St. John's Law Review

Volume 7
Number 1 *Volume 7, December 1932, Number 1*

Article 23

June 2014

Election of Directors--Right of Voting Trustee to Vote by Proxy (Chandler v. Bellanca Aircraft Corporation et al., 162 A. 63 (1932))

St. John's Law Review

judgment is not one by default, an appeal may be taken to the Court of Appeals,[7] after the Appellate Division has reversed an order granting a new trial.

R. L. L.

ELECTION OF DIRECTORS—RIGHT OF VOTING TRUSTEE TO VOTE BY PROXY.—The voting trustees of the Bellanca Aircraft Corporation held a meeting for the election of directors. The defendant, William Bellanca, cast the number of votes granted him by virtue of his trust and also voted for another trustee by proxy. The plaintiff attacked the validity of such proxy on the grounds that it violated the trust relation in depriving the beneficiaries of the trustee's judgment. The defendant in his answer sets up the principle that what a proxy does in the proper exercise of his power is the will of the principal.[1] *Held,* a voting trustee may delegate his unrestricted right to vote to a proxy if the terms of the trust so permit. *Chandler* v. *Bellanca Aircraft Corporation et al.,* — Del. Ch. —, 162 Atl. 63 (1932).

The chancellor in support of his decision declared there was no breach of trust. The instrument setting forth the rights of the trustees declared that they should "possess and shall be entitled in their discretion to exercise all the rights and powers as absolute owners of the shares * * * including the unrestricted right to vote. The trustees may act through a majority in person or by proxy * * * and said act performed either in person or by proxy shall be the act of the trustees." Therefore there has been no violation of the trust and no cause of action exists.

In New York two of the three recognized methods by which stock may be voted by one other than the owner are the voting trust and the proxy.[2] Voting trusts are based upon the recognized right of stockholders to use their property in any way not contrary to law.[3] As a matter of legislative discretion this claim was later revoked in the instance of banking corporations.[4] The right to vote by proxy not being an ordinary privilege requires legal consent, given by the New York Corporation Laws to all corporations except religious and bank-

---

[7] N. Y. C. P. A. §588.

[1] Hexter v. Colombia Baking Co., 16 Del. Ch. 263, 145 Atl. 115 (1929).

[2] William Randall & Sons v. Lucke *et al.,* 123 Misc. 5, 205 N. Y. Supp. 121 (1924); N. Y. STOCK CORP. LAW (1932) §50; GEN. CORP. LAW (1932) §19.

[3] Manson v. Curtis, 223 N. Y. 313, 119 N. E. 559 (1918); Matter of Morse, 247 N. Y. 290, 160 N. E. 374 (1928); Harris v. Magril, 131 Misc. 380, 226 N. Y. Supp. 621 (1928).

[4] Matter of Morse, *supra* note 3; N. Y. STOCK CORP. LAW (1932) §50 (amended 1920, c. 120).

ing corporations.[5] It is also a prerequisite in the use of this agency that the legal title be vested in the principal.[6]

There has been no adjudication as to the validity of a trustee casting his vote by proxy in New York. However, the right of a trustee to vote on stock so held is recognized.[7] Furthermore, everyone having stock and the right to vote on such stock stock is entitled to vote by proxy.[8] Therefore, since both these methods are valid, and a combination of them would not produce a principle illegal in itself, it seems logical to conclude that New York would follow the rule of the Delaware case if the terms of the agreement permitted the voting trustee to vote by proxy.

C. T. S.

NEGLIGENCE—LIABILITY FIRE SPREADING TO NON-CONTIGUOUS PREMISES.—Sun Oil Company maintained a plant for the storage of gasoline in Syracuse. Homack Corporation owned certain buildings across the street from this plant. A fire started on the premises of the Sun Oil Company and was transmitted by direct flames, sparks or intense heat, across intervening street free from inflammable material, to a building of the Homack Corporation and thence spread to other buildings on the same premises. An action was brought by the Homack Corporation for damage caused by the fire alleged to have negligently originated on land of Sun Oil Company who contend they are not liable because the fire on their premises was not the proximate cause of the damage.[1] Appeal from a judgment of the Appellate Division of the Supreme Court unanimously affirming judgment in favor of plaintiff. *Held, aff'd, Homack Corporation* v. *Sun Oil Company,* 258 N. Y. 462, 180 N. E. 172 (1932).

As stated in this case it is settled that when a fire negligently starts upon land of *A* and spreads to land of *B,* an adjoining land owner, and ignites a building and spreads to others, *A* is liable for the damage to all the buildings on the land of *B.*[2] If, however,

---

[5] Phillips v. Wickham, 1 Paige 590 (1829); N. Y. GEN. CORP. LAW, §19; FLETCHER, CORPORATIONS, vol. 5, §2050.

[6] Matter of Mohawk & Hudson R. R., 19 Wend. 135 (1838); FLETCHER, CORPORATIONS, vol. 5, §2053.

[7] Matter of Barker, 6 Wend. 509 (1831).

[8] N. Y. GEN. CORP. LAW (1932) §19; FLETCHER, CORPORATIONS, vol. 5, §1005.

[1] Ryan v. N. Y. C. R. R. Co., 35 N. Y. 210 (1886); Frace v. N. Y., L. E. & W. R. R. Co., 143 N. Y. 182, 189, 38 N. E. 102, 103 (1894); Hoffman v. King, 160 N. Y. 618, 627, 55 N. E. 401, 403 (1899); Matter of City of New York, 209 N. Y. 344, 103 N. E. 508 (1913).

[2] Frace v. N. Y., L. E. & W. R. R. Co., *supra* note 1; Hoffman v. King, *supra* note 1; Davis v. D. L. & W. R. R. Co., 215 N. Y. 181, 109 N. E. 95 1915); Rose v. Penn R. R. Co., 236 N. Y. 568, 142 N. E. 287 (1923).