VOTING TRUSTS, A CHAPTER IN RECENT CORPORATE HISTORY

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CONTENTS

		PAGE
I.	The Significance of Voting Trusts	1
II.	The Contents of Voting Trusts	36
III.	The Law of Voting Trusts	100
IV.	Forms Relating to Voting Trusts	135
	Index	217

I

THE SIGNIFICANCE OF VOTING TRUSTS

THE history of American corporations may be roughly divided into an early period, in which corporate organization appeared chiefly in the development of banks and insurance companies, the later period of railroad expansion, and the modern period of the general application of corporate forms to mercantile enterprises. If a bank ceased to be solvent, holding only the assets usually acquired by such concerns and with no plant or real estate investment to be gradually developed, the natural result was the prompt winding up of the business, without any attempt at reorganization. When, on the other hand, the rapid expansion of railroads under ill-considered financial policies led to or threatened disaster, there existed the road itself which could not be abandoned and the saving of which required the concerted action of either the former owners or new investors or of both. Likewise, with many of the large mercantile corporations more recently established, financial embarrassment could not properly be met, by those interested, merely by writing off an investment, for the same reason that there usually existed a property or business of some intrinsic value which ought not to be sacrificed, and which might under proper conditions be managed with some probability of ultimate success. Naturally thus the history of corporate development in the last forty years has been marked by the introduction and refinement of the reorganization agreement or readjustment agreement. Usually as an incident or as a result of these, and after experience showing the ineffectiveness of pooling agreements and deposit agreements in meeting the needs of the case, there gradually came into use the voting trust agreement.

In its early form the typical voting trust agreement evidenced little more than the stockholders' transfer of their certificates absolutely to trustees, or in some instances to a trust company, and the undertaking on the part of the trustees to deliver stock certificates on the expiration of the trust and in the meantime to distribute to the holders of trust certificates the amount of any dividends paid upon the stock. The powers of the trustees were, for the time being, those of owners of the stock, and the absence of restrictions indicates the complete dependence then placed on the trustees, both to meet any unforeseen contingencies and to take all steps which might seem to them appropriate. The development from the occasional use of this simple arrangement has been marked, however, both by a great variety of detailed provisions and by the application of such trusts to many concerns of substantial importance.

A discussion of voting trusts, in a period when not only concentration of property but even combinations of mere influence have been subjected to severe criticism, naturally suggests a justification of what some still regard as an innovation of slight utility and of doubtful propriety. Such, however, is hardly more appropriate than a defense of corporate organization itself. Like every other detail or process in corporate affairs the voting trust may have been subject to such misuse as is inevitable when dependence is placed on the personal equation; but, on the other hand, while the object of some adverse comment, it has been much less harmful and much more productive of desirable results than most features of modern corporate development. It has not ordinarily been in itself a means of undue concentration, and not often has it been justly deemed even evidence of a purpose to bring about such a condition. Spoken of judicially as a "comparatively modern and useful device in corporate management" (*New York Law Journal*, January 19, 1914), the voting trust has come to be recognized both by conservative bankers and by investors as a desirable and effective adjunct of modern finance whose invention, and whose application to difficult situations, have been amply justified.

The significance of the voting trust in the modern history of corporations, from both the legal and the economic standpoints, is sufficiently indicated by the fact that stocks of such railroad systems as the Erie, Reading, Baltimore and Ohio, Chesapeake and Ohio, Seaboard Air Line, and Northern Pacific have earlier been thus controlled, and by the facts also that this form of control is now in force in the affairs of many