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CAN THE RIGHT TO VOTE STOCK BE SEPARATED FROM ITS OWNERSHIP? Two or more stockholders in a corporation sometimes wish to combine to elect the officers of the corporation, and, in order that their stock may be voted as a unit, they enter into what are known generally as Voting Trust agreements. How to make these agreements binding upon the parties to them, has been a puzzling question. The difficulty in all the devices that have been tried finally resolves itself into the question of the separability of the right to vote stock from its ownership, and upon this question the opinions are more or less confused. Public policy has insinuated itself where it has no business; the distinctions between trustee and agent have been left to take care of themselves; and the not unusual lack of discrimination between *right* and *power* is again exhibited.

Some of the cases declare illegal all agreements by which the right to vote is separated from the ownership of stock—a result due, perhaps, to the undertone in the books. which deprecates control by one man or clique and favors minority representation. Judges, in their eagerness to protect persons from what turn out to be ill-advised contracts, have lazily seized upon public policy as their reason. It will be found, however, upon examination of the cases, that in not one of them was the illegality of these agreements really involved. In *Hafer* v. *N. Y. L. E. & W. R. R.*, 14 Wk. L. B., 68 (1885), the court decided that the contracts were void "both upon the ground that the power is denied to one corporation thus to acquire control of another, and that the stockholder cannot barter away the right to vote upon his stock." The purpose of the agreement was improper, its object being to give one corporation control over another. In the *Shepaug Voting Trust Cases*, 60 Conn. 553 (1891), there was a secret agreement underlying the pooling agreement, the object of which was to secure profits from certain construction contracts in the extension of the railroad; and the Voting Trust was, therefore, condemned, because its purpose was repugnant to the fiduciary relationships of the stockholders to one another. In *Gage* v. *Fisher*, 65 N. W. (N. Da.) 809 (1896), the object was to give an office to one of the parties to the contract, and, of course, this would not be aided by a court of equity. *Harvey* v. *Linville Imp. Co.*, 24 S. E. (N. Ca.) 489 (1895), involved only the question of revocability of proxy. In *Vanderbilt* v. *Bennett*, 6 Pa. Co. Court R. 193 (1888); *White* v. *Thomas Inflatable Tire Co.*, 28 Atl. (N. J.) 75 (1893); *Ohio & M. R. Co.* v. *State*, 32 N. E. (Ohio) 933 (1893), although the *dicta* were strong to the effect that such agreements were absolutely void, the question of illegality was admittedly not involved. Professor Baldwin, in 1 Yale Law Journal, argues that these agreements are illegal.

On the other hand, some cases see nothing illegal in such agreements, but these again used language broader than the cases justified. It was merely a question of revocability of proxy in *Griffith v. Jewett*, 15 Wk. L. B. 419 (1886). *Mobile & Ohio R. R.* v. *Nicholas*, 98 Ala. 92 (1892), and *Smith* v. *San Francisco & N. P. R. Co.*, 47 Pac. 582 (1897), were cases in which it was not attempted to separate the right to vote stock from the ownership of the same. It may be noted here that a reason, perhaps, for not holding some of these agreements illegal at the instance of third parties, is the uselessness in doing so; for the parties to them could do just what the agreements say and their actions could not be assailed, it being impossible to go into the question of motives. And in some cases, even if the contracts could be said to be illegal, the corporation or a minority stockholder may not have a standing in court to object.

Mr. Lilienthal (in 10 Harvard Law Review, page 428) not only rejects the theory of illegality, but contends for a doctrine that would view with utter indifference a result by which a corporation could be run entirely by outsiders. On page 433 he says: "Again it will be admitted that the ownership of shares represents a double right—the right to vote and the right to participate in profits. If it be lawful to sell an interest in the latter right, as it undoubtedly is, why not, then, in the former?"

If such contracts are illegal because contrary to public policy, why is not a partnership holding a majority of stock also illegal? On the other hand, shall we agree with Mr. Lilienthal that the right to vote may pass from hand to hand, regardless of the ownership of stock? Because of the difficulty that one or the other view has with such questions as these, and in view of the vagueness of the cases, it may be worth while—if for no other reason than that of definiteness and clearness of thought—to look for an underlying principle; and, in looking for such a principle, it were better to avoid the too convenient reason of public policy, however fascinating it may be to talk of the duties of shareholders to one another and of the confidence reposed in them by the state.

It makes no difference what shape the scheme to separate the right to vote from the ownership of stock takes. Whether it be a proxy to vote the stock, or an agreement with adequate consideration, or a transfer of the stock to a trustee, it seems that the contention that the right to vote is separable from the ownership of stock includes the assumption that it is a property right. Is it? Some rights are ours merely because we are members of society. Such is the right not to be assaulted, belonging as it does to every human being merely as such. So there are rights which constitute privileges of a certain class, belong to men because they are members of one or another class. The right to vote, for instance, is a man's, because he is a citizen or a member of a club or the owner of shares in a corporation. Just as the right not to be assaulted is mine because I am a member of society, so the right to vote stock in a corporation is mine because I am a member of the corporation. Rights of the latter sort belong to fewer individuals than do the former, because their classes are less inclusive; but they are, nevertheless, precisely the same sort of rights. The classes may be various—the nature of the right always remains the same. It is purely and absolutely *personal*, and, from its very nature, is incapable of being separated from the man. It would be difficult to think of the right not to be assaulted as transferable; the alienability of the right to vote is just as much of an impossibility. These rights all belong to a man, because he has brought himself within one or another class, and for no other reason. If he ceases to be a member of the corporation, his right ceases. An outsider may get the right only by becoming a member. The language of the cases supports such a theory. "The franchise is an inseparable incident of the ownership of stock:" *Lafferty* v. *Lafferty*, 26 Atl. (Pa.) 388 (1893). "The right to vote is an incident of the ownership of stock, and cannot exist apart from it:" *Griffith* v.

Jewett, 15 Wk. L. B. 419 (1886). "It is the policy of our law that an untrammeled power to vote shall be incident to the ownership of stock:" *Shepaug Voting Trust Cases*, 60 Conn. 553 (1891). "The right of voting stock is inseparable from the right of ownership. The one follows as a sequence from the other, and the right to vote cannot be separated from the ownership without the consent of the legal owner:" *Tunis* v. *Hestonville R. Co.*, 24 Atl. (Pa.) 88 (1892).

It is objected, however, that the right to vote is sometimes dissociated from the ownership of stock. A proxy is said to be such a dissociation. It is true that the *power* to vote is separated, but the *right* ever remains in the shareholder. The mere fact of agency does not give the agent a *right*. If it does, why may he be deprived of it without his consent—as, for instance, when I revoke his authority? The truth is that in such a case I do not destroy any *right* that is in the agent. I merely take away a *power*—withdraw my consent from the personal relationship which cannot exist against my will: *Griffith* v. *Jewett*, 15 Wk. L. B. 419 (1886); *Woodruff* v. *Dubuque & S. C. R. Co.*, 30 Fed. 91 (1887). An owner of property makes me an agent to sell. Do I get the right to sell, or merely the power? There is no objection, of course, to an agent acquiring a right from a contract of agency; but that is a different question.

Where the power is coupled with an interest, the right to vote is then in the person who is to exercise the power. He becomes an owner, and acts in his own name. Such are the cases of *Shelmerdine* v. *Welsh*, 20 Phila. 91 (1893), and *Mobile & Ohio R. R. Co.* v. *Nicholas*, 96 Ala. 92 (1892), in which cases the creditors are really pledgees by the transfer to the trustees, who, as representatives of the creditors, have thus a power coupled with an interest. So when stock is held jointly, and one joint owner is given the authority to vote, the right is not separated from the ownership: *Hey* v. *Dolphin*, 92 Hun. 230 (1895); *Lafferty* v. *Lafferty*, 26 Atl. 388 (1893); *Smith* v. *San Francisco & M. P. R. Co.*, 47 Pa. 582 (1864).

There is an apparent dissociation when the transfer book is closed some time before the election. One who transfers after the books are so closed may no longer have an interest in the stock and yet may be allowed to vote. It has been held that a vote by the transferor under such circumstances, no objection being made, is not void. But there is no case, I believe, which holds that the transferor has a *right* to vote as against the transferee. Is it contended that he will be entitled to vote if the transferee challenges his right to it? In *American National Bank* v. *Oriental Mills*, 23 Atl. 795 (1891), it is said that the holder of the legal title "would have been bound to vote in accordance with the wishes of the holders of the beneficial interest." Why would not the transferor who has not even got legal title be also bound so to vote? It is submitted that in these cases the transferor is nothing more than an agent and that the *right* of voting is never in the transferor as against the transferee.

The ownership of shares does not "represent a double right—the right to vote and the right to participate in profits," any more than it represents also the right to sell, the right in certain cases to be a director, or the right to sue for mismanagement, and although the right to dividends, for instance, may be alienable, it is by no means inconsistent that another right, as that of being a director, is not alienable.

If the right to vote is a property right it is admittedly assignable. And if it may be the subject of sale, why not of gift? But no case or writer has ever intimated that the owner may part with the right by gift. Indeed, all who have touched upon this part of the subject affirmatively lay down that there must be a sufficient consideration. Why in the world a consideration is insisted upon it is hard to understand, unless it be upon the belief (as it is sometimes laid down in the books) that a power of attorney given for consideration is not revocable. If so, it goes upon a proposition which can mean nothing more than that the power must be coupled with an interest. A question of contract is not necessarily involved and talk as to consideration is irrelevant. It deserves notice that *Fisher* v. *Bush*, 42 N. Y. 641 (1870), the case mostly relied upon in this connection, is not satisfied with mutual promises—a fact indicative, perhaps, of the inseparability of the right to vote, for there can be no objection to the adequacy of a promise as a consideration.

With these views none of the cases are in conflict. We may, indeed, believe that such contracts are not illegal; we will hesitate, however, to concur in a theory which will give control of a corporation to persons who are not shareholders in it.

George Stern.

Philadelphia, 1898.

CORPORATIONS; STATUS OF STOCKHOLDER OF NATIONAL BANK; SUBSCRIPTION INDUCED BY MISREPRESENTATION. In *Wallace* v. *Hood*, 89 Fed. 11, the receiver of a national bank sued to recover an assessment alleged to be due by defendant as a stockholder. The assessment had been duly made under Secs. 5151 and 5234 of the Revised Statutes. The defence was that the shares in question had been repurchased from original holders by the bank to keep up its credit, the bank's funds being used for the purpose and the stock transferred into the names of irresponsible employes; that the defendant, in ignorance of these facts, was induced to purchase the stock by the fraudulent statements of the president as to the bank's condition; that in spite of diligence he had been prevented by false bookkeeping from ascertaining the true condition of the bank until after the appointment of the receiver; and that he had then learned that the corporation had been insolvent when the stock was sold to him, and that, in point of fact, no part of the capital had ever been paid for in cash, as required by the National Banking Act.

He tendered his certificate to the receiver and demanded repayment of what he had paid for the stock. The tender and demand having been refused, the defendant presented with his answer a "cross-petition" praying for a recovery of the purchase money. To the defence, based upon the purchase by the bank of its own stock, the court opposed the principle of *National Bank* v. *Stewart*, 107 U. S. 676 (1882), and of *Bank* v. *Matthews*, 98 U. S. 626 (1878), holding that the stock was not thereby made void and that upon a subsequent sale the proceeds went into the bank and restored its capital for its creditors. As to the fraudulent misrepresentations, the court cited *Upton* v. *Englehart*, 3 Dill. 496 (1874), and Judge Dillon's comment therein upon *Oakes* v. *Turquand*, L. R. 2 H. L. 325 (1886). While conceding that there may be cases in which a stockholder can rescind the contract of purchase made voidable by the fraud of the corporation's officer, the court thought that such a right could never be asserted where the rights of corporate creditors were concerned, those rights having attached during the time that the defendant was a stockholder: *Bank* v. *Newbegin*, 20 C. C. A. 329 (1896); *Stuffelbeam* v. *De Fashmutt*, 83 Fed. 451 (1897); *Bank* v. *Matthews*, 29 C. C. A. 491 (1897). The court labored to justify this result on a theory of estoppel, that the stockholder had been held out as such by the official registry. Obviously the true explanation is that afforded by partnership law and has nothing to do with estoppel. Where B is induced by A's fraud to become his partner, B is liable jointly with A to all creditors whose debts accrue during the partnership. The liability results from the status and corresponds in each case to a legal right in the creditor which prevails over the partner's or stockholder's equitable right of rescission. The doctrine of estoppel or holding out might apply if the defendant were *not* a partner or a stockholder. It can have no application where, as here, he is such in fact and in law. If this principle had been recognized the court would have been spared the task of separately discussing the "counter-petition," which it disposed of on the authority of *Sheafe* v. *Larimer*, 79 Fed. 921 (1897). The court also made short work of the defence based upon non-payment of the original capital, citing *Louisville Trust Co.* v. *L. N., Etc., Co.*, 22 C. C. A. 378 (1896); *Casey* v. *Galli*, 94 U. S. 673 (1876); *Handley* v. *Stutz*, 139 U. S. 417 (1890).

INSURANCE; INTEREST IN THE LIFE INSURED. The Supreme Court, Special Term, of New York, recently had before it a case involving the interest necessary to maintain an action upon a policy of life insurance. A had been lawfully married in Ireland. He left there, his wife living, and came to New York, where he met the plaintiff and became engaged to her, she not knowing that he had a wife living. He was a member of a beneficial association and had designated the plaintiff as beneficiary in case of his death. The association paid the money into court on A's death, and it was claimed by the plaintiff, and the representatives of A's wife, deceased after A's death. Held, that the plaintiff was entitled to the money. Although the court did not think it necessary that the plaintiff should have an insurable interest in the life of A, yet it was of the opinion that she had such an interest: *Bogart* v. *Thompson*, 53 N. Y. Suppl. 622 (1898).

It is well settled that a woman who is engaged to be married to a man has an insurable interest in his life: *Chisholm* v. *Insurance Co.*, 52 Mo. 213 (1873). But that rule proceeds upon the view that there is a legal contract to marry, which was absent in the principal case. The reason is that the woman in such a case may expect an advantage to result from the continuance of the life insured.

Just what constitutes an interest in a life, in the sense required by the law to support a policy of life insurance, has been much debated in the past. It was once held that the interest required was such as could be the subject of a contract of indemnity: *Godsall* v. *Boldero*, 9 East. 72 (1807). But life insurance is no longer considered in the light of indemnity: *Dalby* v. *India & London Life Assurance Co.*, 15 C. B. 364 (1854). And it has been decided that the interest must be a pecuniary interest: *Halford* v. *Kymer*, 10 B. & C. 724 (1830); *Singleton* v. *Insurance Co.*, 66 Mo. 63 (1877). But the weight of authority in this country is the other way: *Lord* v. *Dall*, 12 Mass. 115 (1815); *Insurance Co.* v. *Kane*, 81 Pa. 154 (1876); *Loomis* v. *Insurance Co.*, 6 Gray, 396 (1856); *Warnock* v. *Davis*, 104 U. S. 775 (1881).

In a case analogous to the principal case it was held that a woman who lived with a man as his mistress, although he had a wife living, has an insurable interest in his life, since she has a reasonable expectation of some pecuniary advantage from the continuance of it: *Lampkin* v. *Traveler's Insurance Co.*, 52 Pac. (Cal.) 1040 (1898).

If the reason assigned in the cases which allow a woman to insure the life of her betrothed, viz., the existence of a binding contract from which some advantage may be expected, is valid, then it seems that in a case like the principal case the plaintiff would not have an interest, for there was no binding contract to marry. And in a case like *Lampkin* v. *Traveler's Insurance Co.*, *supra*, it is hard to see how the plaintiff had any expectation of advantage from a continuance of the life insured and a consequent continuance of the illicit relationship between them which the law would recognize. It certainly would not enforce any obligation arising out of such a relation, and it is a well-established maxim that the law will not give effect indirectly to what it will not enforce directly. And if any one should be permitted to take advantage of the illegal relation, it should be the insurance company, which has been led to believe the plaintiff was the wife of the insured.

But it seems that the true explanation of these and kindred cases lies in the fact that *no interest* is required in cases where, from the relationship of the parties, it is safe to conclude that the contract of insurance was entered into *bona fide*, and that it was not a subterfuge to support a wagering transaction. It is said in many of the cases that there is a *presumption* of interest in cases of close relationship. The interest is purely sentimental. If that be so, then it would follow that in any given case this presumption could be rebutted by evidence to show that the parties were estranged or, *per contra*, the same presumption could be raised by showing an intimacy between the parties. But as matter of fact, no court would listen to such an argument. The courts have laid down hard and fast rules that there are certain relationships which give rise to this presumption. Therefore, it seems to be an improper use of terms to call it a presumption. It is the same thing as saying that in such cases no interest is required.

The conclusion from the authorities seems to be that whenever you have such a relationship between the parties as insures good faith and fair dealing, then no *interest* is required to support a policy of life insurance. These relationships have been confined by the courts to marriage, persons under contract to marry, persons living together as man and wife, and near degrees of consanguinity.

PARTNERSHIP; LIABILITY OF ESTATE OF DECEASED PARTNER. *Thompson* v. *White*, 54 Pac. 718, is a most interesting case. In it the Supreme Court of Colorado had before them a suit on a joint book account and on joint promissory notes and checks, given to evidence what was, in large part, a partnership debt of the makers. One of the debtors died, and judgment was entered against his executrix and the survivors. The question was whether the judgment against the executrix could stand. At common law the contract of the creditor with the partner is a joint contract. and, in a case like the present, the survivors alone would be liable. Obviously the theory of a joint contract is an inconvenient theory to apply to a mercantile relation. What was really required was a recognition that the contract, though joint in form, was several in substance. Lord Mansfield perceived this, and decided, *Rice* v. *Shute*, 5 Burr. 2611 (1770), accordingly. Instead of developing his theory, courts of law continued to treat the contract as joint, while courts of equity (instead of boldly declaring all contracts to be several in equity, which would have been at least a coherent doctrine), undertook to treat the contract as several only in partnership cases, in which one of the partners has died. The same contract, joint one day in law and equity, was next day joint at law and several in equity: See opinion of Lord Selborne, in *Kendall* v. *Hamilton*, 4 App. Cas. 504 (1879), at p. 537, *et seq.* Lord Eldon had expressed surprise at this doctrine years before in *Ex parte Kendall*, 17 Vesey, 514 (1811). In some jurisdictions, in order to reach the estate of the deceased partner in equity, it was declared necessary to aver and prove that there were no partnership assets and that the other partners were insolvent. This, again, was obviously an anomaly. The legislatures then began, in haphazard fashion, to remedy the evil by making (in general) all contracts several as well as joint, unless expressly declared to be joint: See Parsons (J.) on Part. § 82, *et seq.* The contract of a creditor with a partnership is, of all others, the one to which such legislation should be held applicable. Yet the Supreme Court of Colorado, in the case before us, actually decides that such contracts are the only ones to which such statutes do not apply, and proceeds to insist that the plaintiff must aver a failure of partnership assets in order to reach the estate of the deceased partner. There can be no doubt that the court is right in holding that there cannot be (as seems to have been urged by counsel) one rule applicable to contracts evidenced by formal writings, and another applicable to oral agreements and open accounts. It is submitted, however, that in both cases the legal right of the creditor against the separate estate of each partner, dead or alive, ought to be recognized to the full. Except where authority requires the application of the mischievous "bankruptcy rule," the firm creditor may seize and sell the separate estate. (See *Meech* v. *Allen*, 17 N. Y. 300 (1858). See, also, note on p. 367, Ames's Cases on Part). If he may do so when all the partners are alive, he ought, on principle, to have the same rights when one is dead; and this is especially true where a statute has dissipated that medæval conception, the "joint contract." These considerations seem to answer the suggestion of the Colorado court, that "if a firm debt cannot be paid out of the separate property of a deceased partner except upon a certain contingency, the partnership contract does not impose an absolutely several liability." The answer is that the partnership debt *can* be paid out of the separate property of a partner under all circumstances, except in the single contingency represented by the bankruptcy rule.

PRACTICE; INVALIDITY OF APPOINTMENT OF MASTER IN DIVORCE TO FIND FACTS AND SUGGEST DECREES. Legislation in Pennsylvania, while comprehensive upon the leading subject of stating the causes of divorce, has provided meagerly for proceedings in the courts. The second section of "An Act Concerning Divorces" (March 13, 1815, P. L. 150), provides for a petition or libel, with an affidavit of specified averments, the issue of a subpœna and the service of the same, and, if the respondent be not found, for an *alias* subpœna and publication, and for appearance and hearing, and for an issue to be tried by a jury. This section ends with the provision " . . . but when neither of the parties requires an issue to be so formed, the court may inquire and decide upon the case in the presence of the parties; or, if either of them will not attend, then *ex parte* by examination of witnesses on interrogatories, exhibits or other legal proof had either before or at the hearing."

With such mere outlines of procedure, the details of practice were conducted for many years under rules of the Courts of Common Pleas, and in accordance with decisions upon questions that arose in the course of litigation. The text and notes in II. Tr. & H. Pr., § 2334, *et seq.* (Brightly Ed. 1880), indicate the respective sources of authority for carrying on such suits, and the successive steps to be taken therein. In the county of Philadelphia the four Courts of Common Pleas adopted, to go into effect the first Monday of January, 1884, a carefully drawn set of rules—in some regards an entirely new system—regulating the practice in divorce. Prior to that time, cases in which there was no demand for a jury trial were referred to an examiner (under certain stipulations as to interrogatories, notice, &c.), and witnesses were examined before him and their testimony reported to the court. One important innovation made by the new rules was the substitution of a master instead of an examiner. The language of the rule on this point is, that "when a case is ready to be proceeded with, either upon answer not demanding a trial by jury, or *ex parte*, a master may be appointed by the court upon the written motion of either party." Minute directions for all the proceedings before the master are given in further sections of this rule of court, the main features of which were apparently intended to give actual notice to the respondent, who had been served only by publication, and to compel a careful examination in detail of each witness upon "all matters relevant to a just and proper determination of the cause."

It is further made a duty of the master to "report his proceedings and the testimony, together with his opinion of the case . . . and to file the same in the office of the prothonotary."

The manifest purpose of this change in practice was to secure care and thoroughness in matters of such vital social importance as divorces. Until very recently no question has been raised as to the power of the courts to appoint such an officer. Now, however, this has been considered and decided. A case contested before a master, to whose report exceptions were filed and after argument dismissed by the Court of Common Pleas, and the divorce granted, was appealed by the respondent to the Supreme Court of Pennsylvania. There was no assignment of error to attack the validity of the appointment of the master. The contention of the appellant was upon very interesting questions as to the issue of desertion stated in the exceptions which had been considered by the Court of Common Pleas, and the full and able argument of counsel made no reference to the right to appoint a master or to the scope of his power when appointed.

The Supreme Court, however, of its own motion, decided that, while the court below might appoint an examiner to take testimony and report it, there is no authority under the act to appoint a master to find facts and suggest a decree.

As this decision ends a practice which had existed for about fourteen years, it would be interesting to, *in extenso*, quote the exact language of the judge who delivered the opinion of the Supreme Court. But the whole extract on this point would be too long for this note. The conclusion of the court is in substance as just stated. Judicial responsibility cannot be evaded by shifting it over to a member of the bar. The following sentence may be given from the opinion of Dean, J.: "Therefore, of whatever drudgery the court of original jurisdiction may relieve itself in this class of cases by the appointment of an examiner, neither it nor we can escape the burden of a careful consideration of the evidence to ascertain if it does in very truth establish the statutory grounds for a divorce."

While much might be said in favor of the careful and particular requirements of the rule of court, and the advantage of having an opinion from a master who sees the witnesses, hears their oral testimony, reduces it to writing, and forms a judgment from personal observation, yet the determination of the Supreme Court positively uproots the present practice. The rule of court so far as concerns the appointment of a master, and its provision for an opinion suggestive of a decree by him, is absolutely of no effect.

It may be conjectured that hereafter cases will be referred to examiners in accordance with the old practice, since the opinion of the Supreme Court expressly concedes that the Court of Common Pleas may appoint an examiner to take testimony and report it: *Middleton* v. *Middleton*, 41 Atl. 291.

INNKEEPERS; LIENS; GOODS OF THIRD PERSONS. The Code of South Dakota provides that innkeepers shall have a lien on baggage and other effects belonging to any person who shall abscond without paying his hotel bills. The Supreme Court of that State has held, in the case of *McClain* v. *Williams*, 76 N. W. 930 (Oct. 18, 1898), that this provision of the code must be construed strictly and that the innkeeper's lien will not attach to goods of third persons brought into the hotel by the guest. The court takes the view that the code supersedes the common law, and to allow the property of the third person to be held for the debt of another would be unconstitutional as depriving one of his property without due process of law. The court holds that to allow such a lien would not be promotive of justice. It is a question, however, whether or not issue might not be joined upon this point. It is a rule in law that where one of two innocent persons must suffer, by reason of the fraudulent acts of a third person, he who has enabled the third person to commit the fraud should be the one to suffer. At common law, the goods of a third person brought into a hotel as the goods of a guest and believed by the innkeeper to belong to the guest would be subject to the lien: *Sneed* v. *Watkins*, 1 C. B. n. s. 266 (1856); *Singer* v. *Miller*, 52 Minn. 516 (1893); *Kane* v. *Prentice*, 13 Ore. 482 (1886); *Covington* v. *Newberger*, 99 N. Car. 523 (1888). And it is hard to see why this is unjust. The third person by allowing his goods to remain in the hands of the guest enables him to secure credit for board and lodging, and as between him and the innkeeper the latter would seem to have the greater equity. It might also be questioned whether the view of the court in holding that the words