Nominating petitions, by statute in Ohio,[15] when filed with the secretary of state, become documents of public record open to public inspection and publication. It has been held that there was no invasion of property where a person, whether willingly or not, participates in a public event and has his role in that event publicized.[16] By availing himself of the right to nominate by petition, the voter assumed to know that the petition he signs, when filed with the secretary of state, will become public record. Consequently, there can be no immunity for the signers of a petition which will be invaded through the publication of their names by a newspaper. E. G.

CORPORATIONS

Appraisal Statutes — Sale of Corporate Assets — Conclusive Presumption of Fair Value Under Ohio Statute.

In a recent issue of this Journal[1] the decision of the Ohio Supreme Court in the case of *Voeller, et al.* v. *Neilston Warehouse Company, et al.*,[2] was reviewed. In that case the constitutionality of the appraisal section of the Ohio Corporation Act[3] was attacked. Over two-thirds of the shareholders had voted for the sale of a piece of real estate which constituted substantially all of the corporation's remaining assets. Plaintiffs voted against the sale and, complying with all the conditions precedent of the statute,[4] named an amount which they demanded of the corporation as the fair cash value of their shares. The corporation refused to pay the amount demanded but made no counter offer. After six months had elapsed, neither party having filed a petition for appraisal, the dissenting shareholders filed suit in the Court of Common Pleas asking that judgment be rendered in their favor for the amount originally demanded. There was judgment for the defendant which was later reversed by the Court of Appeals, one judge dissenting. The case

[15] Ohio G.C. Sec. 4785-92, reads in part, ". . . such petition papers shall be preserved and open under proper regulation to the public for at least five days prior to the fifty-fifth day preceding the election, during which time objections may be filed thereto and be heard by the secretary of state or board as the case may be. . . ."

[16] Jones v. Herald Post Co., *supra*.

[1] Note (1940) 6 O.S.L.J. 308.

[2] 136 Ohio St. 427, 26 N.E. (2d) 442 (1940).

[3] Ohio G. C., sec. 8623-72 par. 7: "If such petition (for appraisal) is not filed within such period (six months), the fair cash value of the shares shall conclusively be deemed to be equal to the amount offered to the dissenting shareholder by the corporation if any such offer shall have been made by it as above provided, or in the absence thereof, then an amount equal to that demanded by the dissenting shareholder as above provided."

[4] Ohio G.C., sec. 8623-72.

eventually reached the Ohio Supreme Court which reversed the Court of Appeals and held, two judges dissenting, that since the statute required that the demands of the dissenters be made known only to the corporation, the majority shareholders were deprived of their property without notice and an opportunity to be heard under the due process clause of the Federal Constitution.[4a]

The United States Supreme Court granted certiorari and, in a unanimous decision reversing the decision of the Ohio court, decided that notice to the corporation of the demands of the dissenting shareholders constituted notice to the majority shareholders and met the requirement of due process of law.[5] The Court found that when the directors of the corporation failed to make a counter offer or ask for an appraisal they were representing the majority shareholders just as they would be representing them by any other act of management. As was pointed out by the Court, such representation is a feature of the corporate system. When the majority shareholders voted in favor of the sale of the property they thereby made their decision to leave their investment with the corporation and to remain a part of the corporation. Having cast their fortunes with those of the corporation, they should not now be heard to complain of their decision. The corporation could have avoided the effect of the conclusive presumption in favor of the amount demanded by plaintiffs, either by making a counter offer or by requesting an appraisal.[6] It did neither. Would it be reasonable to allow the majority shareholders to avoid the effect of the acts of the directors, done within the scope of their authority as managers, just because the result was unprofitable to the shareholders as members of the corporation? Or should the majority shareholders be bound by the acts of the managers of the corporation? It was contended by the corporation on behalf of the majority shareholders that it was sufficiently their representative to raise in court the issue of constitutionality of the statute but not sufficiently their representative to receive notice of the demands of the dissenters. The Court held that in this case it was "sufficiently their representative for both purposes," so far as the constitutional requirement of due process was concerned. The Court pointed out that "the rights of parties are habitually protected in court by those who act in a representative capacity." The Corporation Act of Ohio is a part of the contract between the share-

[4a] In a recent decision the Ohio Supreme Court ruled that the procedure provided for in OHIO G. C. sec 8623-72 satisfies the due process of law requirement of the Ohio Constitution as well as that of the Federal Constitution. Wildermuth v. Lorain Coal & Dock Co., 138 Ohio St. 1, —N.E. (2d)—, decided Feb. 26, 1941.

[5] — U.S. —, 85 L.Ed. —, decided January 6, 1941.

[6] OHIO G. C., sec. 8623-72.

holder and the corporation[7] and it can be said that the shareholder has consented in advance to representation by the corporation in matters of appraisal.[8]

By this decision the uncertainty which confronted lawyers representing either corporate clients or dissenting shareholders as a result of the Ohio decision has been dispelled. It is clear now that the corporation must take some action when dissenting shareholders set a valuation upon their shares, or be bound to pay the amount demanded. If the corporation makes a counter offer and neither side asks for any appraisal the conclusive presumption in favor of such counter offer would likewise satisfy the requirements of due process and the majority shareholders would be bound thereby, as would the dissenters. The effect upon the rights of the majority would be the same if the corporation agreed to pay the price set by the dissenters.

If a majority shareholder has actual notice of the demands of the dissenters and learns that the corporation is doing nothing to comply with the statute, he had better take steps to persuade the directors to act. If upon demand by the majority shareholder the board refuses to do anything to protect the interests of the corporation, the shareholder may bring suit to compel the board to comply with the statute or may himself, in a represenative action, ask for an appraisal.[9] It is not necessary for him to show present injury if he can show threatened irreparable injury.[10] J. M. B.

CRIMINAL LAW

Criminal Law — Lotteries — Bank Night.

Plaintiff, owner of a motion picture theatre, attempted to enjoin interference by the police with a scheme whereby every adult member of the community was invited to register his or her name in a book in the theatre lobby, such registration being free of charge and not dependent upon prior purchase of tickets to the theatre. Such registrants were given a number which they were to hold, making them eligible to participate

[7] Wegner v. Wegner, 101 Ohio St. 22, 126 N.E. 892 (1920). Under the reserved power of the state, conferred by Ohio Constitution, Art. XIII, sec. 2, the shareholder is bound by the pertinent statutes passed after he becomes a shareholder.

[8] Lattin, *A Reappraisal of Appraisal Statutes* (1940) 38 Mich. L. Rev. 1165.

[9] Such right is a derivative one and the suit should be brought by the shareholder on behalf of the corporation.

[10] Dodge v. Woolsey, 18 How. 331, 15 L. Ed. 401 (1856); Zinn v. Baxter, 65 Ohio St. 341, 62 N. E. 327 (1901); 13 Fletcher, Cyc. Corp. (Perm. Ed.) sec. 5939. But compare Zimmerman, J., who thought *contra* in the *Voeller* case, 136 Ohio St. at 433 26 N.E. (2d) at 446.