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CORPORATIONS—ELECTION OF DIRECTORS—POWER TO ENJOIN SHAREHOLDERS' MEETING UNTIL SHAREHOLDERS ARE FURNISHED INFORMATION CONCERNING CONDITION OF CORPORATION—Defendant company was operating at a loss of approximately $50,000 per month; the directors delayed three months in reporting the financial affairs of the company; and the shareholders' meeting was delayed six months in violation of the by-laws. On January 24, 1948, the directors called an election meeting for February 16, 1948. On receipt of this notice, plaintiff and others formed an independent shareholders' committee to effect a change in management. The directors refused to allow the plaintiff to make a photostatic copy of the list of 3,080 shareholders, but did permit him to inspect the list five days before the meeting, as required by Pennsylvania law.[1]

[1] 15 Pa. Stat. Ann. (Purdon, 1938) § 2852-510.

Plaintiff's committee secured proxies from about seven hundred shareholders who were previously unaware of the true condition of the company, but lacked time to contact some four hundred others before the meeting date. Plaintiff petitioned for an interlocutory injunction, requesting additional time to give his committee an opportunity to secure proxies from the rest of the shareholders. *Held*, injunction granted. *Steinberg v. American Bantam Car Co.*, (D.C. Pa. 1948) 76 F. Supp. 426.

During most of the nineteenth century, courts were extremely reluctant to interfere with the internal affairs of corporations, taking the position that they "had no visitorial powers over corporations, except such as may be expressly conferred . . . by statute."[2] This rule was later relaxed to afford shareholders redress against ultra vires acts, but not to permit interference so long as the corporation kept within the limits of its charter.[3] Finally, it was established that the chancellor would intervene whenever actual fraud was present.[4] In the principal case, defendants urged that there was no fraud; that the statute dealing with the right of a shareholder to examine the shareholders list had been complied with; and that the defendants' negligence in submitting financial reports was irrelevant. In holding that the directors' actions constituted "constructive fraud" warranting the injunction, the court said it could not permit those in control of a corporation "through the reliance on technicalities or strict compliance with the provisions of law, to place a stockholder in a position where he is denied the right . . . to draw to the attention of all the stockholders . . . the circumstances which relate to the detailed condition of the company."[5] Where there is no "actual fraud," many courts have been influenced by the theory that those who in fact control a corporation are trustees for the minority shareholders and, as such, have the burden of justifying their conduct.[6] Courts have also been influenced by the solicitude shown by the Securities and Exchange Commission for minority shareholders, and it is a fair assumption that the court in the principal case was aware of the Commission's holding that directors must mail opposing proxy solicitation material simultaneously with their own.[7] While use of the term "constructive fraud" has been criticized,[8]

[2] Latimer v. Eddy, 46 Barb. (N.Y.) 61 at 67 (1864).

[3] Cases are collected in 3 COOK, CORPORATIONS, 8th ed., § 669 (1923); 13 FLETCHER, CYC. CORP., perm. ed., §§ 5823-5828 (1943); 4 THOMPSON, CORPORATIONS, 3d ed., §§ 2906-2908 (1927).

[4] Cannon v. Trask, L.R. 20 Eq. 669 (1875); Tunis v. Hestonville, Mantua & Fairmount Pass. R.R. Co., 149 Pa. 70, 24 A. 88 (1892); Flynn v. Brooklyn City Railroad Co., 158 N.Y. 493, 53 N.E. 520 (1899); Bartlett v. Gates, (C.C. Colo. 1902) 118 F. 66; Deal v. Erie Coal & Coke Co., 248 Pa. 48, 93 A. 829 (1915). Several states have statutes which provide for supervision of elections by a master when fraud is present. The statutes are collected in 5 FLETCHER, CYC. CORP., perm. ed., § 2073 (1931).

[5] Principal case at 436.

[6] The trustee theory has been rejected by many courts, while other courts have criticized the application of trust terminology to what is essentially a simple fiduciary relation. For a general discussion of the problem, see Rohrlich, "Suits in Equity by Minority Stockholders as a Means of Corporate Control," 81 UNIV. PA. L. REV. 692 (1933).

[7] In the Matter of Standard Gas and Electric Co., Release No. 7020, Nov. 29, 1946, 1945-1947 C.C.H. Dec. ¶ 75,721.

[8] In re Marine Trust Co., 156 Misc. 297, 281 N.Y.S. 553 (1935).

it is submitted that the decision in the principal case, exemplifying the increasing tendency to protect minority shareholders, properly helps to secure a fair election of directors.

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