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CORPORATIONS - VOTING RIGHTS - EFFECT OF SALE OF STOCK WHILE BOOKS CLOSED

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CORPORATIONS — VOTING RIGHTS — EFFECT OF SALE OF STOCK WHILE BOOKS CLOSED — In a statutory action brought by a stockholder to determine the validity of an election of directors, it appeared that proxy votes of 6,856 shares had been accepted by the inspectors although these proxies were given by former owners who had sold the shares since the giving of the proxies and during the twenty days immediately preceding the election. During that twenty-day period, stock transfers registered with the corporation would have had the effect of disfranchising the stock,[1] but none of the 6,856 shares had been offered for registration. By using these proxy votes the shareholders opposing the management were successful in electing five directors on the board of nine. *Held*, the election is valid. While the right to vote is vested in the holder of the legal title, which is in the transferee, nevertheless election results will not be disturbed in the absence of a showing that the votes were cast against the wishes of the transferee, or of other inequitable circumstances. *In re Giant Portland Cement Co.*, (Del. Ch. 1941) 21 A. (2d) 697.

At common law the legal owner of stock was entitled to vote at corporate

[1] Moon v. Moon Motor Car Co., 17 Del. Ch. 176, 151 A. 298 (1930); Italo Petroleum Corp. of America v. Producers Oil Corp. of America, 20 Del. Ch. 283, 174 A. 276 (1934).

elections whether the stock was registered on the books of the corporation or not.[2] But the impracticality of allowing the election inspectors to determine slippery concepts of legal title was early perceived,[3] and legislation designed to protect the corporation and give the inspectors an easy, reliable means of determining the right to vote was devised. In essence these statutes provide that as far as the corporation is concerned the right to vote shall be determined by the corporate stock and transfer books.[4] Most of the cases which have arisen under these statutes deal with votes cast on stock of divided ownership, as in pledge [5] or trust relationships.[6] Occasionally, however, the transferor of stock, for some reason, attempts to vote it before the transfer has been recorded on the books of the corporation.[7] If the ensuing contest is between the parties to the transfer, the transferee will clearly succeed. However, where the results of an election or the effectiveness of other corporate action is in jeopardy,[8] and the real owner

[2] Commonwealth v. Patterson, 158 Pa. 476, 27 A. 998 (1893); and see generally, 5 FLETCHER, CYCLOPEDIA CORPORATIONS, perm. ed., § 2025 (1931).

[3] In re Election of Directors of the Long Island R. R., 19 Wend. (N. Y.) 37 (1837); In re Election of Directors of the Mohawk & H. R. R., 19 Wend. (N. Y.) 135 (1838); Commonwealth v. Woelper, 3 Serg. & R. (Pa.) 29 (1817).

[4] 5 FLETCHER, CYCLOPEDIA CORPORATIONS, perm. ed., § 2033 (1931), lists four types of statutes: (a) those requiring registration as a condition to voting, (b) those making registration conclusive evidence of the right to vote, (c) those making the books the "only evidence" of the right to vote, and (d) those making the books prima facie evidence. Delaware and New Jersey statutes fall into (c), but the type of statute seems to make little difference as to the problem involved here. Downing v. Potts, 3 Zab. (23 N. J. L.) 66 (1851); In re Election of Directors of the St. Lawrence Steamboat Co., 44 N. J. L. 529 (1882); In re Leslie, 58 N. J. L. 609, 33 A. 954 (1896); Schultz v. Commonwealth Mortgage Co., 12 Del. Ch. 104, 107 A. 774 (1919); Hoppin v. Buffum, 9 R. I. 513 (1870) (prima facie); Morrill v. Little Falls Mfg. Co., 53 Minn. 371, 55 N. W. 547 (1893) (conclusive); but see Dennistoun v. Davis, 179 Minn. 373, 229 N. W. 353 (1930). For a prima facie statute which influenced a result contrary to the general trend, see Commonwealth v. Patterson, 158 Pa. 476, 27 A. 998 (1893).

[5] In re Argus Printing Co., 1 N. D. 434, 48 N. W. 347 (1891); Hoppin v. Buffum, 9 R. I. 513 (1870); Lawrence v. I. N. Parlier Estate Co., 15 Cal. (2d) 220, 100 P. (2d) 765 (1940); Elevator Supplies Co. v. Wylde, 106 N. J. Eq. 163, 150 A. 347 (1930); Gow v. Consolidated Coppermines Corp., 19 Del. Ch. 172, 165 A. 136 (1933); Martin v. Fielder, 161 Okla. 25, 16 P. (2d) 1076 (1932).

[6] Price & Sulu Development Co. v. Martin, 58 Philippines 707 (1933) (trustee); State ex rel. White v. Ferris, 42 Conn. 560 (1875) (assignor in bankruptcy); In re Canal Construction Co., 21 Del. Ch. 155, 182 A. 545 (1936) (administrator); In re Election of Directors of the Mohawk & H. R. R., 19 Wend. (N. Y.) 135 (1838) (former cashier of bank).

[7] People ex rel. Probert v. Robinson, 64 Cal. 373, 1 P. 156 (1883); Haynes v. Griffith, 16 Idaho 280, 101 P. 728 (1909); In re Canal Construction Co., 21 Del. Ch. 155, 182 A. 545 (1936).

[8] As claiming lack of quorum—In re Algonquin Electric Co., (C. C. A. 2d, 1932) 61 F. (2d) 779; or lack of unanimous vote where required—Price & Sulu Development Co. v. Martin, 58 Philippines 707 (1933); Martin v. Fielder, 161 Okla. 25, 16 P. (2d) 1076 (1932); Bacich v. Northland Transportation Co., 185 Minn. 544, 242 N. W. 379 (1932).

has not objected seasonably, the inspector's acceptance of the transferor's vote will ordinarily be sustained.[9] In Delaware, a statute provides that the stock could have been completely disfranchised had the real owner presented it for registration on the transfer books within twenty days before the election.[10] This statute is not applicable to stock which is transferred but not offered for registration and thus the principal case must be determined under the common-law rules. Two important considerations exist in determining the validity of a vote by the registered owner who has disposed of his interest in the stock: first, whether the offer to vote was made over the objections of the real owner; second, whether results of the election will be disturbed. Thus where the transferor's actions are inequitable and his vote is refused,[11] both considerations support a decision sustaining the election fully as much as they do where there was no objection to the transferor's vote and it was accepted, as in the principal case. A more difficult case would arise where the answer to one question supports the election results but the answer to the other conflicts with it, e.g., (1) where the conduct of the record holder has been inequitable and against the wish of the real owner but the election inspector has accepted his vote, relying on the corporate books, (2) where the real owner makes no complaint but the inspector refuses the vote of the registered owner. In such cases the dislike to confirm the wrong of the record holder and the desire to confirm the results of the election will be conflicting arguments in the chancellor's mind. It is submitted that both these cases might very well be determined in favor of maintaining the results of the election, because in (1) the real owner could easily avoid the inequity either by forcing a proxy out of the record holder,[12] or by offering the stock for registration on the

[9] Pender v. Lushington, 6 Ch. Div. 70 (1877); People ex rel. Probert v. Robinson, 64 Cal. 373, 1 P. 156 (1883); Hoppin v. Buffum, 9 R. I. 513 (1870); Haynes v. Griffith, 16 Idaho 280, 101 P. 728 (1909). Courts often find tacit assent on the part of the unregistered owner and may point to the ability of such owner to force a proxy out of his transferor, citing as authority Thompson v. Blaisdell, 93 N. J. L. 31, 107 A. 405 (1919), noted in 20 COL. L. REV. 101 (1920).

For cases where the unregistered but real owner attempts to vote, see: Morrill v. Little Falls Mfg. Co., 53 Minn. 371, 55 N. W. 547 (1893); In re Algonquin Electric Co., (C. C. A. 2d, 1932) 61 F. (2d) 779; Thompson v. Blaisdell, 93 N. J. L. 31, 107 A. 405 (1919); Dennistoun v. Davis, 179 Minn. 373, 229 N. W. 353 (1930); In re Election of Directors of Associated Automatic Sprinkler Co., 11 Del. Ch. 369, 102 A. 787 (1917); In re Election of Directors of the Mohawk & H. R. R., 19 Wend. (N. Y.) 135 (1838). But cf. Elevator Supplies Co. v. Wylde, 106 N. J. Eq. 163, 150 A. 347 (1930); Gow v. Consolidated Coppermines Corp., 19 Del. Ch. 172, 165 A. 136 (1933).

[10] Moon v. Moon Motor Car Co., 17 Del. Ch. 176, 151 A. 298 (1930); Italo Petroleum Corp. of America v. Producers Oil Corp. of America, 20 Del. Ch. 283, 174 A. 276 (1934).

[11] In re Canal Construction Co., 21 Del. Ch. 155, 182 A. 545 (1936), noted in 34 MICH. L. REV. 1039 (1936). In this case the administrator of an estate had transferred shares to the legatees but they had neglected to register them. His offer to vote was made over the objection of the real owners and the election inspectors refused it. Held, election sustained. Contra, State ex rel. Johnson v. Heap, 1 Wash. (2d) 316, 95 P. (2d) 1039 (1939).

[12] Thompson v. Blaisdell, 93 N. J. L. 31, 107 A. 405 (1919), noted in 20 COL. L. REV. 101 (1920).

corporate transfer books, and in (2), the court not being bound by the corporate books,[13] it is unlikely that it would sanction the attempt to vote by one who only apparently, not actually, has the right to vote. If this analysis is sound, then it is clear that the inspectors may wield a good deal of power, for their decision will in any case be upheld. As long as they exercise their judgment in good faith,[14] this result seems wise. The laches of the beneficial owner destroys the force of his contentions, while legislative policy supports the affirmance of the election results.

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[13] Triplex Shoe Co. v. Rice & Hutchins, 17 Del. Ch. 356, 152 A. 342 (1930); Downing v. Potts, 3 Zab. (23 N. J. L.) 66 (1851); In re Election of Directors of the St. Lawrence Steamboat Co., 44 N. J. L. 529 (1882); Italo Petroleum Corp. of America v. Producers Oil Corp. of America, 20 Del. Ch. 283, 174 A. 276 (1934); Lawrence v. I. N. Parlier Estate Co., 15 Cal. (2d) 220, 100 P. (2d) 765 (1940); In re Ringler & Co., 204 N. Y. 30, 97 N. E. 593 (1912). But see Matter of Clarke, 186 App. Div. 216, 174 N. Y. S. 314 (1919).

[14] See Triesler v. Wilson, 89 Md. 169, 42 A. 926 (1899), for a good exposition of this principle. For the result when the corporation through its officers or inspectors is guilty of fraud, see: Van Dyke v. Stout, 8 N. J. Eq. 333 (1850); Italo Petroleum Corp. of America v. Producers Oil Corp. of America, 20 Del. Ch. 283, 174 A. 276 (1934); In re Election of Directors of Associated Automatic Sprinkler Co., 11 Del. Ch. 369, 102 A. 787 (1917). Apparently the court did not make an exception for the element of fraud in State ex rel. Johnson v. Heap, 1 Wash. (2d) 316, 95 P. (2d) 1039 (1939).