Corporate Reorganization—Power of Trustee to Vote in Reorganization Proceedings under § 77B—[Federal].—In proceedings under § 77B of the Bankruptcy Act, 48 Stat. 912 (1934), 11 U.S.C.A. § 207 (1934), for the reorganization of the debtor corporation, the trustee of a first mortgage bond issue secured by property of the debtor, having apparently filed claims on the bonds, sought to vote on a proposed plan of reorganization to the exclusion of all the bondholders, or at least on behalf of the bondholders who had not joined committees or voted as creditors. The trust indenture provided that in the event of default the corporation would pay to the trustee the whole amount due and payable on the bonds, for the benefit of the bondholders. *Held,* in the absence of express authority in the trust indenture giving the trustee power to vote, it may not vote to the exclusion of bondholders. Although trustees have been allowed to file claims in bankruptcy, the trustee files merely as an agent and not as a creditor entitled to vote on a plan of reorganization. Whether the trustee can vote for bondholders who had not voted is a moot question since the bondholders' protective committee could cast more than the number of votes necessary for the approval of the plan. *In re Allied Owners' Corp.*, 74 F. (2d) 201 (C.C.A. 2d 1934).

The theory developed to allow a trustee to file claims for bondholders in ordinary bankruptcy proceedings might seem to support the claim of the trustee to vote, at least for non-filing bondholders. To prevent loss to bondholders it seemed desirable that the trustee be allowed to file claims for them. Two obstacles had to be overcome: Only the holder of a claim or his agent could file a claim in bankruptcy. *In re Ellis*, 242 Fed. 156 (D.C.N.J. 1917); *Fitkin v. Century Oil Co.*, 16 F. (2d) 22 (C.C.A. 2d 1926); *In re Indiana Flooring Co.*, 53 F. (2d) 263 (D.C.N.Y. 1931). Ordinarily there was no agency in the trust indenture. Further, § 57 (b) of the Bankruptcy Act required the instrument on which the claim was founded to be filed with proof of the claim. 30 Stat. 560 (1898), 11 U.S.C.A., § 93 (b) (1927). But the bonds were not in the possession of the trustee. The provision common in trust indentures, that in default the mortgagor would pay the indebtedness to the trustee for the benefit of the bondholders, provided a convenient solution. Both the trustee and the bondholder had a claim even though there was but one debt; § 57 (b) was satisfied by presentation of the trust indenture. Hence, the trustee could prove on behalf of bondholders who did not file for themselves. *In re United Cigar Stores Co.*, 68 F. (2d) 895 (C.C.A. 2d 1934); *In re Paramount Publix Corp.*, 72 F. (2d) 219 (C.C.A. 2d 1934); *In re International Match Corp.*, 3 F. Supp. 445 (D.C.N.Y. 1932); 46 Harv. L. Rev. 309 (1932); *cf. Spitz v. Fox Metropolitan Playhouses, Inc.*, 3 F. Supp. 606 (D.C.N.Y. 1933). Moreover, payment of dividends was made to the trustee and not to the bondholders on whose behalf the trustee had filed. *In re Paramount Publix Corp.*, 72 F. (2d) 219 (C.C.A. 2d 1934); *National Milling & Chemical Co. Inc. v. Amalgamated Laundries*, 7 F. Supp. 723 (D.C.N.Y. 1934).

But if the trustee is allowed to vote as a creditor on behalf of bondholders who have not voted, the trustee may be in a position to determine the acceptance or rejection of a plan of reorganization. Since the trustee is a fiduciary, power to vote may mean an obligation to vote for the best interest of the *cestuis*. See Posner, Liability of the Trustee under the Corporate Indenture, 42 Harv. L. Rev. 198 (1928). Corporate trustees may not be desirous of incurring the possible fiduciary obligation involved in writing a good plan of reorganization. Moreover it is doubtful whether the present day institution of corporate trustee has developed to a point where it can properly perform

such a function. Lowenthal, Wall Street and the Investor, 169 Harper's Magazine 707 (1934).

But even conceding that the trustee can file claims and receive dividends as a creditor, it does not necessarily follow that the trustee can vote on a plan of reorganization. While the trustee may be authorized to perform such acts of an administrative nature, he may not be authorized to decide the questions of changing the contractual rights of bondholders involved in a reorganization. *Cf. Schroeder v. Wolf*, 227 Ill. 133, 81 N.E. 13 (1907); *Bradley v. Tyson*, 33 Mich. 337 (1876). If that is so, the trustee would not seem to be a "creditor" entitled to vote within the meaning of § 77B. But if only creditors who have filed their claims may vote and the trustee may not vote, it would seem that bondholders who have not filed their claims may not vote either, even though the trustee has filed on their behalf. Such disenfranchisement of non-filing bondholders may conceivably make it impossible to secure the adoption of a plan or reorganization under 77B.

Since § 77B (c)(6) is broad enough to allow filing of claims by the trustee as an agent authorized by the court to file on behalf of the bondholders without presentation of the bonds, there is not the same need to invoke the creditor theory to allow the trustee to file. If the trustee merely files as an agent of the bondholder, the trustee has no standing to vote and the bondholder may vote even though he filed no claim. § 77B contemplates that two-thirds of creditors approve a plan of reorganization. Since the bondholders rather than the trustee are the parties ultimately interested in the plan, it seems desirable to allow them to vote, once their claim is filed, regardless of by whom it has been filed, even at the risk of delaying the proceedings until the requisite number of bondholders can be notified and their votes or authorizations to vote secured.

Criminal Procedure—Use of *Habeas Corpus* to Render Prisoner Eligible for Parole—[United States].—Petitioner for a writ of *habeas corpus* had been convicted and sentenced in a federal district court, upon three counts of an indictment, the sentence on the first count running concurrently with that on the second, and the sentences on the second and third counts running consecutively. The petition asserted that the conviction and sentence on the third count were invalid, and that under the federal Parole Act, 37 Stat. 650 (1913), 18 U.S.C.A. § 714 (1927), petitioner was entitled to apply for parole after serving one-third of the aggregate of his sentences. He had served one-third or more of the valid sentences on the first and second counts, but less than one-third of the total of the sentences on all three counts. Petitioner therefore assigned as reason for granting the writ, that the void sentence illegally barred him from his right to apply for parole. *Held*, the petition should be dismissed; the writ of *habeas corpus* can not be used to inquire into the validity of the conviction on the third count, inasmuch as petitioner was lawfully detained under the sentence on the second count. *McNally v. Hill*, 293 U.S. 131 (1934).

The function of the writ of *habeas corpus* is the liberation of those imprisoned without sufficient cause. *Chin Yow v. United States*, 208 U.S. 8 (1907); *Collins v. People*, 92 Colo. 454, 456, 21 P. (2d) 1114 (1933). The judgment of a court of competent jurisdiction, although erroneous, is binding until reversed; another court cannot, by means of *habeas corpus*, look behind such judgment and re-examine the charges and proceedings on which it was based. *United States v. Pridgeon*, 153 U.S. 48 (1893);