of uncertainty on what theretofore had been considered settled law; and while not controlling, the influence of this case was mischievous as witness the decision of the Circuit Court of Appeals in the principal case. The order of events in the *Doherty* case was the same as in the principal case, and yet the court there relied upon *Seibert* v. *Switzer*,[5] where no petition had been filed nor any summons issued, and where it was definitely stated that an attachment may be secured at any time after the filing of a petition and issuance of summons.

Sec. 11879 of the Ohio General Code provides that "In a civil action for the recovery of money, at or after its commencement, the plaintiff may have an attachment against the property of the defendant . . . " Sec. 11279 provides that "A civil action must be commenced by filing in the office of the clerk of the proper court a petition, and causing a summons to be issued thereon." Notwithstanding the plain language of these statutes, the court in the *Doherty* case felt that sec. 11230 was controlling. This section reads: "An action shall be deemed to be commenced *within the meaning of this chapter*, as to each defendant, at the date of the summons which is served on him or on a co-defendant who is a joint contractor, or otherwise united in interest with him. When service by publication is proper, the action shall be deemed to be commenced at the date of the first publication, if it be regularly made." (Italics inserted.) The Supreme Court quite rightly accepted the contention of the plaintiff in the principal case and held that sec. 11230 applied only to matters within the chapter in which it is found (the chapter on "Limitations of Actions"), and that the Circuit Court of Appeals erred in adopting the view expressed in the *Doherty* case.

In reaching the conclusion which it did, the Supreme Court removed the disturbing influence of the decisions in the Circuit Court of Appeals and once again established that certainty which is so desirable in this phase of the law.

W. L. A.

CORPORATIONS

Corporations — Directors Fixing Own Salaries as Officers — Ratification by Stockholders

Five directors of a corporation owned a large majority of the stock. In successive years, by resolutions adopted by the board of directors, the officer-directors voted themselves "salaries" for their services as officers during the year. Such "salaries," although never actually paid, were

[5] See Note 4, *supra*.

placed on the books of the company. At subsequent stockholders' meetings the auditor's reports showing the "salaries" were accepted by the votes of the same officer-directors sitting in the capacity of stockholders. An assignment by one of the directors of his "salary" was made to a bank as security for a loan. The bank failed and the bank examiner sought to realize on the security. *Held:* The acts of the board of directors were wholly void, and not merely voidable. No subsequent acts of the stockholders could give those acts validity.[1]

Directors stand in the position of fiduciaries to the corporation and are subject to the general principles of fair play governing other fiduciary relationships. It is their duty to administer corporate affairs for the benefit of all the stockholders.[2] Unless otherwise provided by statute, charter, by-law, or contract, directors are not entitled to compensation for their services *as directors*.[3] But where directors also serve as officers in the corporation, they are entitled to receive compensation.[4] Directors generally have the power to appoint officers and appointments are often made from members of the board.[5] An incident of such power of appointment is the power to fix reasonable salaries for the officers so appointed. But where an officer-director's salary is fixed by action of the board, his vote being necessary to the result, or his presence necessary to make a quorum, the resolution is not binding. A minority of the courts hold such resolutions void and of no legal effect.[6] They are consequently incapable of ratification by the stockholders.[7] The majority holds them merely voidable and subject to ratification by the stockholders.[8] Where the ratification is by a majority of disinterested stockholders it is clearly effective.[9] The more perplexing problem arises where the *majority* stockholders are themselves the recipients of the compensa-

[1] *State, ex rel. Squire, Supt. of Banks* v. *Miller*, 62 Ohio App. 43, 15 Ohio Op. 401, Ohio Bar Oct. 23, 1939.

[2] *Briggs* v. *Gilbert Grocery Co.*, 116 Ohio St. 343, 346, 156 N.E. 494, 495 (1927); 13 Am. Jur. 948.

[3] *National Loan & Investment Co.* v. *Rockland Co.*, 94 Fed. 335 (1899); *Hall* v. *Woods*, 325 Ill. 114, 156 N.E. 258, 267 (1927); *Calkins* v. *The Wire Hardware Co.* 267 Mass. 52, 165 N.E. 889, 895 (1929); Fletcher Cyc. Corp. (Perm. Ed.) Vol. 5, Sec. 2109.

[4] *Hunter* v. *Conrad*, 132 Misc. 579, 230 N.Y.Supp. 202 (1928); *Hewson* v. *Charles P. Gillon & Co.*, 142 Atl. 250 (N.J.) (1928).

[5] *Barker V. National Life Assoc.*, 183 Ia. 966, 166 N.W. 597 (1918).

[6] *Briggs* v. *Gilbert Grocery Co.* (*supra*, note 2); *Bennett* v. *Klipto Loose Leaf Co.*, 201 Ia. 236, 207 N.W. 228 (1926); *Luthy* v. *Ream*, 270 Ill. 170, 110 N.E. 373 (1915); *McKey* v. *Swenson*, 232 Mich. 505, 205 N.W. 583 (1925).

[7] *McKey* v. *Swenson*, (supra, note 5); *Bassett v. Fairchild*, 132 Cal. 637, 61 Pac. 791, 64 Pac. 1082, 52 L.R.A. 611 (1901).

[8] *Tefft* v. *Schaefer*, 136 Wash. 302, 239 Pac. 837 (1925); *Bates Street Shirt Co.* v. *Waite*, 130 Me. 352, 156 Atl. 293 (1931); *Jones* v. *Morrison*, 31 Minn. 140, 16 N.W. 854 (1883); *Murray* v. *Smith*, 166 App. Div. 528, 152 N.Y. Supp. 102 (1915); Fletcher Cyc. Corp. (Perm. Ed.) Vol. 5, Sec. 2129.

[9] *Tefft* v. *Schaefer*, (*supra*, note 8).

tion so voted. The better view permits ratification if the salaries are reasonable and not excessive. Majority stockholders are bound to act in good faith.[10] Courts use language to the effect that stockholders do not stand in the same fiduciary relation toward each other as directors do toward stockholders,[11] yet the modern rule is that powers granted a corporation, whether exercised by directors or stockholders, are to be exercised only in good faith and with a view to the benefit of the corporation.[12] Where the salaries so fixed may be found to be excessive and unreasonable, the minority stockholders are protected by their right to appeal to equity. The court will ascertain the reasonableness of the salary and, if necessary, give adequate relief.[13]

The principal case, adopting the view of the *Briggs* case,[14] accepts the minority or void rule. The rule, simply stated, is that a resolution of majority directors determining their own salaries as officers is void and of no legal effect. It cannot be ratified. Application of the void rule is not essential for the protection of minority stockholders from unfair contracts. The voidable rule gives thorough protection to the minority by putting upon the majority the burden of proving a fair contract.

P. A.

CRIMINAL LAW

Criminal Law — Embezzlement of Real Property

An attorney was indicted under the Ohio G.C. sec. 12467 on a charge of aiding, abetting and assisting the receiver[1] of a Building and Loan Company to embezzle certain parcels of real estate. A judgment sustaining a general demurrer and dismissing the indictment was

[10] *Kavanaugh* v. *Kavanaugh Knitting Co.*, 226 N. Y. 185, 123 N.E. 148 (1919); *Wheeler* v. *Abilene Nat. Bank Bldg. Co.*, 159 Fed. Rep. 391, 16 Law. Rep. Ann. N.S. 892 (1908); *Outwater* v. *Public Service Corp. of N. J.*, 103 N. J. Eq. 461, 143 Atl. 729 (1928); Berle and Means, The Modern Corporation and Private Property (1938) p. 241.

[11] *Russel* v. *Patterson Co.*, 232 Pa. 113, 81 Atl. 136 (1911); *Sotter* v. *Coatesville Boiler Works*, 257 Pa. 411, 101 Atl. 744 (1917); *Bates Street Shirt Co.* v. *Waite*, (*supra*, note 8).

[12] *Robotham* v. *Prudential Ins. Co.*, 64 N. J. Eq. 673, 53 Atl. 842 (1902); A. A. Berle, Jr., *Corporate Powers as Powers in Trust*, 44 Harv. L. Rev. 1049 (1931).

[13] *Miner* v. *Belle Isle Ice Co.*, 93 Mich. 97, 53 N.W. 218 (1892); see annotation in 27 A.L.R. 300.

[14] Note 2 (*supra*).

[1] Both the receiver and the attorney were indicted in the court below under the false pretense statute, Ohio G.C., sec. 13104, as well as the embezzlement statute, G.C., sec. 12467. The aider and abettor counts under the false pretense statute were held properly dismissed but only because of an insufficient allegation of necessary elements and a consequent failure to charge the offense.