merical growth of chains regardless of their increase in capital or income is a permissible policy of taxation. Cf. *American Refining Co. v. Louisiana*, 179 U.S. 89 (1900); *Watson v. State Comptroller of the State of New York*, 254 U.S. 122 (1920); *Roberts & Schaeffer Co. v. Emerson*, 271 U.S. 50 (1926); *Lawrence v. State Tax Comm. of Miss.*, 286 U.S. 276 (1932). The Indiana court appears to have taken this view, saying "chains are chains" and therefore gasoline stations may be included in a chain store classification. *Midwestern Petroleum Corp. v. State Board of Tax. Comm.* 187 N.E. 882 (Ind. 1933).

Since gasoline filling stations are subject to excise and other taxes a chain store license tax expressly exempting them is constitutional. *Liggett Co. v. Lee* 288 U.S. 517 (1933); *Southern Grocery Stores v. S.C. Tax Comm.*, 55 F. (2d) 931 (E.D.S.C. 1932); *Great Atlantic & Pacific Tea Co. v. Maxwell*, 199 N.C. 433, 154 S.E. 838 (1930); *J. C. Penney Co. v. Diefendorf*, 32 P. (2d) 784 (Idaho 1934). But see *Winter v. Barrett*, 352 Ill. 441, 186 N.E. 113 (1933) (holding unconstitutional an occupational tax which exempted gas stations); see 89 A. L. R. 1432 (1934). In absence of express exclusion it has been held that these distinctions should cause gas stations not to be considered "stores" within the act. *Wadhams Oil Co. v. State*, 210 Wis. 448, 245 N.W. 646 (1932). See note, 43 Yale L. J. 1022 (1934); cf. *McKenney v. City Council of Alexandria*, 147 Va. 157, 136 S.E. 588 (1927) (holding that a gasoline station is not within the scope of a tax on "all engaged in business of merchants"). However, the Indiana statute held constitutional in the *Jackson* case though not specifically mentioning gas stations, was construed to include them as "stores." *Midwestern Petroleum Corp. v. State Board of Tax Comm.*, 187 N.E. 882 (Ind. 1933); see Zimmerman, The Challenge of the Chain Store Distribution (1931) 52; cf. *Gunther v. Atlantic Refining Co.*, 277 Pa. 289, 121 Atl. 53 (1923) (holding that a filling station is within the purview of a covenant against store buildings). The further fact that the West Virginia Legislature rejected a provision excluding gas stations when the act was proposed may have influenced the court in the principal case.

The severity of the tax in the principal case and the existence of doubt as to including gasoline stations within the construction of "stores" under the act may indicate that the Supreme Court will go far to sustain the constitutionality and extensive application of chain store legislation in the future.

Corporations—Interested Director Voting for Salary of Officer—[Illinois].—The board of directors of a corporation, pursuant to its by-laws, by resolution had fixed the salaries of its officers, including that of the plaintiff, the president, who was also a director. Subsequently the plaintiff and other officers informally agreed to accept reduced salaries. The corporation having paid salaries at the reduced rate, plaintiff sought to recover the difference between the salary paid him and the salary as fixed by the board. *Held*, the record not disclosing what directors had voted for the resolution, plaintiff could not recover without showing either that he had not voted for it or that his vote was unnecessary for its passage. Moreover the agreement among the officers being for the benefit of the corporation, it could use it as a defense to plaintiff's claim. *Connors v. Swords Co.*, 276 Ill. App. 318 (1934).

A director, being a fiduciary to his corporation, is disqualified from voting on any matter in which he is interested; any transaction in which he is interested is voidable whether or not the transaction is fair, if authorized or ratified only by including his vote. *Consumers' Ice & Coal Co. v. Security Bank & Trust Co.*, 170 Ark. 530, 280 S.W.

677 (1926); *Voorhees v. Mason*, 245 Ill. 256, 91 N.E. 1056 (1910); *Parsons v. Tacoma Smelting Co.*, 25 Wash. 492, 65 Pac. 765 (1901); Fletcher, Cycopledia of the Law of Corporations (Perm. ed. 1931), § 936; but see *Wheeler v. Pullman Iron & Steel Co.*, 143 Ill. 197, 32 N.E. 420 (1892). The same is true if the presence of the interested director is necessary for a quorum. *Curtin v. Salmon River Hydraulic Gold Mining and Ditch Co.*, 130 Cal. 345, 62 Pac. 552 (1900); *Federal Life Insurance Co. v. Griffin*, 173 Ill. App. 5 (1912). But if the vote of the interested director was unnecessary, the resolution being passed by an independent majority of the board, the transaction is voidable only if unfair. *Louisville, New Albany and Chicago Ry. Co. v. Carson*, 151 Ill. 444, 38 N.E. 140 (1894); *Congress Hotel Co. v. Southgate*, 209 Ill. App. 442 (1918); Fletcher, Cyclopedia of the Law of Corporations (Perm. ed. 1931), § 981. Applying this principle of the fiduciary relation of the director to his corporation it has been held that resolutions fixing salaries are voidable if the vote of the recipient was necessary to its passage or his presence to a quorum. *Davis v. Pearce*, 30 F. (2d) 85 (C.C.A. 8th 1928); *Voorhees v. Mason*, 245 Ill. 256, 91 N.E. 1056 (1910). Such action of the directors may be ratified by the shareholders; and in the absence of fraud or unfairness the votes of the interested directors as stockholders may be counted, it being said that a stockholder is not a fiduciary to his corporation. *Bates Street Shirt Co. v. Waite*, 130 Me. 352, 156 Atl. 293 (1931); *Russell v. Peterson*, 232 Pa. 113, 81 Atl. 136 (1911); *Lowman v. Harvey Pierce Co.*, 276 Pa. 382, 120 Atl. 404 (1923); but see *Wickersham v. Crittenden*, 110 Cal. 332, 42 Pac. 893 (1895); *McNulta v. Corn Belt Bank*, 164 Ill. 427, 45 N.E. 954 (1896). But if there were adopted separate salary resolutions for each office on which the interested director did not vote, under the usual rule the act would seem not voidable, *McNab v. McNab & Harlin Mfg. Co.* 62 Hun 18, 16 N.Y.S. 448 (1891). If this is the case, it would seem unfortunate to make the voidability of the resolution turn on a matter of form, and in at least one case it has been held that a joint salary resolution will be separated into parts, each of which is carried by a majority of disinterested directors. *Funsten v. Funsten Commission Co.*, 67 Mo. App. 559 (1896); *contra*, *Beha v. Martin*, 161 Ky. 838, 171 S.W. 393 (1914). But the separate resolution theory does not always afford a solution. Thus, for example, in a corporation with four directors, two husbands and their wives, since husband and wife can be disqualified from voting for each other's salary, it would be impossible even under separate resolutions for the directors to fix their salaries as officers. See *Butler Paper Co. v. Robbins*, 151 Ill. 588, 38 N.E. 153 (1894); *Standard Furniture Co. v. Hotel Butler Co.*, 161 Wash. 109, 296 Pac. 153 (1931); but see *Cuneo v. Giannini*, 40 Cal. App. 348, 180 Pac. 633 (1919). Moreover, since the interested directors may vote as stockholders in ratifying their action as directors, it does not seem too extreme to set aside such a resolution only if there is fraud or bad faith on the part of the directors. *Gordon Development Co. v. Warren Ranch*, 35 Ariz. 254, 276 Pac. 839 (1929); *Green v. Felton*, 42 Ind. App. 675, 84 N.E. 166 (1908); *Neff v. Twentieth Century Silk Corp.*, 312 Pa. 386, 167 Atl. 578 (1933); cf. *Wight v. Heublein*, 238 Fed. 321 (C.C.A. 4th 1916).

A salary resolution passed by directors and accepted by an officer is a contract between the corporation and the officer subject to the ordinary rules of contracts. *Alabama Lime & Stone Co. v. Adams*, 218 Ala. 647, 119 So. 853 (1928); *Sears v. Kings County Elevated Ry Co.*, 152 Mass. 151, 25 N.E. 98 (1890). Ordinarily one seeking to impeach a contract because of fraud or other inequitable conduct must affirmatively prove the facts on which he relies. *Bailey v. Lisle Mfg. Co.*, 238 Fed. 257 (C.C.A. 8th

1916). Moreover, the acts of directors are generally presumed to be regular and in good faith until it is shown they are not. *Borg v. International Silver Co.*, 11 F. (2d) 147 (C.C.A. 2d 1925); *Robinson v. Pittsburgh Oil Refining Corp.*, 14 Del. Ch. 193, 126 Atl. 46 (1924); *Mayger v. St. Louis Mining & Milling Co.*, 68 Mont. 492, 219 Pac. 1102 (1923).

If the decision in the principal case is to be justified at all, it must be either on the ground that the officers in agreeing between themselves to accept a reduction of salary, made a contract on behalf of the corporation which the corporation accepted; *Snow v. Griesheimer*, 220 Ill. 106, 77 N.E. 110 (1906); *Jones & Dommersnas Co. v. Crary*, 234 Ill. 26, 84 N.E. 651 (1908); or that the corporation was the third party beneficiary of a contract between the officers. *Lawrence v. Oglesby*, 178 Ill. 122, 52 N.E. 945 (1899).

Corporations—Liability of Holding Company Shareholders for Statutory Assessment on Insolvent Subsidiary Bank Stock—[Federal].—The Detroit Bankers Company, a holding company, was organized to hold the shares of a national bank and several state banks. In order to centralize control the voting non-par shares were issued to the officers of the various banks for cash. The remaining shares, which were non-voting for five years, were issued to the stockholders of various banks in exchange for their stock. The charter provided: "The holders of stock of this corporation shall be individually and severally liable (in proportion to the number of shares held by them respectively) for any statutory liability imposed on this corporation by reason of ownership of shares of capital stock of any bank .... and the stockholders .... severally agree that such liability shall be enforced in the same manner as statutory liability may now or hereafter be enforceable against stockholders of banks under the laws of the United States or the State of Michigan." The only assets of the holding company were these bank stocks, so that upon failure of the subsidiary banks, the holding company became insolvent. A suit was brought to enjoin the receiver of the national bank from enforcing the statutory liability against the stockholders of the holding company. *Held*, the stockholders must pay the assessment directly to the national bank receiver. *Barbour v. Thomas*, 7 F. Supp. 271 (E.D. Mich. 1933).

The court in the principal case relied on the contractual relation created by the charter provision. Therein, the stockholders of the holding company assumed a liability for the benefit of the creditors of the subsidiary banks as third party beneficiaries. By allowing the receiver of the subsidiary bank to recover directly from the holding company stockholders, the needless expense and delay of collection by the holding company receiver was avoided, and the full benefit of the assessment was given to those whom the statute intended to protect.

The court, however, suggested that the same result would have been reached by a disregard of the corporate entity of the holding company had there been no provision for stockholders' liability in the holding company charter and stock certificates. The statement is often made that where an attempt has been made to evade a statute by means of incorporation, the corporate fiction will be disregarded. *U.S. v. Lehigh Valley Ry. Co.*, 220 U.S. 257 (1911); 1 Fletcher, Cyclopedia of the Law of Corporations (perm. ed. 1931), § 45; Wormser, Disregard of the Corporate Fiction and Allied Corporate Problems (1929), 40, 63. This generalization, however, gives no criteria for determining whether an evasion has been attempted in a particular case. It has been held that the creation of a "family" corporation to hold bank stock would not permit