MINORITY RIGHTS AND CORPORATE METHODS: AS ILLUSTRATED IN THE ACTION OF THE TRUSTEE-DIRECTORS AND DIRECTOR-TRUSTEES OF THE ST. PAUL AND DULUTH RAILROAD CO.

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Minority Rights and Corporate Methods: As Illustrated in the Action of the Trustee-Directors and Director-Trustees of the St. Paul and Duluth Railroad Co. by Anonymous

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ANONYMOUS

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Trieste

MINORITY RIGHTS

AND

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AS ILLUSTRATED IN THE ACTION OF THE TRUSTEE-DIRECTORS AND DIRECTOR-TRUSTEES OF THE ST. PAUL AND DULUTH RAILROAD CO.

BY

"A Mere Anonymous Newspaper Scribbler."

I thank thee, Jew, for teaching me that word.—*Merchant of Venice.*

NEW YORK:
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1886.

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INTRODUCTION.

I have received the power, with blanks below printed, and a very pressing circular letter from Mr. William H. Rhawn, Vice-President of the St. Paul and Duluth Railroad, soliciting my proxy, that he may act for me at the annual meeting of the stockholders of that road, to be held at St. Paul, on the 21st instant. He promises that, in the absence of other instructions, the proxy will be voted in favor of the several propositions unanimously submitted by the Board of Directors.

Know all men by these presents, That I, ... of..... .....do hereby constitute and appoint William H. Rhawn, of Philadelphia; Charles D. Drake, of Washington, ; James J Hill and William H. Fisher, of St. Paul; or any one of them to be my substitute, attorney, and proxy for me and in my name and behalf, to vote, act for, and represent me as a Stockholder, at the Meeting of the Stockholders of the SAINT PAUL AND DULUTH RAILROAD COMPANY, to be held at the office of the Company in St. Paul, on the 21st day of June, 1886, or at any adjournment thereof, as fully and effectually as I might or could do if personally present, hereby ratifying and confirming all lawful acts done in my behalf by virtue hereof. Witness, etc.

The gentlemen named in the power are Directors of the road, and are also Trustees for two classes of stockholders whose rights are respectively defined in the Plan of Reorganization, adopted in 1877. The reasons why I cannot send them my proxy are set forth in the following letters. These letters were originally printed in the *Railroad Record*, of Philadelphia, under the signature of "An Old Subscriber." They were answered as they respectively appeared, by articles in the editorial form, but for the reasons set forth in the eighth chapter herein attributed to one of the important officers of the Company.

In the last of these articles the Trustee-Director assumes a tone of superiority and indulges in intimations and assertions, which I must admit are partially true. It is true that I am a "mere anonymous newspaper scribbler." Jay, Hamilton and Madison published their articles in defence of the Constitution under assumed titles in a village newspaper. I have good authority, therefore, for my mode of appealing to the parties interested, and I have adopted the title thus given me.

It is true, too, that I "seem" to be interested in the common stock. I *am* largely interested in it. The fact may color my views. But it is not true that I have, or ever had, a dollar of speculative interest

in it. I have held some for a long period, and some I have bought since 1884 on the assurance then given by the Directors that they should pay dividends on it at the earliest period possible. I have never sold a share, and never received a dividend.

It is true, too, that I have rung the changes on the capitalization of net earnings, but my authority for this is the repeated assertion of the Directors that they had capitalized nearly a million of net earnings as long ago as 1880, when the road was not earning much of anything.

It is true, too, as the Trustee-Director suggests, that it will be wise for the common stockholders to read over my letters and observe the contradictions in them and my disregard of figures and other things. That they may be enabled to do so, conveniently, I have reprinted them in this pamphlet, just as they were written, only correcting typographical errors and smoothing one or two rough expressions.

It is true, too—I cannot deny it—that the common stockholders should ponder well the question whether I am interested in the prosperity of the road *or* in litigation.

I am deeply interested in the prosperity of the road. I have no interest whatever in litigation, except to pay for it, if it is necessary to have recourse to it. But I cannot for the life of me see why a man may not be honestly interested in both. The question here is not whether the additions recommended by the Board are wise and necessary, but whether a meeting of stockholders by a vote of a majority can take out of a trust fund secured, or intended to be secured, to the common stockholders, the money that is required to pay for these additions; exonerate the Trustees from liability; transfer the fund from Trustees who are subject to strict ACCOUNTABILITY, to the hands of Directors to be used entirely at their *discretion*, and give the preferred stockholders the profits of ownership in addition to the security as mortgagees. That is the question to "ponder."

How the discretion of Directors is sometimes exercised may be learned from a late decision of Judge Wallace. How it is likely to be exercised by the Directors with whom we have to deal may be learned from the menace of the Trustee-Director in his last article in the *Record* that if the helpless minority stockholders undertake to ask Judge Nelson if they have any rights whatever, it will involve them in "costly litigation," with "everything to lose."

I cannot see why asking a simple question in legal form of a Judge ought to be so very costly to the large number of stockholders interested, nor do I see why they should "lose everything" as the penalty of not submitting to the arbitrary will of a majority.

A MERE ANONYMOUS SCRIBBLER.

June 10, 1886.

I.—THE CASE OPENED.

Your article on the St. Paul & Duluth Railroad dividends was read with interest by a great number of New Yorkers. It supplied much information of which they were possessed in a general way, but which your paper made clearer and more specific.

What you say about the interest of the managers in the common stock, and their natural desire to make it pay, is all very well, but it does not exclude the idea that their interest in the preferred stock may be paramount. The preferred stock has a voting power of three to one over the common stock, and such a power means the use of it to the advantage of the preferred, until the common is driven to litigation to secure its equities.

Two things strike me in looking at the reports. Under the application of the stumpage and land revenue to the extinguishment of preferred stock, the preferred stock ought to have diminished in the last five years. It has increased, and the voting power with it, as against that of the common stockholders.

This being so, what is to prevent the preferred stockholders from consummating the transaction you suggest as probable, at their next meeting—to wit, the purchase of preferred stock for cancellation at market prices, instead of at par? A certain seven per cent. stock that could only be retired at the market price, would soon reach 130 or 150. Put such a sinker as that on the common stock and it would never come to the surface.

So imperfect is the knowledge of our Western geography that there are a great many investors of intelligence who are surprised to learn that the railroad known as the St. Paul and Duluth is a straight line between the navigable headwaters of the Mississippi and its tributaries and the

Western headwaters, so to speak, of the chain of great lakes, the St. Lawrence and the Atlantic Ocean. So much of the great West and Northwest as is nearer to Duluth or St. Paul than to Chicago, is tributary to these great cities of the future. What that means in the way of transportation from the West and East to St. Paul, and from St. Paul to the West and East, that must pass *via* Duluth, goes without saying, and explains the immense outlays for enlargement and extension that you say have been called for during the last five years in the interest of the railroad.

The power of the preferred stockholders consists in their excessive vote, by which they can prolong their own rights and infringe on the rights of the common stockholders.

The power of the common stockholders consists in their faculty of retiring the preferred stock at par, without having it increased by the improvident issue of more of the same sort. When the stumpage and land revenue should be applied to the cancellation of preferred stock is *now*. With money worth four per cent., why should the management continue to allow retireable seven per cent. securities to stand between the common stockholders and a dividend?

The future of the St. Paul and Duluth cannot be otherwise than what its *track and termini* promise to make it. There is no railroad line in the country of the same length that suggests such probabilities and prospects. But present stockholders are interested in the present, and want to see some such "management" as will secure them their equitable interests in the property as they go along.

January 25, 1886.

II.—RETIRING PREFERRED STOCK.

Your editorial comments on my letter are fair and reasonable. It is significant that the net earnings of the St. Paul & Duluth for 1885 have not been published. The argumentative statement that has been issued, in lieu thus far of the annual report, does not exclude the idea that when taxes and operating expenses are deducted from the gross earnings there will remain something that is applicable to dividends on the common stock.

Of course "there is a lion in the way." Preferred stockholders with 7 per cent. secured and a vote of three to one will stay so as long as they can. Of that there is no doubt. The difficulty of carrying out the plan settled by the articles of reorganization is two-fold in their view. *First*, The drawing contemplated is so difficult as to be impracticable. *Second*, There is no provision compelling the stockholders to relinquish their shares at par, if so drawn. Let us see:

Twice every year there is an ascertained set of stockholders to whom dividends are to be paid according to their respective interests, evidenced by stock or scrip, Where is the difficulty of representing every such interest by a number, putting all the numbers in a hat or wheel, and drawing out the numbers that are to be paid off at par? None in the world, that I can see.

Then as to compelling these stockholders to acquiesce in what they have agreed to acquiesce in, according to the endorsement on their stock. How do we manage with bondholders. We stop paying the interest; stop paying dividends on the drawn stock, advertising the fact and notifying the holder at the time of paying the dividends for payment of which the books are closed, and he would be as ready as to "acquiesce" as the holder of a bond would be to cash his bond when the interest is stopped.

If this particular mode cannot be followed, any Court of Equity could devise one that will accomplish the purpose.