

## Louisiana Law Review

---

Volume 3 | Number 3  
March 1941

---

# Corporations - Notice of Dissenting Shareholders' Demands - Due Process of Law

M. M. H.

---

### Repository Citation

M. M. H., *Corporations - Notice of Dissenting Shareholders' Demands - Due Process of Law*, 3 La. L. Rev. (1941)  
Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol3/iss3/10>

This Note is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons. It has been accepted for inclusion in Louisiana Law Review by an authorized editor of LSU Law Digital Commons. For more information, please contact [kreed25@lsu.edu](mailto:kreed25@lsu.edu).

it has the procedural advantage of permitting the injured wife to recover in Workmen's Compensation without the necessity of an inquiry into her marital status and without a limitation upon the recovery when the husband has not joined in the suit.

As a matter of public policy, however, it seems preferable that workmen's compensation should be community property on the theory that joint ownership of property and identity of interests help the family to withstand economic and social hardships. In addition, there remains the fact that the compensation is for the loss of wages<sup>8</sup> which is a loss to the community rather than the individual. For those reasons, it might have been desirable<sup>9</sup> if the court had interpreted the workmen's compensation as falling within the provision of Article 2334<sup>10</sup> that: "Common property is that which is acquired by the husband and wife during marriage, in any manner different from that above declared."

R. B. L.

---

CORPORATIONS — NOTICE OF DISSENTING SHAREHOLDERS' DEMANDS — DUE PROCESS OF LAW—Shareholders dissenting in the vote to transfer all corporate property gave proper notice to the corporation of their objection and also notified the company of the value claimed for their shares, and demanded the purchase of the shares by the corporation as provided by statute.<sup>1</sup> The corporation gave notice of its refusal to pay the price asked, but it did not set a value it would be willing to pay. After six months, the dissenters secured judgment condemning the corporation to pay the value set in the dissenters' notices, in accordance with the provisions of the statute.<sup>2</sup> The Supreme Court of Ohio held the

---

8. "As respects the injured employee, the law declares that he shall be given compensation for the loss of his earnings." *Brownfield v. Southern Amusement Co.*, 198 So. 656, 659 (La. 1940). See also *Carlino v. United States Fidelity & Guaranty Co.*, 199 So. 228 (La. 1940) (worker is not entitled to compensation as long as he is receiving wages equal to the amount of compensation he would otherwise be receiving); *Veasey v. Peters*, 142 La. 1012, 77 So. 948 (1918) (purpose of workmen's compensation is to compensate for loss of earning power).

9. This possibility was suggested by counsel but not discussed in the court's opinion. See Brief on behalf of Appellant, *New Amsterdam Casualty Co.*, p. 15; *Brownfield v. Southern Amusement Co.*, 196 La. 74, 198 So. 656 (1940).

10. La. Civil Code of 1870.

1. Ohio Gen. Code Ann. (Page, 1938) § 8623-72. Cf. La. Act 250 of 1928, § 52 [*Dart's Stats.* (1939) § 1132].

2. *Ibid.*

provision unconstitutional in that it deprived the majority shareholders of property without due process of law because the statute did not provide for notice of the dissenters' demands to them.<sup>3</sup> *Held*, by the United States Supreme Court, the majority shareholders were properly informed of the claim for notice to the corporation as their representative was sufficient notice to the shareholders. *Voeller v. Neilston Warehouse Company*, 61 S.Ct. 376, 85 L.Ed. 314 (1941).

The Ohio statute, which is substantially the same as the Louisiana Business Corporation Act with respect to the rights of dissenters,<sup>4</sup> provides that a dissenting shareholder may demand the purchase of his shares by the corporation when there is to be a transfer of all the corporate property.<sup>5</sup> If the corporation does not acquiesce in the value asked by the dissenter, it may within ten days make a counter offer. However, if a counter offer is not made or a petition asking for an appraisal is not filed within six months, "the fair cash value of the shares shall conclusively be deemed to be equal to the amount offered . . . by the dissenting shareholder."<sup>6</sup>

The contention of the majority shareholders, that there must be notice to them, loses sight of a basic principle of corporate organization.<sup>7</sup> The corporation is managed and its rights are asserted by a board of directors acting as a body and in the name of the corporation.<sup>8</sup> Although in appropriate cases, shareholders may assert a derivative cause of action for mismanagement, they cannot control the directors' action.

In the instant case the dissenters demanded the purchase of their shares by the corporation, and not by the majority shareholders. It was within the discretion of the board of directors to

3. *Voeller v. Neilston Warehouse Co.*, 136 Ohio St. 427, 26 N.E.(2d) 442 (1940), noted in (1940) 6 Ohio St. L. J. 308.

4. La. Act 250 of 1928, § 52 [Dart's Stats. (1939) § 1132].

5. Ohio Gen. Code Ann. (Page, 1938) § 8623-72, par. 1. Cf. La. Act 250 of 1928, § 52, I [Dart's Stats. (1939) § 1132, I], which provides a similar remedy in cases where the vote favoring the transfer is less than eighty per cent of the shareholders.

6. Ohio Gen. Code Ann. (Page, 1938) § 8623-72, par. 7. In Louisiana the same provision is made except the amount becomes conclusive after twenty days from receipt of the offer. La. Act 250 of 1928, § 52, I [Dart's Stats. (1939) § 1132, I].

7. For a very able criticism of the Ohio Supreme Court decision in the principal case, see Lattin, *A Reappraisal of Appraisal Statutes* (1940) 38 Mich. L. Rev. 1165, 1173-1181. See also Note (1940) 6 Ohio St. L.J. 308.

8. Certain corporate powers are reserved to the shareholders, either by statute or by the by-laws. See La. Act 250 of 1928, § 34, I [Dart's Stats. (1939) § 1114, I].

accept the offer made by the dissenters, or to take one of the alternative actions<sup>9</sup> offered by the statute. When they failed to pursue any of these courses the corporation became obligated to pay the price asked by the dissenters. The corporation, and not the shareholders, was deprived of property by the action, or rather inaction, of its duly authorized agents. As has been pointed out by Professor Lattin,<sup>10</sup> the loss to the shareholders here was no greater than in any other case of mismanagement. If the directors were guilty of mismanagement, the corporation would have a cause of action against them.

The result reached in the present case is highly desirable and allows the beneficial purpose of the appraisal provisions<sup>11</sup> to continue without the delay and expense which would result from requiring that notice be given to each of the numerous individual shareholders. The only criticism of the Supreme Court's decision is that it did not rest upon the simple proposition that the demand made by a dissenting shareholder is made upon the corporation, and that in receiving notice and acting thereon the corporation acts through its normal management, the directors.

M. M. H.

---

FEDERAL PROCEDURE—DECISIONS OF INFERIOR STATE COURTS—  
BINDING ON FEDERAL COURTS—Suit was brought to compel defendant company to restore the rights of plaintiffs as remaindermen in certain shares of stock in defendant company. Whether the statute of limitations barred the action was dependant upon whether a demand upon defendant was a prerequisite to the accrual of the cause of action. The only state decision on this subject in the district where the case was brought was by an intermediate appellate court of Ohio. The circuit court of appeals declined to follow this decision. *Held*, on writs of certiorari, that the decision of the Ohio appellate court was "state law," and must be

---

9. Under the statute the corporation could reject the offer and make a counter offer, and if it was refused, could file a petition asking the court for an appraisal; or the corporation could abandon the sale. Ohio Gen. Code Ann. (Page, 1938) § 8623-72, par. 106. Cf. La. Act 250 of 1928, § 52, I [Dart's Stats. (1939) § 1132, I] which has substantially the same provisions.

10. Lattin, *supra* note 7.

11. For discussion of the right of appraisal generally, see Bennett, *Remodeling, Merger, and Dissolution of Louisiana Corporations—A Critical Survey* (1941) 3 LOUISIANA LAW REVIEW 481, 482 et seq.; Lattin, *Remedies under Appraisal Statutes* (1931) 45 Harv. L. Rev. 233; Lattin, *supra* note 7, at 1177.