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CORPORATIONS - VOTING TRUSTS - POWER OF VOTING TRUSTEE TO ELECT DIRECTORS AND OFFICERS FOR PERIOD EXTENDING BEYOND TERMINATION OF TRUST

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CORPORATIONS — VOTING TRUSTS — POWER OF VOTING TRUSTEE TO ELECT DIRECTORS AND OFFICERS FOR PERIOD EXTENDING BEYOND TERMINATION OF TRUST — Defendants held all the stock of a corporation as voting trustees under a voting trust which provided that it should terminate November 18, 1941, and that the trustees should deliver the stock to the holders of the participation certificates within thirty days thereafter. The agreement further provided that the trustees might elect themselves directors and officers of the corporation. At the time of the execution of the agreement, the by-laws of the

corporation provided for annual shareholders' meetings in March. In 1939, defendant trustees, who had elected themselves directors and officers of the corporation, amended the by-laws to require the annual meetings to be held in October of each year beginning with 1940. Plaintiff, holder of fourteen per cent of the participation certificates, obtained an order restraining defendants "from voting for, or electing, themselves . . . or other persons, as directors or officers of the defendant corporation . . . for any term . . . terminating beyond or later than November 18, 1941." On appeal from this order, *held*, affirmed. Trustees may not extend their control of property held in trust beyond the specified period of the trust. *Friedberg v. Schultz*, 312 Ill. App. 171, 38 N. E. (2d) 182 (1941).

After considerable confusion and difficulty in Illinois on the subject,¹ it has been finally established that voting trusts for proper purposes are valid in that state.² The decision in the principal case is further evidence of the scepticism with which the Illinois courts view the voting-trust arrangements. It is true that the right to vote is one of the rights appertaining to ownership of stock, and therefore, the trustee would have a duty not to postpone the beneficiaries' enjoyment of the right to vote for a period beyond that reasonably contemplated by the trust agreement.³ However, it would seem that the parties contemplated management of corporate affairs by the trustee-elected directors for some period subsequent to the termination of the trust and distribution of stock. The agreement expressly allowed the trustees thirty days after the termination of the trust in which to distribute the stock to the beneficiaries. At least it must have been intended that the trustee-elected directors would be competent to conduct the affairs of the corporation until the situation was such that the new stockholders could fairly elect new directors. The practical difficulties in distributing stock to numerous anonymous trust certificate holders are well known;⁴ and until this distribution has been accomplished, there can be no determination of those properly qualified to vote. Furthermore, at the time of the execution of the trust agreement, the by-laws provided that elections should be held in March. Hence, it would seem reasonable that the parties contemplated that the directors elected by the trustees should manage the corporation until such meeting. The effect of the decision in the principal case is to require an election of a new board by the stockholders immediately upon termination of the trust, which would require a distribution of stock to the voting trust certificate holders prior to the termination of the trust, without regard to express or implied authority in the trustees to elect directors to act for a reasonable time after termination of the

¹ 5 FLETCHER, CYCLOPEDIA CORPORATIONS, perm. ed., § 2080, p. 299 (1931); Burke, "Voting Trusts Currently Observed," 24 MINN. L. REV. 347 at 352 (1940).

² *Boyle v. Smyth*, 248 Ill. App. 57 at 82 (1928). See 3 UNIV. CHI. L. REV. 640 (1936) for a discussion of the development of the law of Illinois concerning the validity of voting trusts.

³ Yet the duty to distribute the trust res on termination of the trust is qualified by a right to take such time and steps as are reasonably necessary to protect the interest of the beneficiaries and the trustee himself. 2 TRUSTS RESTATEMENT, § 344, comments a, c, f, § 345, comment e (1935).

⁴ See 5 FLETCHER, CYCLOPEDIA CORPORATIONS, perm. ed., § 2094 (1931); CUSHING, VOTING TRUSTS 77-78 (1915).

trust.⁵ If there were a breach of trust in the principal case, it may have been in amending the by-laws to require the annual stockholders' meeting to be held in October rather than March, for this would postpone the enjoyment of voting rights by the beneficiaries seven months beyond the time which appears to have been contemplated when the trust was created.⁶ Still, even here, unless it could be shown that this amendment was made with improper motives or in bad faith or was not reasonable action in the interest of the beneficiaries, it could not be deemed a breach of trust,⁷ for the trust agreement empowered the trustees to vote on, take part in and consent to any corporate or shareholders' action whatsoever.⁸ The trustees' discretion in exercising these broad powers is limited only by a duty to exercise them in the interest of the trust.⁹

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⁵ Plaintiff relied on an analogy to the rule that a trustee cannot lease trust property for a period extending beyond the termination of the trust. However, it seems clear that a trustee may lease for such a term if the trust instrument confers the power to do so, see *Raynolds v. Browning, King Co.*, 217 App. Div. 443, 217 N. Y. S. 15 (1926), *affd.* 245 N. Y. 623, 157 N. E. 884 (1927); 2 SCOTT, TRUSTS, § 189.3 (1939), or if it be reasonably necessary for accomplishing the purposes of the trust. See *Russell v. Russell*, 109 Conn. 187 at 204, 145 A. 648 (1929). See note, 61 A. L. R. 1368 (1929).

⁶ Neither plaintiff nor the court seems to have relied upon this as a breach. And if it were a breach, it would hardly in and of itself justify the restraining order. Cf. *Hubbell v. Hubbell*, 172 Iowa 538, 154 N. W. 867 (1915), holding that a lease for a term exceeding the power of the trustee is good in equity for the term corresponding with his power and void only as to the excess.

⁷ 2 SCOTT, TRUSTS, § 187 (1939).

⁸ Brief for appellants, p. 4.

⁹ 2 SCOTT, TRUSTS, §§ 193, 193.1, 193.2, 186, 170 (1939); 1 TRUSTS RESTATEMENT, § 193 (1935). It is submitted that circumstances might prevail which would justify postponing the exercise by the beneficiaries of their right to vote: e.g., if there was danger that a militant minority might gain control of an election before complete distribution of stock to all could be accomplished; or if the state of affairs of the corporation required the postponement in the interest of the trust.

The principal case seems to be the only one in which the power of voting trustees to elect directors for a term extending beyond the termination of the trust has been litigated. CUSHING, VOTING TRUSTS, rev. ed., 98 (1929), cites two instances where the trustees declined to exercise their voting right when termination of the trust was pending and adjourned the annual meeting to afford the stockholders opportunity to elect the board for the ensuing year after release of their certificates. Cf., in the earlier edition of Mr. Cushing's book, the voting trust agreement of Chicago Great Western R. R., CUSHING, VOTING TRUSTS 145 (1915), providing that the trustees may take such steps as may be best adapted to enable the stockholders to elect the board at the annual stockholders' meeting held next after the termination of the voting trust, "or as soon as may be practicable after the termination. . . ."