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A STUDY TO DETERMINE WHETHER SECTIONS 2201 AND 3901 OF THE CORPORATIONS CODE SHOULD BE MADE UNIFORM WITH RESPECT TO NOTICE TO STOCKHOLDERS RELATING TO THE SALE OF ALL OR SUBSTANTIALLY ALL OF THE ASSETS OF A CORPORATION.*

*This study was made by the Staff of the Law Revision Commission.

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Sections 2201 and 3901 of the Corporations Code are inconsistent with respect to the requirement of notice to the stockholders of a corporation of an impending sale of all or substantially all of the corporate property. Section 2201 provides that a proposal to sell or otherwise dispose of such property may not be acted upon at a stockholders' meeting unless written notice thereof is sent to each stockholder, even though routine notice of regular or annual meetings has been dispensed with.[1] However, Section 3901 which provides, inter alia, that a corporation may sell or otherwise dispose of all or substantially all of its property or assets with the written consent of a majority of the stockholders,[2] does not in terms require that all stockholders be notified of such a sale. Moreover, as will be shown below, the legislative history of Section 3901 makes it clear that no such notice is required.

This study is concerned with two questions: whether there is any substantial reason for this difference between Sections 2201 and 3901 and, if not, whether either should be revised. Before the question of notice to stockholders of a sale of all or substantially all of a corporation's assets is considered, however, the power of a corporation to engage in such a transaction will be briefly considered.

*This study was made by the Staff of the Law Revision Commission

POWER TO SELL ALL OR SUBSTANTIALLY ALL OF THE ASSETS OF A CORPORATION -- COMMON LAW AND MODERN STATUTES

Common Law

The common law rule was that a corporation could not be dissolved without the unanimous consent of its members. Nor, in the absence of a provision in the corporate charter or by laws, could there be a sale of all or substantially all of the assets of a solvent corporation without the unanimous consent of the stockholders since this was considered to be a step towards dissolution.[3] This doctrine evolved on the theory that there is an implied contract among the stockholders of a corporation that it will continue to exist and to carry out the business purposes as set forth in the corporate charter.[4]

This common law rule empowered one or a minority of stockholders to thwart proposed sales which would be in the best interest of the corporation and most of its stockholders. Because of this it was soon qualified by judicially-created exceptions. First, a number of cases held that the directors or a majority of stockholders could authorize the dissolution of a corporation or the sale of all or substantially all of its assets without the vote or assent of all of the stockholders when the corporation was insolvent.[5] (as used herein majority of stockholders means those entitled to exercise a majority of the voting power of the corporation) The courts later extended this rule, holding that the majority could act without consent of the minority when the prospect of achieving the chartered purposes had diminished because of financial difficulties.[6]

Another judicially-created exception to the common law rule requiring the unanimous consent of the stockholders to the sale of all or substantially all

of the assets of a corporation was developed to cover the situation where the very purpose of the corporation was to sell such assets - e.g., a corporation organized for the sole purpose of managing and disposing of the property of a decedent's estate[7] or a corporation created to buy and sell land.[8] Thus, a distinction was taken at common law between a sale of corporate assets which was made in the usual and regular course of the corporate business and one which was not. In the case of the former, consent of the stockholders was not required.[9] California follows this distinction. In Jeppi v. Brockman Holding Company,[10] which involved the question whether failure to obtain the consent of the majority of stockholders to a contract to sell substantially all of a corporation's property invalidated the contract of sale, the supreme court held that Section 3901 was not applicable and that the transaction was not ultra vires because the sale was one made in the furtherance of the business for which the corporation was organized. The court stated:

> The provisions of the statute should not be applied solely upon the basis of the quantity of the property; the test which determines the question of the necessity for consent of the stockholders is, "whether the sale is in the regular course of the business of the corporation and in furtherance of the express objects of its existence, or something outside the normal and regular course of the business...the only purpose, for the organization of the corporation...was a sale in the regular course of its business...."[11]

Statutes

By 1953 all but six states had enacted statutes relating to the sale of all or substantially all of the assets of a corporation.[12] These statutes may be classified as follows:

1. Eight jurisdictions had enacted statutes which provided that the

directors must have authorization by a vote of a stated proportion of the stockholders, obtained at a regular or special meeting, to make a sale not in the usual and regular course of business.[13] Five of these jurisdictions expressly provided that no consent is needed for a sale in the usual course of business;[14] the other three jurisdictions had no express statutory provisions relating to such sales.[15]

2. Twenty-four other jurisdictions[16] permitted a sale of all or substantially all of the assets of a corporation with the approval of the majority of stockholders obtained at a regular or special meeting. These statutes do not differentiate between a sale made in the usual and regular course of business and a sale not so made. It is not clear whether the courts in these jurisdictions would require the stockholders' consent to the former.[17]

3. At least ten jurisdictions, including California, provided that the directors could be authorized by a majority or specified proportion of stockholders to sell all or substantially all of the corporate assets, such authority to be given either by (1) an affirmative vote at a general or special meeting or (2) by written consent.[18] The general provisions of these statutes are essentially similar to those of the Delaware statute which provides:

> Every corporation...may at any meeting of its board of directors, sell, lease or exchange all of its property and assets,...as its board of directors deems expedient and for the best interests of the corporation, when as authorized by the affirmative vote of the holders of a majority of the stock issued and outstanding having voting power given at the stockholders' meeting duly called for that purpose, or when authorized by the written consent of the holders of a majority of the voting stock....[19]

NOTICE OF SALE OF ALL OR SUBSTANTIALLY ALL OF THE CORPORATION'S ASSETS

General Considerations

One of the questions which arises in any situation in which a corporation is empowered by charter, by-law, statute, or decision to sell all or substantially all of its assets is whether all of the stockholders must be given notice of such a sale before it is made. On this question the answer seems clear in three situations: (1) if the charter or a by-law has a provision one way or the other it will govern; (2) when approval of the stockholders is required to be given at a special or regular meeting they have to be given notice of the sale in the notice of the meeting;[20] and (3) in California and some other jurisdictions[21] notice to stockholders is not required when a sale of all or substantially all of a corporation's assets is made in the usual course of the business of a corporation because the consent of the stockholders to such a sale is not necessary. The precise question with which this study is concerned may, therefore, be narrowly stated: when a corporation is authorized by statute to sell all or substantially all of its assets, other than in the usual and regular course of business, with the written consent of less than all of its stockholders must those stockholders whose consent is not necessary be given notice of the proposed sale?

No decision has been found on the question whether under such a statute notice of an impending sale must be given to stockholders other than those whose consent is required. Two of these states, however, have dealt with the matter by statute. In 1951 Michigan amended its statute which is similar to Section 3901 to require that after a proposed sale of all or substantially

all of the corporate assets has been approved by the written consent of the required proportion of stockholders the directors must mail a notice of such consent to all stockholders of record.[22] New Jersey has also provided that notice of such consent shall be given to stockholders of record regardless of whether or not they are entitled to vote on the proposal.[23]

California Law

On its face Section 3901 of the Corporations Code appears to present the question whether it is necessary to notify all stockholders of an impending sale of all or substantially all of a corporation's assets when the approval therefor is obtained through the written consent of a majority of the stockholders. But this is a case in which appearances are deceiving for two reasons. In the first place, the question is narrower than it would appear to be by virtue of the following considerations:

1. As has been noted, the question does not arise in the case of a sale of corporate assets in the ordinary course of business. The directors can make such a sale without obtaining the approval of the stockholders and a fortiori without notifying them.

2. The question does not arise in connection with a sale of all or substantially all of a corporation's assets in the course of effectuating a merger or consolidation for there are specific statutory provisions setting out the procedural requirements for such a transaction which require that notice thereof be given to all stockholders unless such notice has been waived.[24] Such notice is required to apprise the stockholders of the proposed transaction and to give them the opportunity to withdraw and receive payment for their shares.[25]

3. The question does not arise when the sale of all or substantially all

of the corporation's assets is proposed by the directors in connection with a voluntary liquidation or dissolution of the corporation for there are statutes which specifically require that notice be given to all stockholders in such cases.[26]

In the second place, the legislative history of Section 3901 makes it clear that notice to stockholders is not required in any situation to which it applies. Section 3901 was enacted along with many other provisions following a six year study of California corporation laws by the State Bar Committee on Corporation law during the years 1927 to 1933. This Committee, whose draftsman was Professor Henry W. Ballantine of the School of Law of the University of California, studied the Uniform Business Corporation Act, the Ohio General Corporation Act of 1927, and the statutes of Delaware, Nevada and other states before proposing legislation.[28] In the legislative years of 1929, 1931, and 1933 many fundamental changes were made in California corporation law on the recommendation of this committee.

In its original form what is now Section 3901 of the Corporations Code was Section 361a of the Civil Code enacted in 1903 which provided that no sale of corporate property would be valid without first obtaining the vote or expressed or written consent of two-thirds of the stockholders at a meeting called for that purpose.[29] In 1931 Section 343 of the Civil Code was enacted which contained the former Section 361a but with certain fundamental changes. Section 343 as enacted required approval of a directors' resolution to sell all or substantially all of the corporation's assets by vote or written approval by a majority of the stockholders, and a written notice of the resolution authorizing the same had to be mailed to every stockholder whether entitled to vote or not within five days after the adoption of the resolution.[30] Professor

Ballantine stated in his comment relating to this section that the requirement of written notice was for the purpose of giving the nonvoting stockholders the opportunity to raise objections to the transaction in those instances when no meeting was called and the transaction was authorized by the written consent of the stockholders rather than by vote at a meeting.[31] This section was subsequently revised in 1933 to eliminate the requirement of notice to the shareholders.[32] Professor Ballantine's explanation of this revision was that the requirement of notice raised a question as to the validity of a sale of corporate assets if notice had not been given, and a requirement for notice seemed to be unnecessary.[33] In 1947 Section 343 was repealed and a similar provision was enacted as Section 3901.[34] There were no substantive revisions to the statute at that time nor have there been any subsequent revisions.

ANALYSIS OF THE POLICY QUESTION PRESENTED

The foregoing analysis of the legislative history of Section 3901 makes it clear that there is no present requirement that notice be given to all stockholders before a sale may be made of all or substantially all of a corporation's assets with the written consent of a majority of the stockholders. The policy question presented is whether the Legislature should now enact such a requirement, thus bringing Section 3901 into harmony with Section 2201 but reversing the view expressed in the 1933 amendment of Section 343 of the Civil Code.

It is arguable that although the minority stockholder should neither be able to dictate corporate policy nor prevent the majority from acting for what it regards as the good of the corporation, he should have the right to compel

the majority to act honestly and within the general purposes of the corporate character and that in order to do so he must be given notice of action as drastic as that of selling all or substantially all of the corporation's assets. The general trend in corporation law has been to give broader powers to the majority to determine corporate policy but to afford some protection to the minority against action which would drastically alter the nature or purposes of the corporation. In most jurisdictions a compromise has been reached by the enactment of statutes conferring on the dissenters from such action the right to sell their stock to the corporation at its fair value. Such statutes generally provide that the dissenting minority stockholder must be given notice of the proposed transaction. He may then file written objections to the transaction with the corporation within a specified number of days, making a demand for payment of the fair value of his stock if the transaction is consummated. If there is a disagreement as to the value of his stock, either the corporation or stockholder can have the value of the stock ascertained.[35] The corporation must then buy the stockholder's stock at the appraised value.[36] California has such a statute in Section 4123 of the Corporations Code; it applies, however, only to cases of consolidation and merger.[37]

The following alternatives appear to be available insofar as protecting minority stockholders from a sale of all or substantially all of a corporation's assets with the written consent of the majority stockholders.

1. Make no substantive change in existing law. Thus, as has been shown above, minority stockholders would not be entitled to notice of such a sale. If this conclusion is reached, it is recommended that Section 3901 be amended to make it clear that notice is not required to be given, thus ending the doubt

on this matter which led to the present study. (See Appendix A infra.)

2. Amend Section 2201 to eliminate the requirement that notice must be given to stockholders that action will be taken at a regular or special stockholders' meeting on a proposal to sell all or substantially all of the assets of a corporation. (See Appendix B infra.) This would be on the theory that if notice is not required when the sale is made with the written consent of the majority of stockholders, the corporation should not be put to the trouble and expense of giving notice that such a proposal will be voted on at a stockholders' meeting. However, this suggestion fails to take account of the importance of proxy voting at stockholders' meetings. Section 2211 of the Corporations Code provides that the presence in person or by proxy of the persons entitled to vote a majority of the voting shares at any meeting constitutes a quorum for the transaction of business. And, because Section 2213 provides that in the absence of a quorum no business other than a vote to adjourn may be transacted, corporations have established the practice of soliciting proxies so as to be assured of having a quorum at stockholders' meetings. A corporation generally will have one regular annual stockholders' meeting preceded by notice to the stockholders of the business that is to come before the meeting. Included with the notice is a proxy statement soliciting the stockholders' proxy to represent the stockholders' shares.

Section 14A of the Rules and Regulations of the Securities and Exchange Commission provides for the procedure, form, and contents of proxy statements for corporations registered with the Commission. This statement must include information on matters to be acted upon at the meeting. The proxy statement must also give the stockholder the opportunity to indicate how his shares are to be voted on each matter listed and must state how the proxy will vote if no instructions are given by the stockholder. Thus the stockholder is pro-

tected in that he is aware of the business that is to be brought before the meeting and how his shares will be voted by his authorization of a proxy.

A California corporation that is not regulated by the Securities and Exchange Commission, on the other hand, is free to send out a proxy statement which gives no information whatever as to matters to be voted on at the meeting (There is one exception to this in Section 3637 of the Corporations Code which is discussed infra). Thus, a proxy statement might list certain business that is to come before the meeting, i.e., the election of directors, and state that this is the "only item of business to come before this meeting of which the management is aware at this time." (See, e.g., proxy Statement, Food Mart, Ind., May 6, 1958) The stockholder is requested to sign the authorization appointing certain persons as proxies to represent and to vote his stock (a) for the election of directors, and (b) "in accordance with their best judgment, with respect to any other business that may properly come before the meeting." Such business could, of course, include a proposal to sell all or substantially all of the corporation's assets.

Since the solicitation of proxies is the general practice and many California corporations are not registered with the Securities and Exchange Commission, the only way the stockholder who has given his proxy may be protected against having it voted in favor of action which may drastically affect the future of the corporation is by requiring, as does Section 2201 of the Corporations Code, that all stockholders be given notice of the matters to be acted upon at the meeting.

If the present requirement that stockholders be given notice that a proposal for the sale of all or substantially all of the corporate assets is to be acted upon at a stockholders' meeting were eliminated from Section 2201 and the corporation were not regulated by the Securities and Exchange Commis-

sion, a stockholder might quite unknowingly authorize a proxy to approve such a sale. Thus, the sale would be approved without the actual knowledge or consent of a majority of the stockholders.

3. Enact a new Section 3901.5 of the Corporations Code requiring that all stockholders be given notice of a proposed sale of all or substantially all of the corporation's assets whenever proxies are solicited for a meeting at which such a proposed sale is to be acted upon and whenever the written consent of shareholders to such a sale is solicited (See Appendix C infra). There is precedent for this proposal in Section 3637 of the Corporations Code. Section 3635 provides that certain amendments of the articles of incorporation must be approved by the vote or written consent of the majority of stockholders. In 1937 Section 3637 was enacted to supplement Section 3635; it provides that when the corporation solicits proxies or written consents of the stockholders to such an amendment the corporation shall mail a concise summary of the proposed amendment to each stockholder. The section further provides, however, that failure to comply with the notice requirement does not invalidate the amendment.

If Section 3901.5 were adopted the notice requirement might be deleted from Section 2201 on the theory that notice would be given in the proxy statements. It should be noted, however, that Section 2201 requires that special notice be given that a proposal to amend the articles of incorporation will be acted upon at a stockholders' meeting even though Section 3637 also requires that notice thereof be given in soliciting proxies.

4. Add a new Section 4300.5 of the Corporations Code to give stockholders dissenting from a sale of all or substantially all of a corporation's assets a right to require the corporation to purchase their shares. (See

Appendix D infra.)

5. Even if no other change is made, both Section 3901 and Section 2201 of the Corporations Code should be amended to codify the Jeppi decision - i.e., to make it clear that these sections are inapplicable to a sale of corporate assets in the ordinary course of business. (See Appendix E infra.)

APPENDIX A.

A proposed addition to Section 3901 to provide that no notice is required when a sale of all or substantially all of the corporate assets has been approved by the authorized written consent of the stockholders.

3901. A corporation shall not sell, lease, convey, exchange, transfer, or otherwise dispose of all or substantially all of its property and assets except in accordance with one of the following subdivisions:

(a) Under Section 3900.

(b) Under authority of a resolution of its board of directors and with the approval of the principal terms of the transaction and the nature and amount of the consideration by vote or written consent of shareholders entitled to exercise a majority of the voting power of the corporation.

However, the articles may require for such approval the vote or consent of a larger proportion of the shareholders or the separate vote of a majority or a larger proportion of any class or classes of shareholders.

<u>When a corporation proposes to take action with the written consent of shareholders pursuant to this section notice of the proposed action is not required to be given to shareholders other than those whose consent is obtained.</u>

APPENDIX B

A proposed amendment to Section 2201.

2201. At the annual meeting directors shall be elected, reports of the affairs of the corporation shall be considered, and any other business may be transacted which is within the powers of the shareholders, except that action shall not be taken on any of the following proposals unless written notice of the general nature of the business or proposal has been given as in case of a special meeting, even though notice of regular or annual meetings is otherwise dispensed with:

~~(a) A proposal to sell, lease, convey, exchange, transfer, or otherwise dispose of all or substantially all of the property or assets of the corporation except under Section 3900.~~

~~(b)~~ (a) A proposal to merge or consolidate with another corporation, domestic or foreign.

~~(c)~~ (b) A proposal to reduce the stated capital of the corporation.

~~(d)~~ (c) A proposal to amend the articles, except to extend the terms of the corporate existence.

~~(e)~~ (d) A proposal to wind up and dissolve the corporation.

~~(f)~~ (e) A proposal to adopt a plan of distribution of shares, securities, or any consideration other than money in the process of winding up.

APPENDIX C

A proposed new Section 3901.5 of the Corporations Code relating to the solicitation of proxies or written consents of stockholders in connection with a sale or transfer of all or substantially all of the corporate assets.

3901.5. In soliciting proxies authorizing the holder to vote in favor of any transaction referred to in Section 3901 or in soliciting written consents of shareholders thereto the corporation shall mail to each shareholder of record a notice setting forth the principal terms of the transaction and the nature and amount of the consideration. Failure to comply with this section does not invalidate the transaction.

APPENDIX D

A proposed new Section 4300.5 relating to the rights of the dissenting shareholder and a cross reference in Section 3901 to Section 4300.5.

3901. A corporation shall not sell, lease, convey, exchange, transfer, or otherwise dispose of all or substantially all of its property and assets except in accordance with one of the following subdivisions:

(a) Under Section 3900.

(b) Under authority of a resolution of its board of directors and with the approval of the principal terms of the transaction and the nature and amount of the consideration by vote or written consent of shareholders entitled to exercise a majority of the voting power of the corporation.

However, the articles may require for such approval the vote or consent of a larger proportion of the shareholders or the separate vote of a majority or a larger proportion of any class or classes of shareholders.

Any holder of voting or nonvoting shares who has not voted to approve a transaction authorized by this section may apply for the purchase of his dissenting shares as provided in Section 4300.5.

4300.5. In the event that a corporation has sold, leased, conveyed, exchanged, transferred or otherwise disposed of all or substantially all of its property and assets pursuant to Section 3901 of this code, any holder of voting or nonvoting shares who has not voted to approve the principal terms of the transaction and the nature and amount of the consideration, or given his written consent thereto, may,

by complying with this article, require the corporation of which he is a shareholder to purchase his dissenting shares and to pay him their fair market value. The market value shall be determined as of the day before the vote of the shareholders approving the transaction, or the day before the written consent of the requisite number of shareholders was obtained, as the case may be, excluding any appreciation or depreciation in consequence of the proposed transaction.

APPENDIX E

Proposed amendments to enact the principle of the Jeppi decision.

2201. At the annual meeting directors shall be elected, reports of the affairs of the corporation shall be considered, and any other business may be transacted which is within the powers of the shareholders, except that action shall not be taken on any of the following proposals unless written notice of the general nature of the business or proposal has been given as in case of a special meeting, even though notice of regular or annual meetings is otherwise dispensed with:

(a) A proposal to sell, lease, convey, exchange, transfer, or otherwise dispose of all or substantially all of the property or assets of the corporation except when made in the usual and regular course of its business or under Section 3900.

(b) A proposal to merge or consolidate with another corporation, domestic or foreign.

(c) A proposal to reduce the stated capital of the corporation.

(d) A proposal to amend the articles, except to extend the term of the corporate existence.

(e) A proposal to wind up and dissolve the corporation.

(f) A proposal to adopt a plan of distribution of shares, securities, or any consideration other than money in the process of winding up.

3901. A corporation shall not sell, lease, convey, exchange, transfer, or otherwise dispose of all or substantially all of its property and assets except in accordance with one of the following subdivisions:

(a) Under Section 3900.

(b) When made in the usual and regular course of its business.

(c) Under authority of a resolution of its board of directors and with the approval of the principal terms of the transaction and the nature and amount of the consideration by vote or written consent of shareholders entitled to exercise a majority of the voting power of the corporation.

However, the articles may require for such approval the vote or consent of a larger proportion of the shareholders or the separate vote of a majority or a larger proportion of any class or classes of shareholders.

FOOTNOTES:

1. Cal. Corp. Code § 2201 provides:

At the annual meeting directors shall be elected, reports of the affairs of the corporation shall be considered, and any other business may be transacted which is within the powers of the shareholders, except that action shall not be taken on any of the following proposals unless written notice of the general nature of the business or proposal has been given as in case of a special meeting, even though notice of regular or annual meetings is otherwise dispensed with:

(a) A proposal to sell, lease, convey, exchange, transfer, or otherwise dispose of all or substantially all of the property or assets of the corporation except under Section 3900.

(b) A proposal to merge or consolidate with another corporation, domestic or foreign.

(c) A proposal to reduce the stated capital of the corporation.

(d) A proposal to amend the articles, except to extend the term of the corporate existence.

(e) A proposal to wind up and dissolve the corporation.

(f) A proposal to adopt a plan of distribution of shares, securities, or any consideration other than money in the process of winding up.

2. Cal. Corp. Code § 3901 provides:

A corporation shall not sell, lease, convey, exchange, transfer, or otherwise dispose of all or substantially all of its property and assets except in accordance with one of the following subdivisions:

(a) Under Section 3900.

(b) Under authority of a resolution of its board of directors and with the approval of the principal terms of the transaction and the nature and amount of the consideration by vote or written consent of

shareholders entitled to exercise a majority of the voting power of the corporation.

However, the articles may require for such approval the vote or consent of a larger proportion of the shareholders or the separate vote of a majority or a larger proportion of any class or classes of shareholders.

3. Ballantine, Corporations § 281 (rev. ed. 1946); 4 Thompson, Corporations § 2501 (3d ed. 1927); 3 Cook, Corporations § 670 (8th ed. 1923).

4. Lake Ontario Bank v. Onondaga Bank, 7 Hun (N.Y.) 549 (1876); Town v. Bank of River Raisin, 2 Doug. (Mich.) 530, 546 (1847); Revere v. Boston Copper Co., 15 Pick. (Mass.) 351 (1834); Geddes v. Anaconda Mining Co., 254 U.S. 590, 596, 41 Sup.Ct. 209, 211 (1921) (dictum); Ballantine, Corporations § 281 (rev. ed. 1946) 3 Cook, Corporations § 669 (8th ed. 1923).

5. Oskaloosa Savings Bank v. Mahaska County State Bank, 205 Iowa 1351, 219 N.W. 530 (1928); Ballantine, Corporations § 281 (rev. ed. 1946); 4 Thompson, Corporations § 2498 (3d ed. 1927); 3 Cook, Corporations § 670 (8th ed. 1923); 7 United States Securities and Exchange Commission Report, 576 (1938).

6. Bowditch v. Jackson Co., 76 N.H. 351, 82 Atl. 1014 (1912); Paterson v. Shattuck Arizona Copper Co., 186 Minn. 611, 244 N.W. 281 (1932); 6a Fletcher, Cyclopedia Corporations § 2947 (perm. ed. 1950).

7. Jeppi v. Brockman Holding Co., 34 Cal.2d 11, 206 P.2d 847 (1949); see also, Keck Enterprises v. Braunschweizer, 108 F.Supp. 925 (1952); Thayer v. Valley Bank, 35 Ariz. 238, 276 Pac. 526 (1929); Annot., Sale of Corporate Assets, 9 A.L.R.2d 1306,

1312 (1950).

8. Hendren v. Neeper, 279 Mo. 125, 213 S.W. 839, 5 A.L.R. 927 (1919).

9. Ballantine, Corporations § 42 (rev. ed. 1946); 2 Fletcher, Cyclopedia Corporations § 518 (perm. ed. 1950); Annot., Corporations - Sale of Property, 5 A.L.R. 930 (1920).

10. 34 Cal.2d 11, 206 P.2d 847 (1949).

11. Id. at 16, 206 P.2d at 850.

12. Source of the comparative analysis of the statutes is from Corporation Manual (Parker and Smith 1953).

13. Illinois, Louisiana, Missouri, North Carolina, Ohio, Pennsylvania, Wisconsin, Virginia. See note 12 supra. All of these jurisdictions require that when a sale not in the usual and regular course of business is contemplated the vote must be taken at a regular meeting in which notice had been sent apprising the shareholder that such a transaction was to be considered at the regular meeting, or at a special meeting duly called for that purpose.

14. Illinois, North Carolina, Pennsylvania, Wisconsin, Virginia. See note 12 supra. Wisconsin has a provision specifically exempting corporations organized to deal in property as well as a provision relating to a sale in the usual course of business. Wisc. Stat. c. 180, § 180.70 (1955).

15. Louisiana, Missouri, Ohio. See note 12 supra.

16. Alabama, Colorado, Connecticut, District of Columbia, Georgia, Hawaii, Idaho, Indiana, Kansas, Kentucky, Maryland, Montana, New Hampshire, New Mexico, New York, North Dakota, Oklahoma,

Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Washington. See note 12 supra.

17. A New York court upheld a sale by a corporation engaged in the real estate business making no attempt to proceed in accordance with the statute. Greenpoint Coal Docks v. Newtown Creek Realty Corp., 5 Misc.2d 812, 912 N.Y.S.2d 466 (1949).

18. Cal. Corp. Code § 3901. Alaska, Arkansas, Delaware, Florida, Michigan, Minnesota, Nebraska, Nevada, New Jersey, West Virginia. See note 12 supra.

19. Del. Code Ann. Tit. 8 § 271 (1953). A report to the Securities Exchange Commission stated that these statutes, including Section 3901 of the California Corporations Code, are not clear as to whether, when such a sale is made with the written consent of the required proportion of shareholders, such consent has to be filed at a shareholders' meeting to be effective. 7 United States Securities and Exchange Commission Report, 570 (1938).

20. The statutes providing for the approval of the sale at a special or regular meeting require notice to the shareholders regarding the proposed sale. Parker and Smith, Corporation Manual, passim (54th ed. 1953)

21. See note 7 and 18 supra.

22. Mich. Comp. Laws c. 450, § 57 (Mason Supp. 1952).

23. N.J. Stat. Ann. Tit. 14, c. 14:3-5 (1939).

24. Cal. Corp. Code § 4107.

25. Cal. Corp. Code § 4123.

26. Cal. Corp. Code § 4600-19. Section 4600 of the Corporation's Code provides that a corporation may be dissolved by the written consent of 50% of the shareholders and Section 4605 requires the directors to mail notice of the commencement of the proceedings for a voluntary dissolution to all the shareholders.

27. See, Ballantine, Amendments of the California General Corporation Law (1933), 8 Calif. S.B.J. 136 (1933); Ballantine, California Corporation Laws, pp.V,21 (1932); Ballantine, Questions of Policy in Drafting a Modern Corporation Law, 19 Calif. L. Rev. 465 (1931): Ballantine, California Amendments, preface (1929).

28. Cal. Civ. Code § 361a (1903).

29. Cal. Civ. Code § 343 (Deering 1931).

30. Ballantine, California Corporation Laws 323 (1932).

31. Cal. Civ. Code § 343 (1933).

32. Ballantine and Sterling, California Corporation Laws 136 (Supp. 1933).

33. Cal. Stat. 1947, c. 1038, pp. 2375, 2440.

34. By court action, Ore. Rev. Stat. § 57.516 (1957-58); Mo. Rev. Stat. c. 351, 351.405 (1943); or by three disinterested persons, N.H. Rev. Stat. Ann. c. 294, § 295:77 (1955); Mont. Rev. Codes Ann. Tit. 15, § 15-912 (1947).

35. N.Y. Stock Corporation Act § 21.

36. Cal. Corp. Code § 4123; Michigan has a similar provision. Mich. Comp. Laws § 450.44 (1948). Michigan, however, does provide

that a shareholder could request a withdrawal of his demand for payment. If the directors consent to this request he is then entitled to any rights which he would otherwise have had during the time when his demand for payment was in effect. These statutes are unusual in that they provide that the dissenting shareholder who is entitled to sell his shares to the corporation is precluded from resorting to any other remedy in equity or law. The latter provision has been criticized on the ground that "no majority however large should be permitted to run rough shod over the minority, however small, by illegal action or legal act carried out by illegal means." Lattin, Remedies of Dissenting Stockholders under Appraisal Statutes, 45 Harv. L. Rev. 245, 283 (1931). Dissenting stockholders should not be deprived of those remedies which are ordinarily available in the event of irregular or illegal action by the majority merely because a special statutory remedy is given them. Stevens, Corporations 595 (Hornbook Series 2d ed. 1949). On the other hand, in commenting on the Section 4123, Professor Ballantine took the position that the remedy given by the statute should be made exclusive thus precluding minority stockholders from blocking necessary changes and hampering business. Ballantine, Questions of Policy in Drafting a Modern Corporation Law, 19 Calif. L. Rev. 465, 482 (1931).