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Corporations: Stock Transfers: Conflict of Laws and the Application of the Uniform Stock Transfer Act

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BANKS AND BANKING § 1031. The panic of 1907 resulted in the Federal Reserve Act of 1913 (38 STAT. 251) which created 12 "bankers' banks" to stabilize the national banks. It was compulsory for national banks to join the Federal Reserve System and optional on the part of state banks. *Hiatt v. United States*, 4 F. (2d) 374 (C.C.A. 7th, 1924). But a state bank which joined the Federal Reserve System became subject to federal laws and punishable by the federal government. *Westfall v. United States*, 274 U.S. 256, 47 S.Ct. 629 (1927). During the last few years the trend toward centralization has become more marked. In 1930 an amendment to the act of 1864 gave national banks many of the privileges heretofore enjoyed only by state banks. *City of Marion v. Sneeden*, 291 U.S. 262 (1934). And by the act of June 16, 1933, as amended by the act of August 23, 1935 [12 U.S.C.A. § 64(a) (1936), 48 STAT. 189 (1933), 49 STAT. 708 (1935)] the stockholders of national banks were relieved from the "super-added liability" which is still enforced against state banks in some states. But, unlike the First United States Bank, the present centralization is not being forced directly. State banks still have all the powers and rights originally granted to them, but the national bank status offers additional inducements not extended to state banks. Then too, a state bank which avails itself of federal legislation must comply with two sets of laws, is subject to double examination and reporting, and receives no more advantages than those granted to national banks. It is not unlikely that many state banks will take advantage of the liberalized branch banking law under which a state bank may affiliate itself with a national bank and continue operations as a branch of such national bank.

ROY C. PACKLER.

CORPORATIONS—STOCK TRANSFERS—CONFLICT OF LAWS AND THE APPLICATION OF THE UNIFORM STOCK TRANSFER ACT.—The defendant, a resident of Minnesota, was the owner of a certificate of a beneficiary's interest representing 100 shares in the Standard Oil Shares, Inc., whose transfer agent was located in New York City. The certificate contained a provision stating that it was transferable to a holder without indorsement. The certificate which was unindorsed was lost in a public street in a city in Minnesota. On application a duplicate was issued to the defendant, who furnished a bond on which the plaintiff was surety, to hold the transfer agent harmless should the original certificate appear. The lost certificate next appeared in the hands of one *H* who sold it to the *B. Co.* of Chicago through the *W. Co.* of Minneapolis. *B. Co.* transferred it, and there were subsequent transfers until it came into the hands of the *H. Co.*, who presented it to the transfer agent for transfer to its name on the books of the corporation. The transfer agent refused to make the transfer, and the certificate was relayed back from transferor to transferor, in accord with the stock exchange rules, until it came back into the hands of *W. Co.*, who presented it for transfer. The transfer agent still refused to make the transfer upon advice from the defendant not to do so. *W. Co.* threatened to bring suit to compel the transfer on the corporate books, and the plaintiff surety in order to prevent a lawsuit, which it would eventually have to defend, and, to which, it believed, it had no defense, bought the lost certificate. It then brought suit against the defendant for reimbursement. A verdict was directed in favor of the plaintiff. On appeal from an order denying a new trial, *held*, order reversed. A new trial must be had to determine whether or not *W. Co.* was a holder in due course of the lost certificate. In the instant case the issue that confronted the court was the determination of the title to the lost unindorsed certificate which was in the hands of a

purchaser as against the one who had lost it and who held a duplicate certificate representing the same interest. Although no proof was submitted on trial as to the existence of the Uniform Stock Transfer Act at the situs of the stock at the time of its transfer or in the state of domicile of the issuing corporation, the court said that the Uniform Stock Transfer Act had no application because the certificate being unindorsed did not fall within the terms of the Act, which requires that any certificate must be indorsed by the person appearing by the certificate to be the owner. And then, despite the fact that the Uniform Stock Transfer Act had no application in the instant case, the court mooted the following propositions which might be stated as follows: Does the Uniform Stock Transfer Act apply, (a) if it is in force at the situs of the certificate at the time of its transfer, but not in the state of the domicile of the issuing corporation; (b) if it is in force in the state of the domicile of the issuing corporation, but not at the situs of the certificate at the time of its transfer. *American Surety Co. v. Cunningham*, (Minn. 1937) 275 N.W. 1.

The Uniform Stock Transfer Act [WIS. STATS. (1937) c. 183] does not by its own terms apply to all certificates. Section 22 of the Act provides: "In the Act unless the context or subject matter otherwise requires . . . 'certificate' means a certificate of stock in a corporation organized under the laws of the state or of another state whose laws are consistent with this Act." It has been consistently held that the Uniform Stock Transfer Act will not be applied to certificates of stock in corporations organized in states where such Act has not been adopted, even if the Act is in force at the situs of the certificates at the time of their transfer. In *Penington v. Commonwealth Hotel Construction Corp.*, 18 Del. Ch. 170, 156 Atl. 259 (1931), the stock certificates of a corporation organized in Delaware where the Act had not been adopted were transferred in New York where the Act was in effect to a purchaser for value who had no knowledge of the fact that they were stolen from the owner. The court held that the title of the certificates was determined by the law of the situs of the certificates at the time of their transfer, that, although the Uniform Stock Transfer Act was in effect in New York where the transfer of the stock took place, it would not apply, since the certificates were not such as were governed by the Act for the issuing corporation was organized in Delaware where the Act had not been adopted. In *United States Fidelity & Guaranty Co. v. Newburger*, 263 N.Y. 16, 188 N.E. 141 (1933), the controversy arose in New York, which was also the situs of the certificate at the time of its transfer, as to the title of a stolen certificate representing 100 shares in a Maine corporation. The New York court held that its own Uniform Stock Transfer Act had no application because the issuing corporation had not been organized in a state which had laws consistent with the Act. *Turnbull v. Longacre Bank*, 249 N.Y. 159, 163 N.E. 137 (1928) and *Peckinpaugh v. Noble & Co.*, 238 Mich. 464, 213 N.W. 859 (1927), were decided in states which had adopted the Act. In each case the contending parties failed to submit proof at the trial as to the law in the state of the domicile of the issuing corporation, either because of inadvertence on their part, or because they assumed that the title to the certificates was governed by the Act. On appeal, in each case, the contention was made that the Act did not govern because it did not appear that the Act was in effect in the state of the domicile of the issuing corporation, and in each case the court held that on appeal it was too late to raise that question. It seems, therefore, that the Act will govern if it is in force at the situs of the certificate at the time of its transfer, even though the certificate has been issued by a corporation organized in a state which has not adopted the Act, unless proof is submitted on

trial that the certificate is not such as falls within the terms of the Act. However, in *Casto v. Wrenn*, 255 Mass. 72, 150 N.E. 898 (1926), the court refused to apply the Act, because there was no proof offered that the issuing corporation was organized in a state where the Act was in force, although the Act was in effect in Massachusetts, the situs of the certificates at the time of their transfer. *Norman v. Bancroft Trust Co.*, 55 F. (2d) 91 (C.C.A. 1st, 1932), is to the same effect.

It has been uniformly held that title to certificates of stock is governed by the law of the situs of the certificates at the time of their transfer. *Direction Der Disconto-Gesellschaft v. United States Steel Corp.*, 267 U.S. 22, 69 L.ed. 495 (1925). Therefore, if the Act is not in effect at such situs it cannot be applied even though such Act was in effect in the state of the domicile of the issuing corporation. However, a recent text writer proposes that if the Act is in force at the domicile of the issuing corporation, the certificates of the corporation are entitled to the benefits of the Act wherever they are negotiated. CHRISTY, *THE TRANSFER OF STOCK* (1929) 118. See also RESTATEMENT, *CONFLICT OF LAWS*, § 53 (d). There is, however, nothing in the Act that lends its support to this holding and no case on the point can be found. It is submitted that the Uniform Stock Transfer Act fails to recognize the needs of modern business. It seems that the statute should be such as to apply to all transfers within the state, so that its inhabitants may determine by local law the validity of transfers made within the state without regard to the law of the state of issue. It seems harsh, for instance, to require a broker, who takes part, every day, in many transactions on the stock market involving many corporations of different states, to look to the laws of each state of incorporation to see if a transfer was effected.

EDWARD J. SETLOCK.

EVIDENCE—PRIVILEGED COMMUNICATIONS—PHYSICIAN AND PATIENT—MEDICAL ASSISTANTS AND DOCTRINE OF AGENCY.—The action was brought by the plaintiff insurance company to cancel a life insurance policy issued by it on the life of the deceased insured and payable to the defendant beneficiary. The insured died a month and three days after the policy was issued and approximately fifteen months after his admission to the Milwaukee County Hospital. Under the terms of the policy, it was not to become effective if at the date of issuance the insured was not in sound health. The plaintiff company contended the insured deceased was not in sound health as required and, thus, the policy never became effective. The defendant beneficiary counterclaimed for recovery on the policy. The trial court, over the objection of the defendant beneficiary, admitted in evidence the testimony of a nurse in the employ of the hospital, and a medical case record of the deceased insured kept by the nurse and used by the physician in treating the patient. Over objection, the trial court also admitted the testimony of an X-ray operator in the employ of the hospital, and an X-ray plate made by him at the direction of the physician. The evidence conclusively proved that the deceased insured had been suffering from an incurable heart ailment at the time the policy was issued. Subsequently, however, the trial court rejected the evidence and entered judgment dismissing the complaint and awarding recovery to the defendant on the counterclaim. The trial court held that all the evidence as to the deceased insured's unsound health was given or based upon the testimony of witnesses who were incompetent to testify under a statute disqualifying a physician from disclosing "any information he may have acquired in attend-