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VOTING TRUSTS AND HOLDING COMPANIES

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VOTING TRUSTS AND HOLDING COMPANIES.

The purpose of the following article is to discuss the fundamental principles involved in the creation of trusts and contracts with reference to the voting power of stock in corporations, and also the right of corporations to vote upon the stock of other corporations held by them. The subject is one involving much confusion in the decisions, but has become of great practical importance on account of recent events in the financial world. The writer's fundamental premise is the generally accepted rule that the majority of the stock of the corporation has the right to control its management absolutely, whether that majority of stock be owned by an individual, or by a combination of individuals, incorporated or unincorporated; such right of control being subject only to the limitation that it must not be used for purposes of fraud. This doctrine has been so often affirmed by the courts that it may be regarded as a fundamental principle of corporation law. It is true that traces of a different doctrine are to be found, to wit, the doctrine that the majority stockholder is a trustee and that his dealings with the corporation are to be treated as fiduciary transactions; but this doctrine, however unimpeachable from an ethical standpoint, seems to have been able to triumph finally only in Colorado.

THE NATURE OF VOTING TRUSTS, POOLS, ETC.

There are three elements in the right of property: the legal title, the beneficial interest and the right of control or manage-

ment. In complete ownership all these are united in one person; but they may be, and often are, divided among different persons. In the case of a trust, the title is in the trustee; the beneficial interest is in the *cestui que trust;* while the right of control is in the former or in the latter as the trust is active or passive. Stock is property; and the elements of that property may be separated and divided among different persons. The title may be vested in A, the right to dividends in B, the right to vote in C. This elementary principle of law, however, has not met with universal acceptance by the courts. It has sometimes been said that the right to vote cannot be separated from the ownership of stock;[1] and sometimes even that the right to vote cannot be separated from the beneficial ownership of that stock.[2] In order to appreciate the force of these views it becomes necessary to analyze the different situations which may be created with regard to the voting power of stock.

First, A gives B a proxy to vote upon A's shares. B is a mere agent, and the proxy is revocable at any time.[3]

Second, A puts his shares in B's name in trust for himself. B, as the holder of the legal title, has the voting power; but as the trust is a naked or dry trust, B is bound to vote in accordance with A's wishes, or to give A a proxy. The trust itself, moreover, may be terminated at any time.[4]

Third, A puts his shares in B's name, but creates an active trust, giving B the power to manage and dispose of the shares for A's benefit at his discretion. Here B is invested not merely with the legal title but also with the power of control. A, having retained only the beneficial interest, has no right to vote or to control B's vote.[5]

Fourth, A gives B a proxy which is called irrevocable. If there is no consideration for the transaction, the proxy is revocable as in the first case. Suppose, however, that B gives a consideration for the proxy. The power of voting is then coupled with an interest, and like all powers coupled with an interest, becomes irrevocable for the time specified, which may be in perpetuity.[6] The two objections made to this rule are first, that the power is not coupled with an interest;[7] and second, that the contract is illegal and against public policy. The question of legality will be discussed hereafter. As to the first objection, it involves a fallacy. Because the holder of the proxy has no interest in the *dividends,* it is said that he has no interest in the *shares.* As a matter of fact,

however, known to every one in the business world, the right of voting is a valuable right, as well as the right to receive dividends. One who has bought that right and paid for it has acquired an interest in the *res* upon which the power is to be exercised, and the power is therefore irrevocable.[8]

Fifth, A and B agree that their stock shall be voted in accordance with the will of C. This agreement, if legal, gives to A and to B respectively the right to insist that the other shall allow C to vote upon his shares. The situation is substantially the same if A, B, and C agree that all their votes shall be cast in accordance with the wishes of the majority, or of one of them.[9]

Sixth, A, B, and C transfer their shares to D in trust for the purpose of voting upon them. If there is nothing more, there is a mere naked trust, as in the second case.[10] If, however, there is an agreement between A, B, and C, that the trust shall continue for a certain period, the situation is like that in the fifth case. The trust becomes an active one; and the duty of the trustee is to exercise his discretion in voting the stock, A, B, and C having bound themselves to abide by his discretion. The situation is substantially the same if the trustee is bound to vote in accordance with the wishes of a majority of the beneficial owners, or of a particular owner.[11]

The Legality of Contracts and Trusts Affecting the Voting Power of Stock.

If stock is to be treated as other property, what element of illegality can be found in any of the situations presented in the preceding analysis? In the absence of statute, "we can perceive no reason offensive to public policy, preventing a stockholder from giving another power over, or rights in, his shares in a corporation to the same extent that he might give in any property."[12] "Combination of common interests is necessary, and constantly is taking place. It is as legitimate for a majority of stockholders to combine as for other people."[13] "What are known as pooling agreements are not necessarily illegal, but each case will depend upon the objects to be attainned."[14] An agreement by shareholders for a valuable consideration that they will vote their shares so long as they hold them in a particular way is valid.[15] "An agreement which seeks to control the stock of a corporation for purposes of management, lawful in itself, is not subject to any infirmity, but is the exercise of a legal right."[15a] And yet, in spite of all this, there is

undoubtedly a strong prejudice in the minds of many against the validity of voting contracts and agreements. What are the objections raised?

The first objection is that a stockholder owes to other stockholders the duty of exercising and expressing his judgment in respect to the control and management of the affairs of the corporation.[16] The fallacy here is in the use of the word "stockholder" to denote the beneficial owner of the stock. It is true that there are statutes in some jurisdictions which may be construed as imposing such a duty on the beneficial owner of stock. In the absence of statute, however, suppose that A and B form a partnership, each furnishing part of the capital to purchase certain stock. It is agreed that A shall have the dividends and B the right to vote. What injury this agreement inflicts on their fellow stockholders is not apparent.[17] Has C the right to insist that A shall vote upon the stock bought with the firm's capital? or if A will not vote, that B shall be allowed to share in A's dividends? Sometimes it is even said that A owes a duty to the public to vote in order to prevent the corporation from violating the law![18]

The second objection to voting trusts is that the stockholders excluded from the trust are deprived of the right to combine with other stockholders to elect a majority of the directors; in other words, that the minority stockholders are permanently excluded from a voice in the management.[19] It is conceded that the majority stockholders have the right to manage the corporate affairs; but it is denied that the majority have the right to insure the permanent control of the corporation by a majority of that majority through the formation of a voting trust. The fact that permanence of control is one of the most important factors in corporate finance makes little impression on those who forget Lord Bowen's maxim, "Law should follow business."[20] A slight familiarity with the circumstances of recent "raids" on corporations is sufficient to show the unsoundness of the foregoing objections from a business standpoint; while the technical reason for upholding the control of a majority of the stock by a corporation, and refusing to allow that control by a voting trust, is not apparent. It has been said that each stockholder has a right "to the benefit of the fundamental and statutory rule that the best interests of the minority are found in a rule by the majority."[21] It would seem to follow that the best interests of the majority stockholders as a whole may be intrusted to a majority of that majority. The minority stockholders are

equally deprived of an opportunity to combine with other stockholders when a corporation owns the majority of the stock; and to some extent, when any of the stock is owned by a corporation, since the control of that stock is in the hands of the majority of that corporation. It is submitted that the only right which any stockholder has against other stockholders is to insist that the control of the corporation by one or more of them shall not be used for purposes of fraud and oppression; and that the minority stockholder has no concern with the ownership of the majority stock, or with the division of that ownership between different parties, unless some fraud is practiced or intended against him personally.

If, however, there is any illegal object in the voting combination, it should of course be set aside. It is illegal for the majority to use their power of control for the purpose of securing to themselves special advantages at the expense of the minority.[22] It may perhaps be illegal for the holders of a majority of stock in two competing railroad companies to create a voting trust of their holdings, though the determination of this question awaits the decision of the United States Supreme Court in the Northern Securities case.[23]

In some cases a distinction is drawn between combinations to control the voting power permanently, and contracts to control that power for a "fixed, definite, and reasonable" period.[24] The reason for this distinction is not apparent. If the combination in question interferes with the rights of other stockholders, or of the public, for any period, however short, it is illegal.[25] If it does not so interfere in its inception, there can be no particular time at which the combination, previously lawful, immediately becomes unlawful. Neither the rule against perpetuities, nor the rule against restraints on alienation has any application to the case. There is no contingent future interest, violating the former rule; nor any restraint upon the alienation of the entire property in the stock with the consent of all the persons interested. It is true that the voting power of A's stock cannot be alienated without B's consent; but this is no more a restraint on alienation than B's easement in A's land is a restraint on the alienation of the land.[26]

Another distinction as to the validity of voting combinations has been drawn with reference to the consideration for the agreement between the stockholders. It has been said that if the only consideration for the creation of a voting trust is the mutual promises of the stockholders that the stock shall be voted by the

trustee, the trust is revocable;[27] while if there is some other consideration, it may be irrevocable. To make the validity of an agreement depend upon the question whether the consideration is executed or executory, is to introduce a distinction unknown to the law of contracts. Mutual promises are just as valid a consideration for each other in other contracts as the payment of money; why not in voting contracts?

Another difficulty with voting combinations has been caused by a misapprehension of the distinction between dry and active trusts. It has been said that the fact that the trustee has no beneficial interest in the shares, and no function to perform except that of voting, makes the trust a dry trust.[28] It is clear, however, that if the trust is created for the purpose of carrying out a certain policy, the trustee has an active duty to carry out that policy, and the trust is an active one.[29] And it seems equally clear that the mere agreement of the stockholders that the trustee shall exercise the voting power shows that they regard the exercise of the discretion of the trustee as important for their own interests, and makes the trust an active one.[30]

A distinction has been drawn between a voting trust formed for the purpose of carrying out a certain policy in the management of the corporation, and a trust where the formulation and execution of a plan for the management are left to the trustee;[31] but the reason for this distinction is not apparent. If A is a literary man, and B a banker, may not A transfer his shares to B, in trust to manage them like any other property as an active trustee? Does the fact that B's judgment, and not A's, is to govern, affect the validity of the trust? And if A, owning a majority of the stock, may create an active trust for his own benefit, why may not A, C, and D create a similar active trust for their joint benefit? The only answer is that the other stockholders are entitled to the benefit of the judgment of A, C, and D, regardless of the fact that B's judgment may be far more valuable, not merely to the majority stockholders, but to the corporation itself, and that A, C, and D all recognize that fact; which is not convincing.[32]

Another distinction has been drawn between an agreement between A and B that B's stock shall be voted as A may direct, and an agreement that B's stock shall be voted as C may direct, C being a person neither interested in the stock nor a representative of persons interested.[33] This distinction is based on no satisfactory reason. If A, owning 1,000 shares, may agree that his stock shall

be voted as B, owning one share, may direct, why may he not agree that C shall vote on the stock, although C does not own a single share? C is not interested in A's stock, it is true; but neither is B; for B's holding of a single share gives him no interest whatever in A's 1,000 shares.

Still another source of confusion has been the failure to distinguish between trusts and proxies. A proxy is a mere agent; and agency is always revocable unless the power is coupled with an interest. A trustee is not an agent. He has the title to the property, and the power of management, unless the trust is a dry trust, when the right of control is in the *cestui que trust.* Because a proxy is revocable, it has been assumed that a voting trust is revocable;[34] and statutes limiting the creation of proxies have been construed as applying to the creation of trusts.[35] It is within the power of the legislature to regulate the right of voting, and to limit that right to persons having the beneficial interest in the stock; but a limitation on the creation of proxies should not be held to apply to the creation of trusts, unless it is clear that the legislature meant what it did not say; and it is reasonable to suppose as matter of law, if not as matter of fact, that statutes are drawn deliberately and with ordinary knowledge of the meaning of legal terms.

It may be said that almost the entire difficulty with reference to voting combinations springs from a single fact—the refusal to recognize that the voting power of stock is a valuable property right[36] as well as the right to receive dividends. Every business man knows that the right of control has a money value distinct from the right to receive dividends; and recognizing that fact, contracts are daily made with reference to the right of control. To say that that is not to be treated as property, valuable and transferable property, which is so clearly recognized by all financiers as such, is to involve the law in constant confusion, and to impede the legitimate pursuit of happiness by the holders of corporate stock.

The courts have apparently been misled to some extent by a supposed analogy between the duty of a citizen to the State in voting, and the duty of a stockholder to a corporation. There is no satisfactory middle ground between the doctrine that each stockholder is a trustee for the corporation,[37] and the doctrine that the duty of the stockholder is simply a duty not to defraud the corporation by using his power of control to its injury.[38] The former doctrine is generally repudiated on the score of convenience;

but the alternative is not always so clearly recognized; and the result is confusion.

The real nature of a share of stock is this: It is a right to share in the profits of the corporation as those profits are made and distributed in the form of dividends under the control of the majority stockholders, *plus* a right to insist that the majority stockholders shall not commit fraud, *plus* a *chance* that the shareholder may, by acquiring the ownership or control of the majority of the stock, control the corporation entirely at his own discretion, so long as he does not commit fraud on the other shareholders. Of his rights the shareholder cannot be deprived; but his power of control is not an absolute right; it is merely a contingent right, the contingency having no relation to the ownership or control of an individual share, but being dependent solely upon the ownership or control of a majority of the shares. If the majority shareholder is an individual, the minority stockholder has no right against him except to insist that he shall not defraud the corporation. The minority stockholder's rights are not increased by the fact that the majority of the stock is held by a combination of individuals, whether in the form of a trust, a pool or a corporation. The only logical ground upon which any arrangement between the majority stockholders can be attacked is that the object and effect of that arrangement is to deprive the minority of their substantial rights. To say that a voting trust causes a direct injury to the minority stockholders "by stripping from their stock an element of pecuniary value to which they are entitled"[39] involves what is known in logic as a fallacy of division. The thing of value is the power of controlling the corporation, not the mere right to vote. In a corporation with 100 shares, of which 51 are controlled by a single shareholder, the right of the holder of the other 49 shares to vote is of no practical value whatever, so far as the ordinary management of the corporation is concerned. The thing which really is of value, the power of control, attaches only to the ownership of the majority of the stock as an entity, and the fallacy of division occurs in attributing to each share which goes to make up that majority, an element of value which belongs only to all the shares composing that majority taken together.

The Right of One Corporation to Vote upon the Stock of Another Held by It.

The right of one corporation to buy stock in another is not for discussion here. The buying corporation may or may not have

that right. If it has that right, it becomes the owner of the stock, and possesses all the rights of ownership. If it has not that right, the general rule governing *ultra vires* transactions governs; the contract for the purchase is void, but the title to the stock passes upon the completion of the sale.[40] The title having vested in the purchasing corporation, the purchaser has all the rights of ownership, regardless of the fact that the transaction was illegal in its inception.[41]

The first objection raised to these elementary principles is that if the holding corporation were to vote upon the stock it would be engaging in a business not authorized by its charter.[42] The answer to this objection is that the State alone is concerned with the question. The title to the stock having vested in the purchasing corporation, the right to vote is merely one of the necessary incidents of ownership. The exercise of the rights of an owner by a corporation can never be questioned on the ground that the acquisition of the property is *ultra vires*.[43] Moreover, it is unsound to speak of a stockholder as engaging in the business carried on by the corporation.[44]

Another objection to the voting of stock in one corporation by another is that where the voting corporation is a competitor of the other, it is interested in sacrificing its rival.[45] That the holding corporation should be restrained from injuring its rival is clear;[46] but the fact that an individual stockholder is a competitor of his corporation does not restrict his right to vote; why then should the fact that the corporation and the corporate stockholder are rivals affect the rights of the latter?[47]

Another objection to such voting is that the directors elected by the holding corporation would be subject to a conflict of duties.[48] There is no more reason, however, why the directors of a corporation should violate their duties in the interest of a corporate stockholder than in the interest of an individual stockholder controlling the same amount of stock.

Another objection to such voting is that it may operate in restraint of trade.[49] It is obvious that if one corporation holds the majority of stock in one or more other corporations, there will be no real competition between them. There is no common law rule, however, requiring corporations to compete with each other whether they wish to do so or not. Statutes may affect the case in various ways. The legislature may absolutely prohibit corporation A from acquiring stock in corporation B, so as to prevent

A from acquiring any title to the stock.[50] This situation is unusual. Or the legislature may provide that no corporation shall hold stock in a competing corporation, or in two corporations which are themselves competitors. This, in effect, is the construction placed upon the Sherman Anti-Trust Act, so far as interstate commerce is concerned, by the Federal court in the Northern Securities Case.[51] The question of the construction of that act, or of its constitutionality, if the construction placed upon it by the court is correct, need not be here discussed. It may be suggested, however, that the court does not pay sufficient attention to the distinction between the legality of the motive governing the Securities Company in its purchase of the stock of the competing roads, and the motive of the stockholders of that company in forming it, on the one hand, and the legality of the purchase itself on the other. If any existing corporation had the right to purchase the stock of the competing roads, there could be no illegality in the formation of a new corporation for that purpose. Conversely, if it was illegal for the Securities Company to make the purchase in question, because it was formed for the object of making that purchase, it could only be because the purchase of a controlling interest in the stock of two competing roads by any corporation is illegal under the Sherman Act.

Even if the purchase of stock by a holding company in competing corporations is illegal, the title to the stock passes, and with it the right to vote. Under the Sherman Act, the purchasing corporation, it has been held, may be restrained from voting upon the stock at the instance of the United States,[52] but not at the instance of a State in which the competing corporations operate, even though the holding company has violated the criminal law of that State in making the purchase.[53] It seems clear that no minority stockholder should have the right to enjoin the holding company from voting without showing some threatened injury to himself.

It has been said that a corporation holding the majority of stock in another corporation and assuming the control of its affairs through its control of its officers and directors, becomes for all practical purposes "the corporation of which it holds a majority of stock, and assumes the same trust relation towards the minority stockholders that a corporation itself usually bears to its stockholders."[54] Legally, however, there is no difference between the duty of an individual majority stockholder and that of a corporate

majority stockholder. Whatever duties the majority owe to the minority ought to be the same in all cases, and not restricted to the case where the majority stockholder is "a corporation or a combination of individuals." Unfortunately, the rights of minority stockholders are by no means clear. The courts are hesitating to-day between applying the strict rule applicable to directors, and treating the majority stockholders as fiduciaries, and applying the rule of convenience, that the acts of the majority can only be attacked by proof of actual fraud. It is perhaps, natural, therefore, that the stricter rule should be the more readily invoked where the majority stockholder is a corporation than in other cases.

The effect of the organization of a series of corporations, each controlling a bare majority of the stock in the one preceding, and thereby giving to the holder of a majority of the stock of the last corporation, having but a few thousand dollars capital, the control of the first of the series with a capital of many millions, is questioned in *Robotham v. Prudential Ins. Co.*[55] The court intimates that the minority holders of the largest corporation might "disfranchise the few irresponsible adventurers who assumed to wield the voting power of the majority of the stock—disfranchise this stock until the beneficial owners of it should take control of their own property and use its voting power." The answer to this is that the beneficial owners of the largest corporation A, are first, the minority stockholders and, second, corporation B; while the beneficial owners of corporation B are first, the minority stockholders of that corporation and second, corporation C. Now if the minority stockholders of corporation A undertake to disfranchise the stock held by corporation B in corporation A, they are disfranchising the minority stockholders of corporation B, who have an interest in corporation A; while if the minority stockholders in B are allowed to vote at stockholders' meetings of A, then the minority stockholders of C, D, E, etc., should also be allowed to vote at such meetings. This would require, first, the ignoring of all the corporate entities; second, the determination of how many votes should be cast by the minority stockholders of the respective corporations at the meetings of each corporation—a practical impossibility; and third, the control of each corporation by a minority of its legal stockholders, in violation of well settled general principles of law. The court in the second place intimates, "that the actual, beneficial owners of the majority of stock in corporation A might break through the chain of corporate fictions which separated them

from their property, and dictate how its voting power should be exercised." The answer to this is that the "actual, beneficial owners" of corporate property are the stockholders; that when corporation B owns stock in corporation A, the actual, beneficial owners of that stock are the members of corporation B; and if corporation Z owns stock in corporation Y, the actual, beneficial owners of that stock are the members of corporation Z. To deny to the majority of the stockholders of corporation Z their right to control the vote upon the stock held by Z in Y, is to deny to them that power of control of the corporate property by the majority which is a fundamental principle of corporation law. And if the power of one corporation to own and vote upon stock in another corporation is conceded by the law, that right cannot logically be granted to corporation Z, whose members are individuals, and denied to corporation B, the majority of whose stock is held by corporation C, merely on the ground that the ultimate control of A is thereby vested in the majority stockholders of Z. The third suggestion of the court is that the holding companies might be dissolved at the suit of the State as formed for an unlawful purpose. The nature of the supposed illegality, however, is not apparent, except upon the theory that one corporation has no right to acquire a controlling interest in another,—a theory which is expressly repudiated by the court.

The effect of the transaction in the case of the Prudential Insurance Company would have been to enable the directors of the insurance company by using the funds of the insurance company to purchase a controlling interest in the stock of a trust company, which would in turn purchase from those directors the controlling interest in the insurance company. The result would have been to place the existing board of directors in permanent control of both companies. This was treated by the court as *ultra vires* on the part of the directors; but as the directors controlled the majority of the stock, they would have the right as stockholders to ratify their own acts as directors unless such acts were fraudulent or prohibited by the charter of the corporation.

Edward Avery Harriman.

Derby, Conn., December, 1903.

APPENDIX.

1. *Harvey v. Improvement Co.,* 118 N. C. 693; *Shepaug Voting Trust Cases,* 60 Conn. 553; *Lafferty's Estate,* 154 Pa. St. 430; *Woodruff v. Dubuque & S. C. R. Co.,* 30 Fed. 91; *Griffith v. Jewett,* 15 Wkly. Law Bulletin, 419; *Robotham v. Prudential Ins. Co.,* N. J. Eq.; 53 Atl. 842. Cf., *Railway Co. v. State,* 49 Ohio St. 668.

2. See cases *supra.*

3. *Kreissl v. Distilling Co.,* 61 N. J. Eq. 5.

4. *Vanderbilt v. Bennett,* 6 Pa. County Court Rep. 193.

The reservation of "all the rights, powers, and privileges of ownership" in a transfer of stock in trust, reserves the power of voting, and entitles the *cestui que* trust to call upon the trustee for a proxy.

Pennsylvania R. v. Pennsylvania Co. for Ins., 54 Atl. 783.

5. *Brightman v. Bates,* 175 Mass. 105, 111; Holmes, C. J.; *Clowes v. Miller,* 60 N. J. Eq. 179.

6. *Smith v. San Francisco, etc., R.,* 115 Cal. 584; cf. *Williams v. Montgomery,* 148 N. Y. 519, 525. But see *Moses v. Scott,* 84 Ala. 608.

7. *Kreissl v. Distilling Co.,* 61 N. J. Eq. 5. Cf. *Clowes v. Miller,* 60 N. J. Eq. 179.

8. In *Chapman v. Bates,* 61 N. J. Eq. 658, the court says that an irrevocable proxy may be revoked by the appearance of the stockholder at the meeting. This is true as regards the *power* of revocation, but does not affect the question of the *right* to revoke. It has been held in New York that an irrevocable proxy to two trustees, who in the event of disagreement are to elect a third, will not prevent the owner of the stock from voting when the two fail to agree upon the third. *Sullivan v. Parkes,* 69 App. Div. (N. Y.) 221. This may be a satisfactory rule from a practical standpoint, but logically it is unsatisfactory, as applied to voting combinations. If the agreement of the two trustees, either upon the way in which the stock shall be voted, or upon the person who shall direct its voting, is essential, it is fair to assume that the beneficial owners do not wish that stock to exercise any voting power in the case of the disagreement of the trustees.

9. *Smith v. San Francisco, etc., R.,* 115 Cal. 584; *Clowes v. Miller,* 60 N. J. Eq. 179.

Cf. *Railway Co. v. State,* 49 Ohio St. 668.

But see *Moses v. Scott,* 84 Ala. 608.

10. *Vanderbilt v. Bennett,* 6 Pa. County Court Rep. 193; *Shepaug Voting Trust Cases,* 60 Conn. 553.

11. *Clowes v. Miller,* 60 N. J. Eq. 179. The conflicting authorities are hereafter discussed.

12. *Chapman v. Bates,* 61 N. J. Eq. 658.

13. *Brightman v. Bates,* 175 Mass. 105, 110; Holmes, C. J. Cf. *Rigg v. Railway Co.,* 191 Pa. St. 298.

14. *Chapman v. Bates,* 61 N. J. Eq. 658.

15. *Greenwell v. Porter,* (1902) 1 Ch. 530.

15a. *Scruggs v. Cotterill,* 67 App. Div. (N. Y.) 583, 588; enforcing specific performance of a contract giving stockholders an option on each other's stock in case of sale or death.

16. *Harvey v. Improvement Co.,* 118 N. C. 693; *Kreissl v. Distilling Co.,* 61 N. J. Eq. 5; *Shepaug Voting Trust Cases,* 60 Conn. 553; *Cone v. Russell,* 48 N. J. Eq. 208; *Robotham v. Prudential Ins. Co.,* N. J. Eq.; 53 Atl. 842; cf. *Clowes v. Miller,* 60 N. J. Eq. 179.

17. *Hey v. Dolphin,* 92 Hun, 23.

18. *Lafferty's Estate,* 154 Pa. St. 430, 432. The opinion is that of Ashman, J., in the Orphans' Court whose decision was affirmed by a divided court.

19. *White v. Thomas Inflatable Tire Co.,* 52 N. J. Eq. 178. Cf. *Moses v. Scott,* 84 Ala. 608; *Clark v. Central R.,* 50 Fed. 338.

20. Quoted by Mr. Bigelow, in his "Bills, Notes, and Cheques" (2d ed.), 7.

21. *White v. Thomas Inflatable Tire Co.,* 52 N. J. Eq. 178, 187.

22. *Kreissl v. Distilling Co.,* 61 N. J. Eq. 5; *Shepaug Voting Trust Cases,* 50 Conn. 553; *Snow v. Church,* 13 App. Div. (N. Y.) 108; *Guernsey v. Cook,* 120 Mass. 501; *Fennessy v. Ross,* 5 App. Div. (N. Y.) 342; *Cone v. Russell,* 48 N. J. Eq. 308. Cf. *Harris v. Scott,* 67 N. H. 437.

23. See 120 Fed. 731 for the opinion of the lower court.

24. *Hey v. Dolphin,* 92 Hun 230; *Brown v. Britton,* 41 App. Div. (N. Y.) 57.

25. *Kreissl v. Distilling Co.,* 61 N. J. Eq. 5; *Shepaug Voting Trust Cases,* 60 Conn. 553.

26. See *William v. Montgomery,* 148 N. Y. 519, 525.

It has been said in New York, however, that a voting trust for more than 15 years is void under the statutes of that State, as "a restriction or suspension of one of the essential elements of ownership." *Sullivan v. Parkes,* 69 App. Div. (N. Y.) 221, 229.

27. *Smith v. San Francisco, etc., R.,* 115 Cal. 548, 603.

28. *Vanderbilt v. Bennett,* 6 Pa. County Court Rep. 193.

29. *Shelmerdine v. Welsh,* 20 Phila. 199; *Mobile & Ohio R. v. Nicholas,* 98 Ala. 92.

30. See *Brightman v. Bates,* 175 Mass. 105, 11; Holmes, C. J.

31. *Kreissl v. Distilling Co.,* 61 N. J. Eq. 5. Cf. *Railway Co. v. State,* 49 Ohio St. 668.

32. *Brightman v. Bates, supra.*

33. *Clowes v. Miller,* 60 N. J. Eq. 179.

34. *Vanderbilt v. Bennett, supra.*

35. *Shepaug Voting Trust Cases,* 60 Conn. 553.

36. "A most valuable privilege, which attaches to the ownership of stock in a corporation, is the right to vote upon it at any meeting of the stockholders." *Hodge v. U. S. Steel Corp.,* 54 Atl. 1 (N. J. Eq.). "Now, what is a share? It is but a bundle of rights, of which the right of voting at meetings of the company is not the least valuable." Lord Davey, in *Bradley v. Carritt* (1903), A. C. 253, 268.

37. *Glengary Consolidated Mining Co. v. Boehmer,* 28 Colo. 1.

38. *Beatty v. Northwestern Transportation Co.,* L. R. 12 A. C. 589; *Hodge v. U. S. Steel Corp.,* 54 Atl. 1 (N. J. Eq.). Every one is entitled

"to use his position as a shareholder solely for his own benefit." Lord Robertson, in *Bradley v. Carritt* (1903), A. C. 253, 269.

The motive of a stockholder in voting is immaterial. *Chicago Macaroni Mfg. Co. v. Boggiana,* 202 Ill. 312.

39. *Robotham v. Prudential Ins. Co.,* 53 Atl. 842 (N. J. Eq.).

40. *Morawetz on Corporations,* sec. 707.

41. *Manchester St. Ry. v. Williams,* 52 Atl. 461 (N. H.).

Cf. *Punt v. Symons & Co.* (1903), 2 Ch. 506.

42. *State v. Newman,* 51 La. Ann. 833.

Parsons v. Tacoma Smelting Co., 25 Wash. 492, 508.

43. *Manchester St. R. v. Williams, supra.*

44. *Robotham v. Prudential Ins. Co.,* 53 Atl. 842 (N. J. Eq.).

45. *George v. Central R. R.,* 101 Ala. 607; *Milbank v. New York, Lake Erie & Western R.,* 64 Howard's Practice (N. Y.) 20.

It is said, however, that the adverse interest must clearly appear.

American Refrigerating Co. v. Linn, 93 Ala. 610. Cf. *Memphis & Charleston R. v. Woods,* 88 Ala. 630.

46. *Farmers' Loan & Trust Co. v. New York & Northern R.,* 150 N. Y. 430.

47. See *Manchester St. Ry. v. Williams, supra; Cannon v. Brush Electric Co.,* Md., 54 Atl. 121.

48. *Memphis & Charleston R. v. Woods,* 88 Ala. 630. Cf. *Manchester St. Ry. v. Williams, supra.*

49. *Clarke v. Central R.,* 50 Fed. 338; *Clarke v. Richmond, etc., Terminal R.,* 62 Fed. 328.

50. *Franklin Bank v. Commercial Bank,* 36 Ohio St. 350.

51. *U. S. v. Northern Securities Co.,* 120 Fed. 721.

52. *Ibid.*

53. *Minnesota v. Northern Securities Co.,* 123 Fed. 692. Cf. *Parsons v. Tacoma Smelting Co.,* 25 Wash. 492, 508.

54. *Farmers' Loan & Trust Co. v. New York & Northern R.,* 150 N. Y. 430. *Contra, Cannon v. Brush Electric Co., Md.,* 54 Atl. 121.

55. N. J. Eq., 53 Atl. 842.