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Corporations

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One procedural constitutional law case should be noted. Both federal and state due process clauses demand accuracy, clearness and certainty in a court's charge in a criminal case. A charge which stated that if evidence favorable to a plea of self-defense preponderates the jury *may* find the defendant had the right to resort to self-defense is constitutionally invalid. The court should have used the word *must*. Such an improper charge violates the accused's right to a fair trial under due process of law.¹⁹

In another case the burden of proof in a hearing to determine the necessity for changes in an industrial plant for safety purposes was held to be upon the Director of Industrial Relations. His failure to call witnesses to support the change upon which his order was based was a fundamental infraction of law and a denial of procedural due process. No valid change order could be issued.²⁰

Another appellate case presented a constitutional conflict: on the one hand, the procedural right to a fair trial under Article I, Sections 5 and 10 of the Ohio Constitution, as well as the due process requirement implicitly demanding a fair trial in the Fourteenth Amendment of the United States Constitution; and on the other hand the substantive right of freedom of the press in the State Constitution's Article I, Section 11 and the Federal Constitution's Fourteenth Amendment which incorporates the First Amendment rights. The issue was whether a court can forbid a newspaper photographer from taking pictures in the courtroom or chambers. A conviction of contempt was rendered for violation of this order. The court favored the individual's right to a fair trial and upheld the conviction as a reasonable enforcement of courtroom decorum.²¹

OLIVER SCHROEDER, JR.

CORPORATIONS

As in previous years, the Ohio courts have dealt with a wide variety of corporation problems, both of procedure¹ and of substance.² Only three cases have been reported which are worthy of special note.

The Ohio Banking Act provides that bank corporations shall be governed by the General Corporation Act except where the Banking Act indicates otherwise.³ The Corporation Act permits any stockholder to cumulate his voting power.⁴ The Banking Act neither permits nor forbids cumulative

¹⁹ State v. Collins, 94 Ohio App. 401, 115 N.E.2d 844 (1952).

²⁰ Goodyear Synthetic R. Corp. v. Dep't of Ind. Relations, 122 N.E.2d 503 (Franklin Com. Pl. 1954).

²¹ State v. Clifford, 118 N.E.2d 853 (Ohio App. 1954).

voting, but merely provides that each stockholder is entitled to one vote per share.⁵ In *State ex rel. Kearns v. Rindsfoos*⁶ the Ohio Supreme Court held that a bank stockholder could not cumulate his votes. Although the question could have been decided either way as a matter of legislative construction, the court appeared to rely heavily on the common law rule against cumulative voting.

*Barsan v. Pioneer Savings and Loan Co.*⁷ is not only a case of first impression in Ohio, but apparently a new case in the United States. A corporation issued a new block of stock without granting existing stockholders their pre-emptive rights. All stockholders knew of the new issue and nobody objected. Apparently the failure to grant pre-emptive rights was an innocent mistake of law on the part of all concerned. When the directors discovered their error, they cancelled the new issue and offered to buy back the stock from the new stockholders. On suit of a new stockholder, the court enjoined the cancellation, pointing out that the old stockholders, and not the corporation, were the only ones harmed by violation of the pre-emptive rights statute⁸ and were the only ones who could object.

In *Czech Catholic Union v. Satla Realty Co.*⁹ a new corporation was formed to liquidate the assets and liabilities of a dissolved corporation. The

⁵ *Gustafson v. Buckley*, 161 Ohio St. 160, 118 N.E.2d 403 (1954) (quiet title action against Ohio corporation should be brought in county where corporation located instead of county where land located); *Veterans of World War I v. Levy*, 118 N.E.2d 670 (Ohio App. 1954) (quo warranto is exclusive procedure for determining who are *de jure* corporate officers); *Silberman v. Silberman*, 121 N.E.2d 838 (Ohio App. 1954) (in action to impose constructive trust on corporate shares of Ohio corporation, non-resident shareholder may be served by publication).

⁶ *Marshall v. New Inventor's Club*, 117 N.E.2d 737 (Cuyahoga Com. Pl. 1953) (corporation cannot practice patent law); *Millar v. Mountcastle*, 161 Ohio St. 409, 119 N.E.2d 626 (1954) (statute provides that if wife dies without issue or will, identical property received from husband's estate goes to his heirs; held corporate stock issued as a result of a stock split after husband's death is such identical property); *Muth v. Maxton*, 119 N.E.2d 162 (Montgomery Com. Pl. 1954) (trustees of cemetery corporation cannot vote unsold lots); *In Re Davis' Estate*, 120 N.E.2d 907 (Ohio App. 1953) (gift of stock certificate may be made only as prescribed by Uniform Stock Transfer Act); *Spitz v. Volibar Realty Co.*, 121 N.E.2d 325 (Cuyahoga Com. Pl. 1954) (where corporation issued as units a share of stock and a note, it could repurchase both); *Union & League of Romanian Societies v. Corofan*, 121 N.E.2d 446, 449 (Ohio App. 1954) (non-profit corporation could require officers and members to execute non-Communist loyalty affidavit).

⁷ OHIO REV. CODE § 1103.42.

⁸ OHIO REV. CODE § 1701.58.

⁹ OHIO REV. CODE § 1103.20.

⁶ 161 Ohio St. 60, 118 N.E.2d 138 (1954). The opinion of the court of appeals is in 121 N.E.2d 146 (1953).

⁷ 121 N.E.2d 76 (Ohio App. 1954).

⁸ OHIO REV. CODE § 1701.40.

⁹ 160 Ohio St. 545, 117 N.E.2d 610 (1954).