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VOTING-TRUSTS.

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There are few moneyed corporations, the management of which is not liable to change hands, every year, by the requirement of law or charter that the board of directors shall be chosen annually. Where the stock is held by but a few persons and as a permanent investment, no inconvenience results, because the annual election is always a re-election. But in the case of new enterprises, or corporations with a widely distributed capital, unless some one man or family holds an interest so large as to be practically controlling, changes will not be infrequent. Under such circumstances a vacillating policy often results, and plans of direction may be abandoned, when but half tried, for others which meet with no better fate.

This is a real evil, and the "voting-trust" is the remedy, to which, of late years, there has been frequent resort.

A majority of the shares of the corporation are transferred to one or more trustees, who become invested with the absolute legal title. By the agreement for such transfer, the trustees are to hold the stock for a term of years, and to vote on it at all meetings of the corporation. Such votes, it is often provided, are to be cast according to such directions as may be given from time to time by some committee or other third party, designated in the agreement.

The trustee under the more recent and principal voting trusts has been an incorporated trust company, which has issued to each

shareholder, thus placing his stock in its hands, a "trust certificate." This declares him to be the owner of an equitable interest in the whole trust stock, proportioned to his contribution to it; and refers to the trust agreement as the measure of his rights. It also recognizes his right to transfer his equitable interest, at the office of the trust company, which is then to issue a like certificate to his assignee, on surrender of the original one.

It is obvious that a trust of this character virtually severs the ownership of the stock from the power to vote on it. The legal owner casts the vote, but at the dictation of a third party who is not the equitable owner. And not only is the third party not the equitable owner, but he may, in the progress of time, be directly opposed to his interests. He represents the interests of the original constituents of the trust, as they existed years before. Their interests in the stock meanwhile may have been sold to others, of different views, but these can take no share in the management of the corporation, during the life of the trust.

The legal theory of the relation between the State and those who receive from it a corporate franchise, is that it is one resting on a personal confidence. The State issues, so to speak, its commission to the corporators, as its "trustworthy and well-beloved" servants, fit to do this special work, which it commits to them. They can, therefore, no more alienate the right to vote on their stock at corporate meetings, than the citizen can alienate his right to vote at public elections. Delegation is a temporary alienation, and therefore proxy voting is not recognized at common law, at meetings of corporations. As was said in *Taylor v. Griswold*, 14 New Jersey Law, 222, "the obligation and duty of corporators to attend in person and execute the trust or franchise reposed in or granted to them, is implied in and forms a part of the fundamental constitution of every charter in which the contrary is not expressed."

And as this power of voting cannot, without special authority, be transferred, neither can it ordinarily be suspended. Whoever holds the legal title to the stock must be entitled to vote upon it.

An exception is made when public policy forbids such action. If he holds as a bare trustee for the corporation itself, he cannot be allowed to vote, because the corporation would naturally dictate the vote, and it would therefore represent the wishes of the majority of the directors, and presumably of the stockholders. If it represented the unanimous wishes of the stockholders, it would be useless to cast it, for it could not vary the result. If it represented only a majority, to cast it would give that majority an undue

weight, because greater than that proportioned to their stock interest. While, therefore, stock is owned by the corporation, whether standing in its own name or in the name of a naked trustee, the right to vote on it is suspended. As was said by the Court of Errors of New York in an old case, "It is not to be tolerated that a company should procure stock in any shape, which its officers may wield to the purposes of an election, thus securing themselves against the possibility of removal." *a*

Another exception may be allowed in cases where one corporation, without authority of law, buys stock in another, for the purpose of controlling its management. Here again the principle of a *delectus personarum* on the part of the State, which granted the charter of the latter, comes into prominence, apart from the objection against the purchase by the other, as *ultra vires*. This charter was granted to A, B and C, and their associates. It was granted to attain certain beneficial purposes, through their agency. The purchasing company was incorporated for other purposes, or if for similar purposes, then for their attainment, by working under its own franchise. To allow it to influence the actions of a different corporation, by sharing in the exercise of its franchise, is to divert that franchise from the exclusive control of those to whom it was exclusively granted. While therefore, a corporation may, no doubt, generally invest its surplus funds temporarily in stock of another corporation, and vote on such stock as fully as any of its associate stockholders, it cannot make such purchase for the purpose of controlling another franchise. *b* And if this be done, the power of voting on the stock so purchased may be denied or controlled by a Court of Equity, at the instance of one of the *bona fide* stockholders. *c*

Another exception may exist when the stockholder, though nominally such, is really a creditor of the corporation. The subscriber to preferred stock often occupies virtually that position. His subscription is a mere substitute for a loan. *d* If the preferred stock could control the management of a corporation, there would be no stimulus to develop its business beyond the point where it earned the preferential dividends. The legislature may, therefore, consistently with the legal theory of the rights of stockholders, deny those holding preferred shares the right to vote.

a Ex parte Holmes, 5 Cow. 426, 435.

b *Summer v. Marcy*, 3 W. & M. 105.

c *Pearson v. Concord R. R.*, 13 American and English Railroad Cases, 102.

d *Williams v. Parker*, 136 Mass. 204; *Cotting v. New York & New England R. R. Co.*, 54 Conn. 156, 170.

“The promise to the preferred stockholders was to award them the first net earnings—the holders of the common stock to share in such of the net earnings as they might, by good management, be able to make, over and above the 8 per cent. As the burden was upon the common stockholders, the power to manage might fairly be left with them.” *e*

If, however, a creditor of a corporation receives some of its stock from it as collateral security, the law sanctions his right to vote on it, unless objected to by the other stockholders, notwithstanding the real ownership remains in the corporation. Here the pledgee has a power coupled with an interest. *f*

Assuming, then, the general and almost universal rule to be that the stockholder must retain the right to vote or to direct the vote on his stock, we ask if any scheme of voting-trust can avoid its application.

Some of the earlier trusts of this kind were designed, like that in the Seligman case, to guarantee the control of the corporation to creditors who would not otherwise extend their credit. On the re-organization of a foreclosed railroad, for instance, holders of income bonds might be willing to accept some similar security from the new company, provided they could have a controlling voice in the election of directors. A consideration for the temporary relinquishment in their favor of the voting right might thus fairly arise, and the whole scheme of re-incorporation might depend upon it.

When the Reading railroad was in a position of great financial embarrassment, in 1887, such a voting-trust was devised, under an arrangement between the principal creditors and stockholders. Their bonds and stock were put under the control of a “Reconstruction Board,” with power to adjust securities, reduce interest rates, create or exchange liens, and transfer stock. The stock was to be ultimately held by five representatives of the different interests concerned, and the majority of these dictated the stock vote. They, in turn, issued “trust certificates” to the original stockholders, stating that they owned a beneficial interest in the shares which they had contributed, devoid of the right to vote.

Three years afterwards a holder of one of these trust certificates applied for a temporary injunction to prevent the execution of the voting-trust at a coming meeting of the company, and the case was fully argued on both sides before the Court of Common Pleas, at Philadelphia. Judge Hare, in delivering the opinion, while resting the denial of the injunction primarily on the

e Miller v. Ratterman, 47 Ohio St. 141; 24 North East. Rep. 496, 500.

f Burgess v. Seligman, 107 U. S. 20, 28.

ground that the case was not clear enough to warrant such preliminary relief, discusses the general question involved at some length, and in the following language :

“ Under the statutes of this State, and on general principles, the right to vote on stock cannot be separated from that ownership in such sense that the elective franchise shall be in one man, and the entire beneficial interest in another, nor to any extent, unless the circumstances take the case out of the general rule. It matters not that the end is beneficial and the motive good, because it is not always possible to ascertain objects and motives, and if such a severance were permissible it might be abused. The person who votes, must, consequently, be an owner, but it does not follow that he must be the only one. If, for instance, stock is pledged as a collateral, whether the debtor or creditor shall vote depends on the terms on which the pledge is made. The power is, under these circumstances, necessarily, to some extent severed from the ownership, and the parties may, consequently, determine on which side it shall lie. So much is conceded on each side of this controversy, and the question is, can the debtor and creditor agree to lodge the vote in some one who is to act for both, so long as the debt remains and the stock is held as security for its payment ?

“ The counsel for the Reading Railroad contend that such a course is not forbidden by any rule or principle. In their opinion, there is no reason that forbids a stockholder to transfer his shares to one man as a security for a debt due to another, with a stipulation that the holder shall have the right to vote, and the case would be the same although the intermediary gave the debtor a certificate that the equitable ownership was in him subject to the payment of the amount due. No authority directly in point has been cited on either side, but we incline to think that this view is correct and rules the case in hand. It has indeed been argued for the complainants that the power conferred on the members of the Voting Trust is not coupled with an interest, that they have a dry legal title, with no active duties to perform, and that they should be compelled to transfer the shares standing in their names to the persons who are the beneficial owners.

“ We think that this view errs in looking solely towards the stockholders. They are not the only persons beneficially interested in the railroad ; the lien creditors are also owners, and, if harmony be not preserved, may possess the whole. It was, therefore, necessary to have some arbiter to reconcile interests which were jarring and might diverge, and the want was supplied by the Voting Trust. To decide that the election must be held exclusively on behalf of the holders of the stock certificates would frustrate rather than give effect to the principle that the votes should be cast by those who have a substantial interest in the result. It is not easy to discern how the position of the members of the Trust differs from that of an individual to whom stock is transferred as a security for a debt to a third person. The only duty of such a holder is to keep the certificate safely until the debtor pays or is in default, and then hand it over to whichever party is equitably entitled. Had the duties of the Reconstruction Board and Voting Trust been confided to a single body, with authority to secure the creditors by executing mortgages, and then hold the stock, with a right to vote in the way best calculated to promote the common good, it could hardly have been said that there were no active duties to uphold the Trust or that it came to an end when the mortgages were executed. If

this would have been the rule in the circumstances above supposed, it does not, we think, vary the case that the end was sought to be obtained through two closely related Boards, one supplementing and operating as a restraint on the other. Without pronouncing an opinion on a point which remains open for consideration on the final hearing, it is enough to say that the case is not sufficiently clear to warrant a preliminary injunction that would prevent an election on the day named in the charter, and might cause the irreparable injury which such remedies are given to prevent." *g*

One of the first cases in which the validity of a voting trust, which had not been constituted in aid of a re-organization, or to set an embarrassed company on its feet again in the interest of all concerned, came in question, was that of *Hafer v. New York, Lake Erie & Western R. R. Co.* in the Superior Court of Cincinnati. A controlling interest in the stock of the Cincinnati, Hamilton & Dayton Railroad Co., another corporation, was bought up in 1882 and placed in the name of H. J. Jewett, who was then president of the New York, Lake Erie & Western Railroad Co., under an agreement that he should give an irrevocable proxy to such persons as the Erie should appoint from time to time to vote on the stock; that his stock certificates should be left in the hands of trustees; and that they should issue to the respective owners of the stock, trust, or "pool," certificates for amounts equal to their respective equitable interests. On all stock thus pooled, the Erie agreed to guaranty a certain dividend.

After three years had passed, one Hafer, who owned stock not in the pool, brought an equitable action, claiming the pooling control to be illegal and void, and asking that Jewett be enjoined against delivering any future proxy to the Erie.

The Erie filed a cross bill demanding the proxy, or if the contract should be decided illegal, that it be rescinded, and Jewett enjoined against voting on the stock at any time.

The court, in an able opinion, from which the following quotation is made, sustained a motion for a temporary injunction, and held the trust contract illegal on two grounds: One that it put the control of an Ohio corporation into the hands of a New York corporation (the Erie), and the other, that the stockholders, who united to make it, thereby violated their duty to their fellow stockholders.

"The law has confided the care of the franchises and property of this company to the stockholders, and it is the duty of each stockholder to vote for directors of the company with an eye singly to its best interests.

g *Shelmerdine v. Welsh*, *Legal Intelligencer*, Vol. XLVII, p. 26. (Jan. 17, 1890.)

“Here a large number of the stockholders, for a valuable consideration, have attempted to confer their right to vote upon the directors of another company. This transaction, apart from the want of power in the N. Y., L. E. & W. R. R. Co. to enter into it, is plainly illegal. It places in the hands of persons, in this connection unknown to the law, the powers which have been confided to the stockholders, to be exercised by them according to their judgment, will and discretion for the joint benefit of all concerned. The law presumes that the pecuniary interest of a stockholder will be a motive to impel him to vote in such a manner as will promote the interests of the company. Such a motive is entirely lacking in one who is not a stockholder, and if such a person be empowered to vote for directors he may be subject to interests and motives other than such as would conduce to the welfare of the company.

“A sale by a stockholder of the power to vote upon his shares, is illegal, for very much the same reason that a sale of his vote by a citizen at the polls, or by a director of a corporation at a meeting of the board, is illegal. Each is a violation of duty ; in effect, if not in purpose, a betrayal of the trust. The adjudged cases appear unanimous on this point. *h*

“Both on the ground that the power is denied to one corporation thus to acquire control of another, and that the stockholder cannot barter away the right to vote upon his stock, we hold these contracts void.

“Such being the case we are met with the objection that they are executed and cannot now be interfered with. Many of the cases holding that an executed illegal contract will not be undone by the courts rest upon the doctrine that the parties to such contracts are *in pari delicto*, and for that reason the court will not interfere. Such is *Hooker v. De Palos*, 28 O. S. 251 ; and see 1 *Wharton on Contracts*, Sec. 352, *et seq.*

“It is obvious that the rule as to executed contracts cannot be applied to the plaintiff for any such reason as that last mentioned, for he was not a party to the contract. There are other cases wherein special circumstances made it imperative as a matter of good faith, that the contract should not be interfered with, and others when the protection of interests acquired by innocent parties caused the courts to refrain.

“We find in this case no special circumstances which, in justice and good faith, forbid interference with the further execution of this contract ; and as to innocent parties, there is no suggestion that there are any, except the purchasers of the pool certificates issued by the three trustees to the stockholders ; but these, from the nature of the interest purchased as well as from the instrument by which it was evidenced, received notice of the contract, and are, therefore, in no better or different position from that of the original holders of such certificates. In many respects the case is, at this point, parallel to *Thomas v. R. R. Co.*, 101 U. S. 71, where it was held that an illegal lease of a railroad, which had been in force and carried out by the parties for five years, was not so far executed as to give a party to it the right to insist on the remainder of the term, and that it was not only the right, but the duty of the parties to put an end to it. There, as here, it was not sought to undo the executed portion of the contract, but it was the unexecuted portion which was in question. So far as this case and the remedy sought in it are concerned, the contracts are not

h *Guernsey v. Cook*, 120 Mass. 501 ; *Woodruff v. Wentworth*, 133 Mass. 309 ; *Fuller v. Dane*, 18 Pick. 484 ; *Jones v. Scudder*, 2 Cin. Sup. Ct. Rep. 178 ; *Fremont v. Stone*, 42 Barb. 169 ; *Noel v. Drake*, 28 Kansas, 265.

executed but executory. By virtue of them the same acts are to be performed year after year : on the one side the casting of the vote ; on the other the making good of the dividends ; and in this respect their analogy to a lease is very strong. On the facts now before us there is nothing to show that the termination of the contracts at this time will do violence to the legal or equitable rights of any one.

“It is also suggested by counsel for the defendants that plaintiff has not shown that he has, or will suffer, any pecuniary injury by reason of these contracts, and that as he is not a party to them, he cannot be granted the relief he seeks in this action. To this it is sufficient to say, that each stockholder in a company has a right to a fair and lawful election of the directors. *State v. Bonnell*, 35 O. S. 10. And if he could not resort to a court of equity to prevent unfairness, when he had reason to apprehend it, until he could show pecuniary injury, he might be made the victim of any sort of fraud or conspiracy, without even a remedy in damages after the injury was done.” ⁱ

The Court also, on the motion of the Erie road, after thus declaring the contract illegal, enjoined Jewett against casting any vote on the trust stock in his name. ^j

The result of this judgment was the attempt on the part of the same stockholders to form a new voting-trust in a form which, they, apparently, hoped would not be obnoxious to the same objections. A majority of the C. H. & D. stock was placed in the hands of three trustees under an agreement made in 1886, and to continue in force till 1891, and until determined thereafter by a two-thirds vote of the consenting stockholders. Each stockholder signing the agreement transferred his stock to the trustees, and received from them an “assignable trust-certificate,” for a corresponding number of shares of the “beneficial interest” in the capital stock of the road. The agreement made the trustees the attorneys of the consenting stockholders to vote for them at all meetings of the company, “and the power herein given shall continue irrevocably.” Each trust certificate issued stated that it “does not give the holder a right to vote at the meetings or elections of said company.”

After three months, purchasers of a minority of the trust-certificates tendered theirs to the trustees, with a request that the shares of stock represented by them be transferred to them, which request the trustees refused to comply with. They then sued for an injunction to prevent the trustees from voting on any of their stock, and for a transfer of the stock to themselves.

The Court granted a temporary injunction, stating the law thus:

ⁱ *Hafer v. New York, Lake Erie & Western R. R.*, 14 Weekly Law Bulletin, 68, 70.

^j *Ibid.*, p. 72.

“The agreement made may be finally reduced to this. The entire beneficial interest of the stock is severally vested in the certificate holder, the voting power in the trustees ; and the situation does not differ materially from what it would be if the stockholders, retaining their shares, had simply united in a proxy authorizing the trustees to cast the vote of all of them for directors.

“We can perceive no reason why any number of shareholders, either by means of proxy or by vesting the legal title in another, may not authorize him to vote on their stock ; and as such is the substance of this agreement, we consider it not illegal. So long as the parties to it, or their successors in interest, are satisfied with it, no other person may complain, and the “irrevocable clause” does not effect the rights of any one. But if the equitable owner elects to withdraw the legal title from the holder thereof, the case assumes a different aspect. As we have heretofore seen, it is a dry trust — the trustees having no interest to set up in favor of its continuance ; but the parties have agreed that this power to vote vested in the trustees shall be irrevocable. Can this provision be sustained as against the demand of the certificate holders — that they may be permitted to revoke ? If such demand be not complied with, the party holding the entire beneficial interest in the stock can not cast the vote thereof, while it may be voted upon by one having no interest in it or in the company ; and so it may come to pass that the ownership of the majority of the stock of a company may be vested in one set of persons and the control of the company irrevocably vested in others. It seems clear that such a state of affairs would be intolerable, and is not contemplated by the law, the universal policy of which is that the control of stock companies shall be and remain with the owners of the stock. The right to vote is an incident of the ownership of stock, and cannot exist apart from it. ^h The owners of these trust-certificates are, in our opinion, the equitable owners of the shares of stock which they represent, and being such, the incidental right to vote upon the stock necessarily pertains to them. They may permit the trustees, as holders of the legal title, to vote in their stead, if they choose, but when they elect to exercise the power themselves, the law will not permit the trustees to refuse it to them.

“As to the allegations of the answer concerning the motives of the defendants in entering into the agreement, we can only say that we see no reason to doubt that their motives were laudable ; but that cannot materially affect the case, as we have only to do with their action and its effect. So, also, as to the allegation that plaintiff and certain of the defendants have combined to purchase a controlling interest in the stock of the company for speculative purposes, we can only say that it seems probable that they have combined to purchase a majority of the shares, in order to secure control of the company ; but that is not of itself an unlawful proceeding, and as to their alleged speculative purposes, no proof to sustain the allegation has been offered.

“Moreover, we are dealing with the rights of property, and it is no answer to one's demand for the possession and control of his own property to say that he *intends* to use it for an illegal purpose. The law gives to every one, not under disability, the control of his own property, and imposes upon him the duty of making lawful use of it. If the illegal proceedings feared by defendants should be undertaken by any of the parties, the law will doubtless afford remedies, and the courts be ready to apply them.

^h *Freon v. Carriage Co.*, 43 O. S. 38 ; *Hafer v. N. Y., L. E. & W. Ry. Co.*, 14 W. L. B. 68.

"It follows that the motion for a temporary injunction should be granted to the extent of restraining the trustees from voting the stock which is represented by certificates held by the plaintiff and the cross-petitioners. Should a mandatory order to compel the transfer of the shares to the trust-certificate holders be granted on preliminary hearing, it might work great injury to the parties if the court make a different order upon final hearing. A mandatory order is therefore refused." ^l

Griffith *v.* Jewett was cited with approval by WHEELER, J., in the Circuit Court for the Southern District of New York, in 1887, and the right of a stockholder, who had become a party to the creation of a voting-trust, to revoke his grant of authority to vote, was affirmed, on a motion for a preliminary injunction. This case grew out of one of these trusts, committed to Drexel, Morgan & Co., of New York, by a majority of the stockholders of the Dubuque & Sioux City Railroad Co., in 1886, with the design of effecting some sale or lease of the road, either directly or by a sale of the shares thus deposited. The plaintiff sought an injunction to prevent the trustees from voting on any of the trust stock, but gained it only as to his own shares. His claim that the whole transaction constituted a trust for the corporation itself was held to be untenable, without proof that it was accomplished by the use of corporate funds. If the other stockholders were content with the arrangement, he could not assume to revoke in their behalf. ^m

In an earlier case in the same court, a voting-trust was sustained by Judge BLATCHFORD (now of the Supreme Court of the United States), where the trustee was left free to vote at his own discretion, and the attack came from an outside party. This was the trust credited in stock of the Pacific Mail Steamship Co., in 1864, to endure for four years. The trust agreement provided that none of the contributing stockholders should sell his holding, without first offering it at its market value, to the others, or the trustees, and gave the trustees an irrevocable power of attorney for voting. In 1867, parties interested in a rival company procured proxies to vote at an annual meeting, and planned to control the election by getting at the last moment a temporary injunction, *ex parte*, to prevent the trustees from voting, on the ground of the illegality of the trust. The trustees obtained an injunction against proceeding to any election, in which their votes were excluded, and the court held that the trust was not against public policy. ⁿ

^l Griffith *v.* Jewett, 15 Weekly Law Bulletin, 419, 422, 423.

^m Woodruff *v.* Dubuque & Sioux City R. R. Co., 30 Fed. Rep. 91.

ⁿ Brown *v.* Pacific Mail S. S. Co., 5 Blatchford, 524, 527.

Had the trustees, in this case, not had the right to vote according to their own discretion, a different result might perhaps have been reached. Certainly there is much to be said in favor of the broader view that a voting trust constituted for a term of years, and purporting to be irrevocable, is void, when attacked from any quarter on grounds of public policy.

There can be no question that the almost universal requirements of annual elections, and the right of each share to a vote, are meant to keep the management always under the control of the actual owners.

This has been sometimes treated as the right of the beneficial rather than the nominal or registered owner, as in *Vowell v. Thompson* (3 Cranch Circ. Ct. 428), where the court said that one in whose name stock stood, but who really held it as collateral security, might be required to give a proxy to the pledgor to vote at all meetings, until a forfeiture or foreclosure.

The voting-trust is an attempt by some of the corporators to bargain away their right to share in the control of the corporate business, without consulting the wishes or welfare of the rest. Whether anything short of unanimous consent can warrant such an alienation by one stockholder of his right, to the possible prejudice of the rest, must depend on how far relations of trust and mutual confidence are deemed by law to exist between them. That a stockholder has some fiduciary relations and duties to his fellow stockholder, which he cannot disregard at will, must now be considered as established. *o*

Is it not, then, opposed to these mutual obligations, and contrary to public policy to allow a part of those owning stock in a common enterprise to tie up the entire management for a term of years? It burdens the free transmission of property, and binds the present to the past. It may, by sales of trust-certificates, bring the owners of a majority of the stock in the trust, and also a majority of the stock out of the trust, in accord, and yet leave them with a board of directors in control, elected by a Trust Company, at the bidding of the agents of former stockholders, and furthering private interests of their constituents, in opposition to those of the corporation.

In another Pennsylvania case, these views find support, *Vanderbilt v. Bennett*, 6 Penn. County Court, 193, where the court say (p. 203) :

o Fuller *v.* Dame, 18 Pick. 484; Guernsey *v.* Cook, 120 Mass. 501; Woodruff *v.* Wentworth, 133 Mass. 309; West *v.* Camden, 135 U. S. 513.

"We think that the trust agreement in question is absolutely void, as contrary to public policy, and because it substantially amounts to a repeal of our Act of Assembly in regard to the right to vote incident to the ownership of railroad stock."

A case involving the consideration of this question was recently determined by the Superior Court of Connecticut, which, as it was fully argued and made the subject of an elaborate decision, will be reported in the supplement to the current volume (Vol. 60.) of Connecticut Reports (*Starbuck v. Mercantile Trust Co.*). The majority of the shares of the Shepaug, Litchfield & Northern Railroad Co. had been placed in the name of the Mercantile Trust Co. of New York, on a five year voting-trust, and trust-certificates had been issued by the Company. The plaintiffs bought some of these certificates, with notice, of course, of the trust, and then notified the Company that they revoked the trust, so far as their interests were concerned, and demanded a transfer of their stock. This being refused, and an election being soon to occur, suit was brought and judgment rendered for an injunction, and a transfer. In the opinion of the court (ROBINSON, J.), the point now under particular consideration was referred to, as follows :

"It is the policy of our law that an untrammelled power to vote shall be incident to the ownership of the stock, and a contract by which the real owner's power is hampered by a provision therein, that he shall vote just as somebody else dictates, is objectionable. I think it against the policy of the law of this State for a stockholder to contract that his stock shall be voted just as some one who has no beneficial interest, or title in or to the stock, directs ; saving to himself simply the title, the right to dividends, and perhaps the right to cast the vote directed, willing or unwilling, whether it be for his interest, for the interest of other stockholders, or the interest of the corporation or otherwise. This I conceive to be against the policy of the law, whether the power so to vote be for five years or for all time. It is the policy of the law of our State that ownership of stock shall control the property and the management of the corporation, and this cannot be accomplished, and this good policy is defeated, if stockholders are permitted to surrender all their discretion and will, in the important matter of voting, and suffer themselves to be mere passive instruments in the hands of some agent who has no interest in the stock equitable or legal, and no interest in the general prosperity of the corporation.

"And this is not entirely for the protection of the stockholder himself, but to compel a compliance with the duty which each stockholder owes his fellow stockholder, to use such power and means as the law and his ownership of stock give him, so that the general interest of stockholders is protected, and the general welfare of the corporation is sustained, and the business conducted by its agents, managers and officers, so far as may be, upon prudent and honest business principles, and with just as little temptation to, and opportunity for fraud, and the seeking of individual gains, at the sacrifice of the general welfare, as is possible. This, I take it, is the duty that one stockholder in a corporation owes to his fellow stockholder ; and he cannot be allowed to disburden

himself of it in this way. He may shirk it, perhaps, by refusing to attend stockholders' meetings, or by declining to vote when called upon, but the law will not allow him to strip himself of the *power* to perform his duty. To this extent, at least, a stockholder stands in a fiduciary relation to his fellow stockholders. For these reasons I hold that this trust agreement is void as against the policy of the law of this State."

Similar doctrines were maintained in a recent case in the Court of Chancery of New Jersey (PITNEY, Vice-Chancellor). The majority of the shares of the Upper Delaware River Transportation Co. had been put, under an irrevocable power of attorney, into the control of a small stockholder, to vote on for five years, "for the promotion of the best interests of said company," and to secure the election of directors who would make and keep one of the constituent stockholders in the office of manager at a salary of \$2,500.00, during the five years, provided he so long faithfully discharged its duties. Some of the stockholders revoked this power, and an injunction was granted at their instance. The Vice-Chancellor speaks thus of the fiduciary relation between the members of a corporation :

"The theory upon which the capital of numerous persons is associated in various proportions, in the shape of a trading corporation, to be managed by a committee of the stockholders, is that such committee shall truly represent and be subject to the will of the majority in the interests of the stockholders. The security of the small stockholders is found in the natural disposition of each stockholder to promote the best interests of all, in order to promote his individual interests. A member of an ordinary partnership has an additional security in the personal character of each of his partners, and may decline to be associated with any he does not know and approve. But a stockholder in a corporation cannot control the *personnel* of his associates, and must rely upon their self interest alone.

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"If a majority of the stock is owned by one person, he has no right to use his power as such owner to advance his private interests at the expense of the minority. And in like manner he has no right to depute to another, who has little or no interest in the corporation, a power to use his stock for that purpose. Such a deputation is the more dangerous because the person intrusted with the power has no such inducement to promote the interests of the corporation as the stock-owner has. Where the majority of the stock is owned by one man, or set of men, acting in concert, the minority are, to the same extent, protected by the natural interests of the majority to promote the real interests of the corporation ; but where the person, who has little or no actual ownership, has the unrestricted voting power of the majority of the stock, the minority loses this protection, and what may be properly termed the underlying and fundamental understanding and contract upon which the association is founded is abandoned and broken. The motive which may induce the owner of a controlling interest in the corporation to deprive himself of and depute to another the power to use

it as he may see fit, during a fixed period, may be of little consequence to his associates, but is usually found in the consideration of personal gain." *φ*

Up to the present time, no case, it is believed, turning on the validity of what may be termed the ordinary voting-trust, has come into the reports of any court of last resort. The opinions, from which quotations have here been made, have been all from ordinary trial courts, and citations have been made the more freely from them for this reason, and because, if in print anywhere, they are not easily accessible to the profession. This silence in the reports on this topic is, no doubt, partly due to the fact that the attacks, to which these trusts are most liable, are in the shape of applications for a temporary injunction, with reference to an impending stockholders' meeting. Whether the relief sought is granted or not, as soon as the immediate emergency is past, the motive for further litigation is less pressing. There has been also, probably, a general acquiescence of counsel in the doctrines held in the trial court, which, as we have seen, have been such as to protect the real stockholder, even against himself, and to protect each stockholder against oppression by the rest.

The present tendency of American government seems to be towards greater care in guarding the interests of minorities. In the matter of corporations, this has been manifested in constitutional provisions introducing the principle of the cumulative vote, and in statutes of many kinds. It is also seen in the disinclination of the courts to interfere actively in aid of an effort to secure the control of a majority of the stock, for speculative purposes. Thus in *Foll's Appeal*, 91 Pa. St. 434, a decree for a specific performance was refused, when the contract was to sell a few shares of stock, which were desired to secure the control of a trust, the rest of the stock necessary having been secured largely on credit. "The stock," say the court, "as now held, is scattered among a variety of people and held in greater or lesser amounts. It is difficult to see how the small stockholders, who have modest earnings invested in it, the depositors who use it for the safe keeping of their money, or the business public who look to it for accommodations in the way of loans, are to be benefitted by the concentration of a majority of its stock in the hands of one man, or in such a way that one man and his friends shall control it. Especially is this so, when, as here, an attempt is made to control it by the use of borrowed

φ *Cone's Ex'rs v. Russell*, 21 Atlantic Reporter, 847, 849.

capital. The temptation to use it for personal ends, in such case, is very strong."

The institution of the private corporation has been one of the great factors in the advance of modern society. It cannot exist without adherence to the principle of majority rule. But the majority must come honestly by their power ; they must use it without injustice ; and the majority in power must, at least once a year, be the majority in interest.