del. 1933) 168 A. 87. For a recent case holding that a requirement in the by-laws relative to transfer of shares is for the benefit of the corporation and may be waived by it, see *Moore v. Panama Ice & Fish Co.*, (C. C. A. 5th, 1936) 81 F. (2d) 837. Also, an unregistered transferee will usually take priority over attaching creditors of the transferor. *Allen v. Stewart*, 7 Del. Ch. 287, 44 A. 786 (1895); *Lund v. Wheaton Roller Mill Co.*, 50 Minn. 36, 52 N. W. 258 (1892); 12 FLETCHER, CYCLOPEDIA CORPORATIONS, perm. ed. 358 (1932).

election⁷ may go behind the books to determine the right to vote.⁸ The case at hand presents a novel situation. The record owner seeks to vote stock contrary to the wishes of the unregistered transferee. The election inspectors in rejecting the ballot apparently exceeded their authority⁹ in attempting to determine the equities between the parties, but the court in the exercise of its reviewing jurisdiction reached a desirable result when it denied the petitioner the right to vote stock in which he no longer had any interest. Furthermore, the decision seems in accord with the tendency of the court to protect the unregistered stockholder.

P. M. C.

⁷ Del. Rev. Code (1915), § 31, as amended by Del. Laws (1927), c. 85, § 15.

⁸ *Strong v. Smith*, 15 Hun (N. Y. Sup. Ct.) 222 (1878); *In re Argus Printing Co.*, 1 N. D. 434, 48 N. W. 347 (1891); *Morrill v. Little Falls Mfg. Co.*, 53 Minn. 371, 55 N. W. 547 (1893). See Del. Rev. Code (1915), as amended by Del. Laws (1929), c. 135, § 15, for statutory provision authorizing the court of chancery to review elections and determine the rights of claimants to vote stock. 2 THOMPSON, CORPORATIONS, 3rd ed., 314 (1927).

⁹ The Delaware statute provides that "the original or duplicate stock ledger shall be the only evidence as to whom are stockholders entitled . . . to vote in person or by proxy at such election." Del. Rev. Code (1915), § 29, as amended by Del. Laws (1929), c. 135, § 15.