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PHENIX MUTUAL INSURANCE CO. V. DEANS.

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bia Insurance Co., 11 Johns. 302; *Lawrence v. Sebor*, 2 Cains 203.

If this view is correct, any member of a firm, where the firm held a policy for \$800 or upwards, would be interested in the sense of possessing an insurable interest in the entire amount of the policy, and if for the purposes of effecting an insurance he possessed an insurable interest to the extent of \$800, though the policy covered partnership property only, he would be, in my opinion, an insurer to the amount of \$800 at least within the meaning of section 14 of the Mutual Act.

But should this view not be correct, Mr. Nelson at the date of the levying the assessment in question held a policy in his own name for \$1,000, and thus, while acting as a director in the premises was, as a fact, possessed of the necessary qualification in his individual right. Section 14 does not say that a member is ineligible for election who does not possess the necessary qualification at the date of his election, but that he is to possess the qualification during the time he holds office. Mr. Nelson was a member of the company, and whatever doubt may have existed as to his qualification to serve as a director was removed by his taking out the policy of 25th May, 1881. No steps had been taken to declare a vacancy in the Board, and in a case like this if a *de facto* Board is found acting—and acting in this case under a direct resolution of the contributories, or members of the company—upon a scrutiny of the qualification of the directors, if it appears that at the date of performing the ministerial act complained of, they were, in fact, duly qualified, I do not think a Court of Equity and good conscience would be astute in finding technical reasons for declaring void the acts of such a Board, or decide hastily to render nugatory the acts of such a Board in their efforts, in good faith, to realise the assets of the concern for the benefit of their creditors.

It is not necessary to the decision of this case to go so far, by reason of the conclusions I have hereinbefore expressed, but were it necessary to the decision of the case I should feel inclined to hold that any member of the company elected to the position of a director on being notified of that fact, could immediately qualify himself before entering upon his duties, by taking out a policy for the required amount, did he not hold sufficient insurance at the date of his election. For the

reasons expressed I hold that Mr. C. H. Nelson was a duly qualified director at the date of levying the disputed assessment.

The effect of my view as to the qualifications of the foregoing three gentlemen to act as directors is to hold that on the 21st April, 1882, there was a duly qualified quorum of the Board of Directors; and this conclusion renders it unnecessary to consider the position of Mr. J. J. Withrow, who also acted on this occasion. I am strongly of the opinion, in view of all of the facts proved in evidence in his case, that it is more than doubtful if the cancellation of the policies in favour of his firm was regular and effective, and that as he continued to act as a director on the 21st April, and the *de facto* Board were duly authorized by the resolution of 21st of March, 1882, by the members of the company to perform the very acts now complained of, the defendant should not now be allowed to set up the defence that these acts are void because the agents nominated by himself directing them to be done are not *de jure* directors: *Appleton Mutual Fire Ins. Co. v. Tessor*, 5 Allan (Mass.) 446; *Wyld v. Ames*, par. 286; *Re County Life Association*, L. R. 5, Ch. 288; *Re Canada Land Co.*, L. R. 14, Ch. D. 660; *Brice on Ultra Vires*.

As to the objection that there must be a full Board of at least five directors under sec. 4, that section was complied with because more than five directors were originally elected, but it does not follow that because certain members of the Board ceased to be qualified, and their colleagues failed to fill up the vacancies, that the corporation is thereby dissolved or the Board incapable of acting. Section 22 constitutes three directors a quorum, and gives them power to transact all business in connection with the company: *Thames Co. v. Rose*, 4 M. & G. 552.

There being then in my opinion a qualified board of directors capable of transacting business under the limited powers conferred by the resolution of 21st of March, 1882, and capable of exercising powers sanctioned by the liquidators: sec. 8, sub-sec. 6, Winding up Act, I must now consider the validity of the assessment levied by them.

[The learned judge then proceeded to consider the financial standing of the company, and showed that taking into account the difficulty of collection, the assets of the company are proved to be less than the liabilities, and as sufficient