Bank—Meeting of Stockholders—Effect of Failure of Part of Quorum to Vote.

When at a meeting of stockholders of a bank there is a quorum present, but some of those present do not vote, and a motion is carried by less than a majority of the quorum, the motion is valid.

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My dear Mr. Skelton:

You have requested my opinion on the following question:

"When a quorum is present at a regularly called meeting of stockholders of a bank, but a part of the stock declines to

vote, so that a motion is carried by less than a majority of the stock present, is such motion legally carried?"

The facts as presented to me are as follows: The bank has a total of 500 shares of capital stock outstanding, each entitled to one vote at all stockholders' meetings. At the meeting in question 468 shares were present, in person or by legal proxy. In voting on a pending motion, 140 shares voted aye, 128 voted nay and 200 shares declined to vote. Thus only 268 shares voted upon the pending question. The section of the by-laws of the bank relative to voting at such meetings reads as follows:

> "The majority of the capital stock of the bank represented in person or by proxy shall constitute a quorum, and a majority of such quorum shall decide any question before the meeting, except in cases where the laws otherwise provide."

Thus we start with the fact that more than the required majority of the capital stock of the bank was present at the meeting, either in person or by proxy. Also that more than the required quorum voted upon the pending motion. Two hundred and fifty-one shares represented at the meeting, in person or by proxy, would have been sufficient to hold a legal meeting, and a majority of those shares, or 126, could have decided any question before the meeting, except in cases where the law otherwise provided. The effect here of 200 shares declining to vote, was that of a withdrawal from the meeting. That such action cannot affect the validity of the proceedings of the meeting seems too well settled to really require citation of authorities.

14 C. J. 897, Sec. 1381 (3), states the general rule as follows:

> "If the meeting is duly assembled and there is a quorum, stockholders who do not vote when they might are bound by the result. And this is so notwithstanding the fact that the majority of the votes cast are not a majority of the persons present or of the stock represented."

This rule is sustained by the following text-writers:

2 Cook on Corporations (6th Ed.) Sec. 606;
1 Thompson on Corporations (2nd Ed.) Sec. 910

In the case of Commonwealth ex rel. Sheip v. Vandegrift, 232 Pa. St. 53; 81 Atl. 153; Ann. Cas. 1912 C 1267, where certain stockholders withdrew from the meeting, the court says:

> "A stockholder, not voting, cannot get relief from the courts if he voluntarily refrains from voting, if he had an opportunity and his claim of right to vote was not excluded."

Chief Justice Corliss, in the Argus Printing Co., Case, 1 N. D. 434, 48 N. W. 347, 12 L. R. A. 781, used the following language:

> "A minority must have the right to insist, after a meeting is organized, the majority shall not withdraw from it and organize another meeting at which the minority must appear

> or lose their rights. Once concede the right, and there is no limit to the number of wrecked meetings which may, at the caprice of a majority, precede the transaction of any business."

In one of the old cases, The Inhabitants of the First Parish in Sudbury v. Stearns, 21 Pickering (Mass.) 148, the court says:

> "The principle * * * founded in common sense as well as supported by authority, is, that a majority of the legal voters, who choose to vote, always constitute an election. It has been holden, that when a majority expressly dissent, but do not vote, the election by the minority is good."

And again in Martin v. Chute, 34 Minn. 135, 24 N. W. 353, it was held that a majority of the votes cast at a valid stockholders' meeting, though but a minority of the stock represented, prevails. These having an opportunity to vote and not voting are held to acquiesce in the result of the votes actually cast.

It will be noted that in all the above cases the withdrawal or refusal to vote left a minority of the stock represented at the meeting as voting, which is not the fact in the case before us. Here, if the 200 shares, which declined to vote had not been present at the meeting, yet the meeting would have been a valid and legal meeting as there were present and represented, either in person or by proxy, 268 shares, which was a majority of the outstanding capital stock of the bank. Therefore, the facts in favor of the legality of the action under discussion are, to that extent, stronger than in any of the cases cited.

It is, therefore, my opinion that the motion was legally carried by the vote of a majority of the stock voting, notwithstanding that the stock voting in favor of the motion was a minority of the stock present and entitled to vote on the question.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.