Case No. 7,393.

JOHNSON v. LAFLIN ET AL.

[5 Dill. 65; 17 Alb. Law J. 117, 146; 1 Thomp. Nat. Bank Cas. 331; 6 N. Y. Wkly. Dig. 181; 6 Cent. Law J. 124; 25 Pittsb. Leg. J. 119.][1]

Circuit Court, E. D. Missouri. Feb. 8, 1878.[2]

NATIONAL BANKS—RIGHTS AND LIABILITIES OF SHAREHOLDERS—ELEMENTS OF COMPLETE TRANSFER.

1. Under the national banking act, a shareholder has the right to make an actual and bona fide sale and transfer of his shares to any person capable in law of taking and holding the same, and of assuming the transferor's liabilities in respect thereto; and, in the absence of fraud, this right is not subject to a veto by the directors or the other shareholders.

[See note at end of case.]

2. Where such a sale of shares is made, and the transfer entered on the books of the bank, the transferrer ceases to be a shareholder, and is freed from liability in respect of such shares.

3. The provision of the national banking act (Rev. St. § 5139), that shares shall be "transferable on the books of the association," construed, and *held* nor to give the directors the power to refuse to register a bona fide transfer of stock without some valid and sufficient reason for such refusal.

[See note at end of case.]

4. As between the seller and purchaser of shares in a national bank, the sale is complete when the certificate of the shares, duly assigned, with power to transfer the same on the books of the bank, is delivered to the buyer, and payment therefor is received by the seller; and either the purchaser or seller may compel a registration of the transfer on the books of the bank, unless the bank has some valid and sufficient ground for refusing to register the transfer.

[See note at end of case.]

5. The defendant, Laflin, owning full-paid shares of stock in a national bank of which his co-defendant, Britton, was the president, employed a broker to sell the same in the market. The broker, without Laflin's direction or knowledge at the time, sold the same at the market value to Britton, individually, and received in payment his individual check on the bank for the purchase price, and delivered to the purchaser the share certificates assigned in blank, with blank powers of attorney thereon endorsed, authorizing the transfer of the shares on the books of the bank. Subsequently, after the amount of the check had been collected, but on the same day, the president, without the knowledge of Laflin or the broker, directed the book-keeper of the bank to credit his individual account with the amount of the check which he had given for the shares, and to transfer the shares (the bookkeeper inserting his own name in the blank power of attorney as attorney to make the transfer) to Britton, "trustee," not specifying for whom he was trustee, and charging the sum to the "sundry stocks account" of the bank, all of which was done. The bank, although it had not committed any act of insolvency, was then insolvent; but this fact was not known by Laflin or the broker: *Held,* that, although the bank, or its officers for it, were prohibited from purchasing its own shares (Rev. St. § 5201). yet that Laflin, having sold in good faith, without notice of the illegal purpose of Britton in buying the stock, or of his intended misappropriation of the funds of the bank in paying therefor, was not liable to pay back to the receiver the money received in payment for the shares.

[Cited in Russell v. Bristol, 49 Conn. 261.]

{See note at end of case.}

{6. Cited in Welles v. Larrabee, 36 Fed. 868, and in Germania Nat. Bank v. Case, 99 U. S. 632. to the point that a transfer of shares in a failing corporation, made by the transferer with the purpose of escaping his liability as a shareholder, to a person who, from any cause, is incapable of responding in respect to such liability, is void as to the creditors of the company and as to other shareholders, although as between the transferer and the transferee it was out and out.}

The plaintiff is the receiver of the National Bank of the State of Missouri, appointed June 23d, 1877, by the comptroller of the currency. That bank suspended payment and closed its doors June 20th, 1877. The defendant Laflin had for some years prior to May 16th, 1877, been the owner of eighty-five shares of full-paid stock in that bank, but was not a director. The defendant Britton was the president of the bank. On the 10th day of May, 1877, Mr. Burr, the president of another bank, in which Laflin was a director, wrote a letter to a correspondent who was the owner of stock in the National Bank of the State of Missouri, stating (without giving the grounds of his advice), "you had better sell your stock in that bank, because you can buy it back again at a profit if you wish to do so." Mr. Burr casually showed Laflin this letter and said, "go and do likewise." An election was to be held for directors on the 29th day of May, 1877, which it was supposed would give the stock a greater value in the market before the election than it would have after that event. Acting upon this general advice of Mr. Burr, and without personal knowledge of the actual financial condition of the bank, Laflin, on the 16th day of May, 1877, authorized one Keleher, a broker, to

sell in the market his eighty-five shares of stock. Keleher sold the same at private sale for $5,037.50 to James H. Britton, who then was, and for some years had been, the president of the bank. Mr. Britton gave Keleher to understand that he was buying either for himself or a party whose name he did not disclose. Britton paid Keleher the $5,037.50 by his individual check on the bank of which he was the president, and Keleher thereupon delivered Britton the certificates for the eighty-five shares of stock, assigned in blank, together with a blank power of attorney endorsed thereon, signed by Laflin, authorizing the transfer of the stock on the books of the bank. The stock certificates contained this provision: "Transferable only on the books of said bank, in person or by attorney, on the return of this certificate, and in conformity with the provisions of the laws of congress and the by-laws which may be in force at the time of such transfer." There were no by-laws on the subject of the transfer of stock. Keleher immediately presented Britton's check at the counter of the bank, and received thereon the $5,037.50, and deposited the amount in his own name with his own bankers, the Messrs. Bartholow, Lewis & Co., upon whom he gave Laflin his own check for $4,995—being the proceeds of the sale to Britton less his commission of fifty cents per share. Keleher did not inform Laflin to whom he had sold the stock, and even declined to do so. Laflin did not actually know that it had been sold to Britton until some time afterwards. Keleher supposed Britton was making the purchase for himself or some other person, and did not know that he was buying it as "trustee for the bank." After Keleher had delivered the stock certificates for the eighty-five shares, with the blank power to transfer endorsed thereon, and had collect' ed the check and had left the bank, but on the same day, Britton delivered the stock certificates, assigned in blank, together with the blank powers of attorney signed by Laflin, to one E. Girault, the general bookkeeper of the bank, with instructions to credit from the general funds of the bank Britton's individual account with the amount paid for the stock, viz., $5,037.50, which was done, and to charge the like amount in the books of the bank to "sundry stocks account," and to transfer the eighty-five shares on the stock transfer book to "James H. Britton, trustee." Girault obeyed these directions. The transfer of the stock on the transfer book was accordingly made to "James H. Britton, trustee," not stating for whom he was trustee. But in the stock ledger the transaction was entered in an account entitled "James H. Britton, trustee for bank," meaning Britton's own bank. Girault, in making the transfer of the shares, filled in his own name as attorney in the blank powers of attorney signed by Laflin, and signed the transfer to Britton as trustee thus: "S. H. Laflin, by B. Girault, Attorney." Girault had actual knowledge at the time that this stock had been paid for in the manner hereinbefore stated. No new certificates of stock for the eighty-five shares were ever issued to Britton or any one else. Neither Keleher nor Laflin knew of the foregoing direction of Britton to Girault, nor what Girault did in respect thereto. Other stock to a very large amount was from time to time purchased from other persons by Britton, and

paid for in the same way, and transferred and entered in the same manner. No formal resolution of the directors appears authorizing this to be done, but the directors knew of, and assented to, Britton‘s acts in this regard. At the time of the suspension of the bank, June 20th, 1877, there were, it seems, forty-five hundred and ninety-nine shares of its own stock standing in the name of "James H. Britton, trustee," which had been purchased by him with the funds of the bank, under circumstances more or less similar to the purchase from the defendant, Laflin. All of the stock thus standing in the name of Britton, trustee, including that purchased from Laflin, was voted by him at the election of directors held May 29th, 1877. Britton had been for years the owner of a large amount of stock in the bank in his own name and right, and thus owned fifteen hundred and forty-two shares when the bank suspended. Britton‘s credit was good at the time of this transaction, and there was nothing in the nature of the transaction—in the fact of the purchase, the amount or mode of payment, or the price paid—calculated to awaken suspicion on the part of Keleher that it was not a regular transaction on Britton‘s own account Laflin did not receive more than the stock was then considered to be worth in the market. Laflin did not know that the bank was insolvent, and his firm continued to deposit money with it until it closed. Keleher testifies that he considered the bank "sound in all respects" when he made the sale to Britton. The bank had not at that time committed any act of insolvency. This is a bill in equity by the receiver against Laflin and Britton to compel Laflin to pay back the $5,037.50; to set aside the transfer of the eighty-five shares of stock; to have Laflin declared to be still a stockholder in the said bank in respect of said shares, and to have Britton ordered to re-transfer the shares to Laflin on the books of the bank. The bill as to Britton stands confessed. Laflin answered, denying the material charges in the bill. Explication was filed and proofs taken. The cause is before the court on final hearing.

The following provisions of the national banking act, taken from the Revised Statutes, are those which more directly relate to the questions arising in this case:

"Sec. 5139. The capital stock of each association shall be divided into shares of $100 each, and be deemed personal property, and be transferable on the books of the association in such manner as may be prescribed in the by-laws or articles of the association. Every person becoming a shareholder by such transfer shall, in proportion to his shares, succeed to all the rights and liabilities of the prior holder of such shares, and no change shall be made in the articles of association by which the rights, remedies, or securities of the existing creditors of the association shall be impaired.

"Sec. 5151. The shareholders of every national banking association shall be held individually responsible, equally and ratably, and not one for the other, for all contracts, debts, and engagements of such association to the extent of the amount of their stock therein at the par value, in addition to the amount invested in such shares.

"Sec. 5152. Persons holding stock as executors or trustees shall not be personally subject to any liabilities as stockholders; but the estates and funds in their hands shall be liable in like manner and to the same extent as the testator or person interested in such trust funds would be if living and competent to act and hold the stock in his own name.

"Sec. 5201. No association shall make any loan or discount on the security of the shares of its own capital stock, nor be the purchaser or holder of any such shares, unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith; and stock so purchased or acquired shall, within six months from the time of its purchase, be sold or disposed of at public or private sale, or, in default thereof, a receiver may be appointed to close up the business of the association, according to section 5234.

"Sec. 5204. No association or member thereof shall, during the time it shall continue its banking operations, withdraw, or permit to be withdrawn, either in the form of dividends or otherwise, any portion of its capital. But nothing in this section shall prevent the reduction of the capital stock of the association under section 5143.

"Sec. 5210. Requires a full and correct list of all the shareholders to be kept, subject to inspection of all the shareholders and creditors, and a verified copy of such list to be sent annually to the comptroller of the currency."

Henderson & Shields, for plaintiff.

A. W. Slayback, for defendant.

DILLON, Circuit Judge. The plaintiff is the receiver of the National Bank of the State of Missouri, appointed by the comptroller of the currency June 23d, 1877, the bank having suspended payment three days before. Rev. St. § 5234. The defendant Laflin had for some years prior to May 16th, 1877, been the holder of eighty-five full-paid shares in that bank. At the date of the suspension of the bank the defendant, James H. Britton, was its president, and had been such for years prior to that event. On the 16th day of May, 1877, Laflin sold, through one Keleher, a broker, the eighty-five shares of stock to

Britton, and delivered to him the share certificates, duly assigned in blank, with powers of attorney in blank thereon endorsed to transfer the shares on the books of the bank. Laflin's broker, who effected the sale, understood that he sold to Britton individually, or to some unknown person for whom Britton acted, and he received in payment for the shares the personal check of air. Britton on the bank for $5,037.50, which was immediately presented and paid. Laflin did not know until some time after the transaction who had become the purchaser of his shares. After the shares had been thus delivered and paid for by Britton'a check, and the money received, but on the same day, they were transferred, in pursuance of Mr. Britton's directions, by Mr. Girault, the book-keeper of the bank (by virtue of the powers of attorney from Laflin), to "James H. Britton, trustee," and at the same time the book-keeper credited Britton's individual account at the bank with the amount of his cheek given in payment for the shares, and charged the same amount to the "sundry stocks account" on the books of the bank. On the official stock register the shares were thus made to stand in the name of "James H. Britton, trustee," without stating for whom he was trustee. On the stock ledger of the bank the transaction was entered in an account entitled "James H. Britton, trustee for the bank." Neither Laflin's agent who negotiated the sale of the shares nor Laflin himself had any actual notice of the manner in which the transfer of the stock had been registered, nor that the funds of the bank had been thus used to pay for it, nor of the entries in respect thereto on the books of the bank. But of all these facts Mr. Girault the bookkeeper of the bank, who made the entries, and who had inserted his name in Laflin's blank powers of attorney to transfer the stock, had actual knowledge at the time.

This is a bill in equity by the plaintiff, as the receiver of the bank, against Laflin and Britton, to compel Laflin to repay the $5,037.50 (the amount of Britton's check for the shares paid by the bank), and to set aside the registered transfer of the eighty-five shares on the stock transfer book of the bank. The case presents questions of grave moment concerning the rights of stockholders and creditors in national banking associations. And if the insolvency of the bank here in question is such as shall make it necessary to enforce the individual liability of the shareholders (Rev. St. § 5151),

it is important to those shareholders who made no sale of their stock to know who are shareholders with them, liable to contribute to meet "the contracts, debts, and engagements of the association." These questions principally depend upon the true construction of certain provisions in the national banking act, to which we shall refer as we proceed.

Inasmuch as this act in express terms prohibits a national bank from thus becoming a "purchaser of the shares of its own capital stock" (Rev. St. § 5201), if Laflin had made a contract to sell his shares to the bank, or to its president for the bank, it is plain that such a contract would have been ultra vires and illegal, both as respects creditors and other shareholders, and the transaction could have been impeached by the bank in its corporate capacity, or by its other shareholders, even if the bank were still solvent and going on, or by the receiver as the officer appointed to wind up its affairs. In re London, etc., Exchange Bank, 5 Oh. App. 444, 452; Great Eastern Ry. Co. v. Turner, 8 Ch. App. 149; Currier v. Lebanon Slate Co., 56 N. H. 262. And although Laflin did not contract to sell his shares directly to the Bank, or to the president for the bank, still, if, before the transaction was completed as to him, he had notice, actual or constructive, that the purchase was, in fact, a purchase for the bank, and paid for by the money of the bank, the transaction cannot stand, and the receiver may compel him to pay back the money thus received, and have him declared still to be a shareholder.

It would be easy to support these propositions by argument and by the authority of adjudged cases, but they are so plain that it is not necessary to do so. But Laflin, or his agent, Keleher, did not deal with the bank, or with the president, with knowledge that the latter in fact intended to pay for the shares out of the moneys of the bank. Laflin was acting in good faith. Neither he nor his agent, Keleher, had any actual knowledge of Britton's purpose to turn these shares over to the bank, and to pay for them out of the funds of the bank. If Laflin can be charged with notice, it must be constructive notice, arising either, first, from the mere fact that he was a shareholder in the bank, or, second, from the law imputing to him all the knowledge in this behalf which was possessed at the time by Mr. Girault, the book-keeper, who made the transfer of the shares on the transfer book of the bank under Laflin's blank powers of attorney, and who contemporaneously made the entries on the private books of the bank, which showed that Britton had been paid for the shares out of the general funds of the bank, and had acknowledged that he held the shares as the trustee of the bank.

The controlling question in the case is whether Mr. Laflin is affected with constructive notice in one or the other of these modes. The solution of this question, in its turn, depends upon the nature and extent of the right of a shareholder in a national banking association to transfer his shares, and also upon the elements or requisites of a completed transfer, by which is meant such a transfer as shall release the transferrer from liability to the bank, its stockholders, and creditors.

In considering these questions, our first proposition is that, under the national banking act, a shareholder has the unrestricted right to make an out-and-out bona fide and valid sale and transfer of his shares to any person or corporation capable in law of taking and holding the same, and of assuming the transferor‘s liability in respect thereto. The right to transfer shares in a corporation is usually recognized or given. In express terms in the charter or constituent act, which also, not unfrequently, prescribes the manner in which the transfer shall be made. The capital stock of a corporation is invariably divided into shares of a fixed amount, for the purpose, among others, of allowing it to be readily transferred. In an ordinary partnership the consent of all the partners to the admission or retirement of a member is necessary, and every such change involves the dissolution of the old and the formation of a new partnership. But in incorporated companies this is different. Indeed, it is one of the leading objects of an incorporated body to avoid the operation and effect of this doctrine of the law of partnership. Accordingly, in this country shares in corporations are universally bought and sold without reference to the consent of the other shareholders.

The restrictions on the right bona fide to sell and transfer shares must be found in express legislative enactments or in authorized by-laws. The national banking act (Rev. St. § 5139), by providing that shares shall "be transferable on the books of the association in such manner as may be prescribed in the by-laws or articles of the association," recognizes the right of the shareholder to transfer his shares. There is nothing peculiar in this provision. A similar provision is found in nearly all the incorporating acts and charters in this country. The right to transfer is given or implied in the section just referred to (Rev. St. § 5139), and that right the association cannot take away or defeat. It contemplates a transfer on the books of the association, and all that the association is authorized to do is to prescribe the manner in which the transfer shall be made on its books. There is here no limitation whatever upon the right of transfer, and none exists except such as is implied from the nature of the transaction or from other provisions of the act. Another section (Id. § 5201) prohibits the bank from dealing in its own shares. This implies a restriction

on the shareholder in selling his shares to the bank itself, or to a known trustee for the bank. And a shareholder cannot transfer his shares colorably, and thereby cease to be a shareholder as respects creditors and other shareholders who would be injured by the transfer. There may also be an implied prohibition against the right to transfer shares to an infant or person not capable in law of assuming the liabilities, as well as enjoying the rights, of the transferrer of the shares in respect thereto, but we have no occasion to determine this point. Id. § 5139; compare Id. § 5152; Weston's Case, 5 Ch. App. 614, 620. And, on general principles, there may also be an implied prohibition against the transfer of shares to a pauper or man of straw or insolvent person, for the fraudulent purpose of escaping liability—but this is a matter that need not now be considered.

Subject, however, to such prohibitions and limitations, the right of the share-owner to make an actual and bona fide sale and transfer of his shares to any person capable in law of taking and holding the same and of assuming the liabilities of the transferrer in respect thereto, is plainly deducible from the national banking act itself. But if any doubt could exist on this subject, it would be removed by the judicial decisions construing the provisions of the banking act in this regard and similar provisions in other legislative enactments.

In Bank v. Lanier, 11 Wall. [78 U. S.] 369, arising under the national banking act, it was expressly held by the supreme court of the United States that the owner of shares in a national bank may transfer the same by an assignment and delivery of the certificates, and the transferee may compel the bank to register the transfer on its books. The learned justice who delivered the opinion of the court in that case, after speaking of the additional value given to this species of property by reason of its transferable quality, says: "Whoever in good faith buys the stock and produces to the corporation the certificates, regularly assigned, with power to transfer, is entitled to have the stock transferred," even if the transferrer is the debtor of the bank. The duty of the bank to make the transfer in such a case is held to be a corporate duty, in respect of which the bank is liable for the wrongful acts and omissions of its officers.

It was urged in the argument at the bar in the present case that the provision that the shares should "be transferable on the books of the bank" gave the directors of the bank the power to approve or disapprove of any given transfer of shares, and to register or refuse to register the same, as in their judgment the interests of the bank or of the other stockholders might require. Such, however, is not the object of this very common provision in charters and acts of incorporation. The purpose of requiring a transfer on the books of the bank is that the bank may know who are the shareholders, and as such entitled to vote, receive dividends, etc., and for the protection of bona fide purchasers of the shares, and of creditors and persons dealing with the bank. That such is the meaning of the provision in question, and that it does not restrict the right of the owner to transfer

his stock or clothe the corporation with the power to refuse to register bona fide transfers, is settled beyond all question by numerous decisions in the English and the federal and state courts. Black v. Zacharie, 3 How. {44 U. S.} 483; Union Bank v. Laird, 2 Wheat. {15 U. S.} 390; Webster v. Upton, 91 U. S. 65, 71; Bank v. Lanier, 11 Wall. {78 U. S.} 369; St. Louis Perpetual Ins. Co. v. Goodfellow, 9 Mo. 149; Chouteau Spring Co. v. Harris, 20 Mo. 382; Moore v. Bank of Commerce, 52 Mo. 377; Hill v. Pine River Bank, 45 N. H. 300; In re London, etc., Telegraph Co., L. R. 9 Eq. 653.

The general subject of the right to transfer shares has been much discussed in the cases in England arising under the various companies acts. Some of these acts give the directors express power to refuse to assent to or register transfers of shares, and some do not. The result of the English cases is that the directors cannot refuse to register a bona fide transfer of stock unless the power to do so is expressly given in the act of parliament or the articles of association. The leading authority on this point is Weston's Case, 4 Ch. App. 20. See, also, Gilbert's Case, 5 Ch. App. 559. In Weston's Case, 4 Ch. App. 20, Lord Justice Page Wood, in considering this subject, said:

"I have always understood that many persons enter these companies for the very reason that they are not like ordinary partnerships, but that they are partnerships from which members can retire at once, and free themselves from responsibility at any time they please, by going into the market and disposing of and transferring then shares, without the consent of directors or shareholders, or anybody, provided only it is a bona fide transaction; by which I mean an out-and-out disposal of the property, without retaining any interest in them. But if it is desired by a company that such unlimited power of assignment shall not exist, then a clause is inserted in the articles, by which the directors have powers of rejection of members. Short-ridge v. Bosanquet, 16 Beav. 84, which went to the house of lords, was a case of that kind. In the absence of any such restriction, I think it is perfectly plain that the companies act of 1862, in the twenty-second section, gives a power of transferring shares. I think there is no such power given to the shareholders, and that the shares are at once transferable under the statute, unless something is found to the contrary in the articles of association. It would be a very serious thing for the shareholders in one of these companies to be told that their shares, the whole value of which consists in their being marketable and

passing freely from hand to hand, are to be subject to a clause of restriction which they do not find in the articles. And, I may add, that if we were to hold that such powers were vested in the directors, it would be a very serious thing for them, and would impose upon them much more onerous duties than any which are really imposed upon them by this clause."

In Gilbert's Case, 5 Ch. App. 559, 565, Lord Justice Giffard said: "I agree that, according to Weston's Case, and according to what I have always considered to be the law, there is no inherent power in the directors, apart from the provisions of the articles of association, to refuse to register a proper and valid transfer, if that proper and valid transfer is submitted to them."

And although there is express power to the directors to refuse to assent to or register a transfer, this power must be exercised in a reasonable manner and bona fide, and they must have some valid and lawful reason for refusing to register. Ex parte Penney, 8 Ch. App. 446; Nation's Case, L. R. 3 Eq. 77; Fyfe's Case, 4 Ch. App. 768, L. R. 9. Eq. 589; Allin's Case, L. R. 16 Eq. 449; Id. 559; Weston's Case, 5 Ch. App. 614, 620; Ex parte Elliott, 2 Ch. Div. 104. In a case where the directors had power to approve or reject the transfer of shares, one of the vice-chancellors, speaking of the right of a share-owner to dispose of his shares, said: "One of the incidents (of this class of property) is the right to transfer it—a right to make a present and complete transfer of it. It is the duty of the directors to receive and register the transfer, or to furnish some (valid and sufficient) reason for refusing to transfer." In re Stranton, etc., Co., L. R. 16 Eq. 559, per Bacon, vice-chancellor. Similar observations are made by the supreme court of the United States in Bank v. Lanier, supra. Mr. Justice Davis there said: "The power to transfer their stock is one of the most valuable franchises conferred by congress. It enhances the value of the stock. Although neither in form nor character negotiable paper, they (the share certificates) approximate to it as nearly as possible."

It would be a new, and, I apprehend, a startling, doctrine to proclaim that the holder of shares in a corporation, where the only provision on the subject of transfers was one requiring them to be made on its books, had no right to make a complete and effectual disposition of them without the consent of the directors or other shareholders. No such power over the right of transfer has been given in the national banking act. Such a power is so capable of abuse, and so foreign to all received notions and the universal practice and mode of dealing in these stocks, that it cannot, in the absence of legislative expression, be held to exist.

For these reasons, and upon these authorities, the proposition must be considered as established that a share-owner in a national bank, while it is a going concern, has the absolute right, in the absence of fraud, to make a bona fide and actual sale and transfer of his shares at any time to any person capable in law of purchasing and holding the same

and of assuming the transferrer's liabilities in respect thereto, and that this is right is not, in such cases, subject to the control of the directors or other stockholders.

Our second proposition is that Laflin did make a complete and effectual sale and transfer of his shares to James H. Britton individually, and that, as to Laflin, it was not a sale and transfer of the stock to the bank. Laflin sold through the broker or agent, Keleher, and the latter dealt with Britton as an individual, without knowledge that Britton intended to turn over the shares to the bank, and he received in payment for the shares the personal check of Mr. Britton, and delivered to him at the same time the certificates of stock assigned in blank, with powers of attorney in blank thereon endorsed, authorizing the transfer of the shares on the books of the bank.

As between Laflin and Britton, the transfer was complete by the sale, assignment, delivery, and payment, without registration, and this, whether it gave Britton before the registration the legal title to the shares as against Laflin, or only a complete equitable title. Union Bank v. Laird, 2 Wheat. {15 U. S.} 390; Webster v. Upton, 91 U. S. 65, 71; Black v. Zacharie, 3 How. {44 U. S.} 483; Bank v. Lanier, 11 Wall. {78 U. S.} 369, 377; Chouteau Spring Co. v. Harris, 20 Mo. 382: Moore v. Bank of Commerce, 52 Mo. 377; New York & N. H. R. Co. v. Schuyler, 34 N. Y. 80; McNeil v. Tenth Nat. Bank, 46 N. Y. 325; Grymes v. Hone, 49 N. Y. 17, 22; Bank of Utica v. Smalley, 2 Cow. 778; Bank of Commerce's Appeal, 73 Pa. St. 59; Ross v. Southwestern Railroad Co., 53 Ga. 514; Hoppin v. Buff urn, 9 R. I. 513; Bank of America v. McNeil, 10 Bush, 54; Davis v. Lee, 26 Miss. 505; German Union Bldg. & Sav. Fund Ass'n v. Sendmeyer, 50 Pa. St. 07; Leavitt v. Fisher, 4 Duer, 1.

That the transaction is complete as between seller and purchaser of stock by the assignment and delivery of the certificate assigned, with the power to transfer and the receipt of payment, is fully shown by these cases, and is also evident from the fact that thereupon each of them has the legal right to have a transfer of the shares made on the books of the bank. The seller of the shares, for his protection against creditors of the bank in case of insolvency, may transfer the same on the books to the vendee, the purchase being the authority to the seller to do this. Webster v. Upton, 91 U. S. 65, 71. And, for the like reason, the seller of shares who has done all that is necessary to enable the purchaser to transfer the shares on the books, may file a bill to compel the vendee to record the transfer. Shaw v. Fisher, 2 De Gex & S. 11; Cheale v. Kenward, 3 De Gex & J.

27; Wynne v. Price, 3 De Gex & S. 310; Webster v. Upton, 91 U. S. 65, 71. So, also, the vendee of the shares, where the vendor has done all that is necessary to enable the transfer to be registered, may for his own protection compel the bank to register the transfer, or hold it liable in damages for a wrongful refusal. Bank v. Lanier, 11 Wall. {78 U. S.} 369; Hill v. Pine River Bank, 45 N. H. 300; Bank of Utica v. Smalley, 2 Cow. 778; Commercial Bank of Buffalo v. Kortright, 22 Wend. 348.

The delivery of the share certificates as signed in blank and blank transfers will entitle the bona fide vendee to have the transfer registered. "Whoever in good faith buys the stock and produces to the corporation the certificates regularly assigned, with power to transfer, is entitled to have the stock transferred" (Bank v. Lanier, 11 Wall. {78 U. S.} 369, per Davis, J.), unless there exists some valid and legal reason in favor of the bank for refusing to register the transfer, as in the case of the Union Bank v. Laird, 2 Wheat. {15 U. S.} 390. In that case the charter gave the bank a lien for the shareholder's debt to it, and provided that "stock shall be transferable only on the books of the bank." Under these circumstances the bank was held to have a lien on the shares to secure the shareowner's indebtedness to it, which was superior to the right of the unregistered transferee of the stock. Black v. Zacharie, 3 How. {44 U. S.} 483.

If the foregoing propositions are sound, Britton, as against Laflin, had the right immediately on delivery and payment to register the transfer of the shares, and had the power to fill up the blank transfers and have the transfer registered. In re Tahiti Cotton Co., L. R. 17 Eq. 273; German Union Bldg. & Sav. Fund Ass'n v. Sendmeyer, 50 Pa. St. 67; Leavitt v. Fisher, 4 Duer, 1; Commercial Bank of Buffalo v. Kortright, 22 Wend. 348. Nothing more was required to be done by Laflin or needed to enable Britton to make his title complete. And Laflin could have compelled Britton to register the transfer. If Laflin had proceeded against Britton, he could have forced him to have accepted a transfer of the stock in his own name or in the name of some person capable of taking and holding the same. Maxted v. Paine, L. R. 6 Exch. 132. It would have been no answer to Laflin for Britton to have said, "I bought this stock, not for myself, but for the bank." Laflin could have rejoined, "You purported to act for yourself; I supposed you were so acting, and you had no authority, and could have had none, to act for the bank."

It is held in England, under the companies act, that the transferrer of shares is liable to be treated as a stockholder until he transfers to one who is in law capable of holding and liable in respect of the shares, and whose purchase is registered, unless, perhaps, where the neglect to register is entirely the fault of the corporation or its officers. Fyfe's Case, 4 Ch. App. 768; Lowe's Case, L. R. 9 Eq. 589; Shropshire Union Railways & Canal Co. v. Queen, L. R. 7 H. L. 496, 513; McEuen v. West London Wharves, etc., Co., 6 Ch. App. 655; Weston's Case, 5 Ch. App. 614, 620; Gooch's Case, 8 Ch. App. 266;

Gilbert's Case, 5 Ch. App. 559; Master's Case, 7 Ch. App. 292; Nickalls v. Merry, L. R. 7 H. L. 530; Symons' Case, 5 Ch. App. 298; Heritage's Case, L. R. 9 Eq. 5.

Assuming, without deciding, that this principle applies in all its force under the national banking act, if Laflin had sold to an infant, his liability would remain, notwithstanding the transfer was registered. Nickalls v. Merry, L. R. 7 H. L. 530; Symons' Case, 5 Ch. App. 298. If he had sold to the bank, he would remain prima facie, if not actually, liable, if the bank should so elect. And if the seller of shares remains liable under the national banking act until there is a registered valid transfer—that is, until some person succeeds to the stock who is capable of holding it and liable in respect to it—this principle will not make Laflin liable under the facts of the present case. Here the transfer was registered, but Britton, instead of registering it in his own name, as it was his duty towards Laflin to do, registered it in his name as "trustee," without Laflin's knowledge. But the act (Rev. St. § 5152), authorizes the holding of stock by a trustee. If Laflin, in order to relieve himself of liability, is bound to see the transfer of the stock registered, the registry actually made would not charge him with constructive notice that the bank was in reality the cestui que trust.

Britton is responsible personally, inasmuch as he had no authority to act for the bank, and as there is no cestui que trust who is liable. He is liable for the unauthorized investment and use of the trust money of the bank, and can be compelled to refund it. Great Eastern Railway Co. v. Turner, 8 Ch. App. 149. If it becomes necessary to assess the stockholders, he will be estopped to say that he is not individually responsible, since he was not acting by authority of any cestui que trust capable of taking and holding the shares. If the sale of this stock had been registered to Britton individually, it is clear that Laflin would not have been liable to the bank or its creditors; and, as the matter now stands, the bank and its creditors have every right and remedy against Britton which they would have had if the shares had been transferred to him individually instead of to him as "trustee."

Our third proposition is that Laflin is not liable because the money received for the stock was unlawfully taken by Britton from the bank. The reason for this conclusion is that Laflin parted with value—with his shares, with his power of control over them, and the right to sell them to others—and had no notice at or prior to the consummation of

the transaction that Britton was acting ultra vires, and intended to misappropriate the funds of the bank. If he had dealt directly with the bank, or if he or his agent had known what took place inside the counter before the transaction with Britton had been completed, he would have been liable.

It is urged by the receiver's counsel that Laflin had constructive notice. Mr. Shields, in his argument, bases Laflin's liability on the proposition that, being a shareholder in the bank, he is charged with constructive notice of the condition of the bank, and of what was done by the president in violation of law and of his official duty in respect of these shares. I admit that if, in a transaction directly with the bank, he had received moneys to which he was not entitled, he could be made to pay back the same, irrespective of the question of knowledge on his part. Curran v. Arkansas, 15 How. [56 U. S.] 304; Railroad Co. v. Howard, 7 Wall. [74 U. S.] 392. But it is to be remembered in this case that Laflin is sought to be made liable in respect of the sale and transfer of his shares, which sale and transfer he had the perfect right to make, if he acted bona fide; and he has the same right to sell his shares to another shareholder that he would have to sell them to a person not a shareholder. Even directors have the right to make a bona fide sale of their shares, and thus get rid of liability, if they pursue the articles or charter, and take no advantage of their position and commit no fraud. Gilbert's Case, 5 Ch. App. 559; Ex parte Little-dale, 9 Ch. App. 257. And shareholders, in the exercise of their right to transfer shares, are not bound, it seems, to take notice of irregularities on the part of the directors in respect to the transfer of shares. Bargate v. Shortridge, 5 H. L. Cas. 297, 323; Taylor v. Hughes, 2 Jones & L. 24; Ex parte Bagge (In re Northern Coal Min. Co.) 13 Beav. 162. Nor are directors, it seems, much less shareholders, in the transfer of their stock, bound to take notice of the books of account of the company. Cartmell's Case, 9 Ch. App. 691; Hill v. Manchester & S. Waterworks Co., 2 Nev. & M. 573; 5 Barn. & Adol. 874; Haynes v. Brown, 36 N. H. 568.

We are of opinion, therefore, that the sale and transfer of the stock, as between Laflin and Britton, was complete as soon as the stock was delivered, assigned in blank, with the power to transfer, and payment received; and that what Britton, without Laflin's knowledge, afterwards did, although on the same day, in transferring the shares to himself as trustee for the bank, and in reimbursing himself out of the funds of the bank, could not retroact upon Laflin, whose status had already been fixed, and whose rights had already been acquired. Bank of America v. McNeil, 10 Bush, 54, 58.

Mr. Henderson's argument for the receiver went mainly upon the ground that Laflin was chargeable, through Mr. Girault, with constructive notice of Britton's wrongful acts in the purchase of these shares, and in the use of the bank's money to reimburse himself therefor.

This argument rests upon these propositions: That the sale was not complete until the transfer was registered; that, in making the transfer, Girault, although acting under Britton's directions, was solely Laflin's agent (by virtue of his inserting his name in the blank power of attorney); and that, inasmuch as Girault knew of Britton's acts in directing the transfer for the benefit of the bank, and in paying himself for the purchase money out of the general means of the bank, the law imputes this knowledge to Mr. Laflin. The first branch of this proposition is inconsistent with the one which we have above attempted to maintain, viz., that the transaction between Laflin and Britton was complete without registration of the transfer, and that it is equally complete as to the bank, unless the bank had some valid reason for refusing to register the transfer. Britton had the right to register the purchase in his own name. He was in good credit with the bank, and in the community. He was not then known to be insolvent—indeed, it is not shown by the proofs that he is now insolvent Laflin could have compelled him to register the transfer in his own name. In the eye of the law, the transfer to Britton as "trustee" is a transfer to Britton individually; for, as above shown, Britton could not set up his ultra vires acts to defeat his personal responsibility. Ashhurst v. Mason, L. R. 20 Eq. 225; Ex parte Little-dale, 9 Ch. App. 257. If Laflin had a completed right, immediately on receiving payment for the shares, to have Britton register the transfer of the shares, and if, immediately on such payment, Britton had the right to register the transfer to himself, and if the bank could not have resisted Laflin's application to compel a registration of the transfer to Britton, it is obvious that notice subsequently received by Laflin personally, or through an agent, would be immaterial.

If this view is sound, it is unnecessary to decide the further question, whether Girault, in consequence of his relations to Britton, and the fact that he acted as his servant, and implicitly obeyed his directions, is to be regarded, in making the formal act of transfer on the books, as the agent of Laflin, in such sense that knowledge acquired by him from Britton is to be imputed to Laflin. It deserves consideration, whether, under the circumstances, Girault was Laflin's agent, so as constructively to affect Laflin with notice of what was being done, not in the necessary or lawful execution of his authority, but in violation of that authority, and in hostility to his rights, as well as those of the bank. These are the positions taken by Mr. Slayback, in Mr. Laflin's behalf, and

they certainly have great force. For, in this view, if the name of some one outside the bank, having no knowledge of what was going on inside the hank, had been filled in by Britton as the attorney to make the transfer, or if Britton had filled in his own name, Laflin would not be liable. It is certainly extremely narrow ground to make Laflin's liability depend upon the accident whose name shall be used to make the formal transfer, and upon what knowledge of the interior working of the bank such person may happen to possess, especially in view of the custom to transfer stock in blank through many hands before any registry is made.

It is strongly urged at the bar by Mr. Henderson, for the receiver, that the foregoing views of the right of the shareholder to transfer his shares will have the effect to permit transfer to persons not able to respond to the double liability imposed on shareholders, and thus work an injury to the solvent shareholders and to creditors. But we must hold to the absolute right of the share-owner to transfer his stock in good faith, or the alternative that the directors may have the right to refuse their assent to such transfer, thus putting a shareholder in their power. Not a syllable can be found in the banking act giving the directors such a power; while, on the other hand, the right to transfer shares is expressly recognized. If it is desirable for the security of the shareholders or creditors that the existing members should, through the directors, have a veto on the right of a shareholder to transfer his shares, such a power must be plainly conferred. It has not been given, and cannot, therefore, be held to exist.

It is proper to remark, in order to preclude erroneous inferences from the views here maintained, that it is probable that the unrestricted right of transfer has reference to transfers in solvent and going concerns, and is not intended to enable shareholders to escape from liability where the association has committed an act of insolvency, or has ceased to be a going concern. Allin's Case, L. R. 16 Eq. 449, per Lord Chancellor Selborne; Chappell's Case, 6 Ch. App. 902. While we maintain the right of a shareholder dispose of his shares absolutely, by an out-and-out sale and registered transfer, and thus escape liability, provided the sale is made bona fide, and the purchaser is in law capable of assuming the liabilities of the transferrer, yet this does not involve the right to transfer shares for a fraudulent purpose, or under circumstances which the transferrer knows will make the transfer, if it is sustained, work a fraud upon the other shareholders, or upon the creditors of the bank.

The result is, that there must be a decree dismissing the bill as to Laflin, and as the bill is not framed for separate relief against Britton, dismissing the same as to him also, but without prejudice. Bill dismissed.

{NOTE. An appeal was then taken by the complainant to the supreme court, where the decree was affirmed in an opinion by Mr. Justice Field, who said that shares in a national bank are salable and transferable at the will of the owner, and are in that respect

like other personal property. The bank can only prescribe rules for its own protection against fraudulent transfers, or such as may be designed to evade the just responsibility of a stockholder. No rules can be enforced which clog the transfer with useless restrictions, or make it dependent upon the consent of the directors or other stockholders. As between Laflin and the broker, the sale was consummated when the certificate, with the blank power of attorney indorsed, was delivered to the latter, and the money received from him. Laflin acted in perfect good faith, and the whole transaction, as far as he was concerned, was free from any imputation of fraud. The book-keeper, Girault, was not the agent of Laflin, and his knowledge cannot be imputed to the latter. 103 U. S. 800.}

NOTE. How far receiver of an insolvent corporation represents both creditors and stockholders: Gillet v. Moody, 3 Comst. {3 N. Y.} 479, 488; Talmage v. Pell, 7 N. Y. 328; Ex parte Ginger, 5 Ir. Ch. 174. The assets of an insolvent corporation are a fund for the payment of its debts. If they are held by the corporation itself, and so invested as to be subject to legal process, they may be levied on by such process. If they have been distributed among stockholders, or gone into the hands of others than bona fide creditors or purchasers, leaving debts of the corporation unpaid, such holders take the property charged with the trust in favor of creditors which a court of equity will enforce, and compel the application of the property to the satisfaction of their debts. This has been often decided, and rests upon plain principles. Curran v. Arkansas, 15 How. {56 U. S.} 304; Wood v. Dummer {Case No. 17,944}; Hightower Y. Dozier, 8 Ga. 487; New Albany v. Burke, 11 Wall. {78 U. S.} 96; Burke v. Smith, 16 Wall. {83 U. S.} 390; Sawyer v. Hoag, 17 Wall. {84 U. S.} 610; Upton v. Tribilcock. 91 U. S. 45; Sanger v. Upton. Id. 56; Martin v. Zellerbach, 38 Cal. 301; Railroad Co. v. Howard, 7 Wall. {74 U. S.} 392. Mr. Justice Story says: "On the principle that the capital stock was a trust fund, it is clear that it might be followed by the creditors into the hands of any person having notice of the trust attached to it; that as to the stockholders themselves there can be no pretence to say that both in law and in fact they were not affected by the most ample notice." Wood v. Dummer, supra.

"A purchase by a company of their own shares is not a legal transaction (it is ultra vires), unless there is a clear, distinct, undoubted, and special authority (in the articles of association) authorizing them to do so." Giffard, lord justice, in Re London, etc., Exch. Bank (1870) 5 Ch. App. 444, 452; Id. 707; Great Eastern Railway Co. v. Turner, 8 Ch. App. 149; Hope v. International Financial Society, 4 Ch. Div. 327. See, also, Currier v. Lebanon Slate Co., 56 N. H. 262, where it is said by the court: "The funds of an insolvent corporation cannot be taken to buy in a portion of its capital stock, at the expense of its remaining stockholders. It would be grossly inequitable to the other stockholders, and a fraud upon the creditors. But, assuming that this corporation, on March 17th, 1869 (the date when the stockholders voted to release a stockholder from his subscription) was

solvent, it becomes material to inquire whether the corporation could lawfully purchase of Liscomb one hundred shares of its capital stock, the assessments upon which he had been unable to meet. In Salem Mill Dam v. Ropes, 6 Pick. 23, it is laid down that no vote or act of a corporation can enlarge its chartered authority, either as to the subject on which it is intended to operate, or the persons or property of the corporators. If created with a fund limited

by the act, it cannot enlarge or diminish that fund but by license from the legislature; and, if the capital stock is parcelled out into a fixed number of shares, this number cannot be changed by the corporation itself.'" Compare with the foregoing, the following: Ex parte Holmes, 5 Cow. 426, 434; Taylor v. Miami Exporting Co., 6 Ohio, 218; Robison v. Beall, 26 Ga. 17; Hartridge v. Rockwell, R. M. Charlt. 260; Cooper v. Frederick, 9 Ala. 738; Williams v. Savage Manuf'g Co., 3 Md. Ch. 418, 452; Chillicothe Branch of State Bank of Ohio v. Fox [Case No. 2,683]; City Bank of Columbus v. Bruce, 17 N. Y. 507; Ang. & A. Corp. § 159; Schouler, Per. Prop. (1st Ed.) p. 622; Green's Brice, Ultra Vires, p. 99, note.

If the officers of a corporation illegally and ultra vires invest its money in stock in the name of a trustee, this is an unauthorized investment of trust moneys, but the cestui que trust may have the benefit of the purchase if he elects, or may repudiate it. Great Eastern Ry. Co. v. Turner, 8 Ch. App. 149; Ashhurst v. Mason, L. R. 20 Eq. 225.

Sale and transfer of shares by a trustee or executor: Duncan v. Jaudon, 15 Wall. [82 U. S.] 165; Brewster v. Sime, 42 Cal. 139; Bayard v. Farmers' etc., Bank, 52 Pa. St. 232: Albert v. Mayor, etc., 2 Md. 159; Shaw v. Spencer, 100 Mass. 382; Sturtevant v. Jaques, 14 Allen, 525. The provisions in the companies acts as to transfer of stock, have reference to the transfer in solvent and "going concerns," and are not intended to enable shareholders to escape from liability when the company has ceased to be a going concern. Allin's Case, L. R. 16 Eq. 449, per Lord Chancellor Selborne; Chappell's Case, 6 Ch. App. 902.

A bona fide out-and-out registered transfer no trust for transferrer existing—relieves transferor, if no fraud is committed and the articles are pursued. Master's Case, 7 Ch. App. 292; Gilbert's Case, 5 Ch. App. 559; Weston's Case, 4 Ch. App. 20. Must be a complete and valid transfer and registration of transfer, where required by charter or articles of association, to vest the shares in the transferee so as to release the transferrer. McEuen v. West London Wharves, etc., Co., 6 Ch. App. 655. When the sale is complete and the transfer is left with the officer of the company for registration, but never registered through the laches of the company's officers, the transferrer is not liable. Fyfe's Case, 4 Ch. App. 768; Lowe's Case, L. R. 9 Eq. 589. Duty to register valid transfer: Gilbert's Case, supra; Weston's Case, supra; Bank v. Lanier, 11 Wall. [78 U. S.] 369.

A director may transfer his shares. If he transfers when a call is due, contrary to statute, and the transfer is registered, it is not invalid—the transferee becomes the shareholder, and the director is liable to the company for any loss occasioned by the transfer. Ex parte Littledale, 9 Ch. App. 257. Where the charter provides that "stock shall be transferable only on the books of the bank," an assignment and delivery of shares vests an equitable title only until the stock is transferred on the books of the bank, and an equitable assignment is subject to the rights of the bank under its charter; and where the charter gives the bank a lien for the debt of the owner of the shares, the right of the bank is superior to the

rights of the unregistered transferee of the stock. Union Bank v. Laird. 2 Wheat. [15 U. S.] 390; Webster v. Upton, 91 U. S. 65, 71; s. p. Black v. Zacharie, 3 How. [44 U. S.] 483, where the question arose between equitable assignee and attaching creditor of the seller. The provision requiring transfers on the books of the bank is for the benefit of the bank and bona fide purchasers. An assignment without transfer on books of bank is good between the parties and attaching creditors of the vendor with notice. Black v. Zacharie, 3 How. [44 U. S.] 483, 513; Bank of Commerce's Appeal, 73 Pa. St. 59; State v. New Orleans Gaslight Co., 25 La. Ann. 413; Ross v. South western R. Co., 53 Ga. 514; Brown v. Adams [Case No. 1,986]; Smith v. American Coal Co., 7 Lans. 317; Grymes v. Hone, 49 N. Y. 17; Bank of America v. McNeil. 10 Bush. 54; Fisher v. Essex Bank, 5 Gray, 373; Boyd v. Rockport Steam Cotton Mills, 7 Gray, 406; Williams v. Mechanics' Bank [Case No. 17,727]; Turnpike Co. v. Bulla, 45 Ind. 1; Moore v. Bank of Commerce, 52 Mo. 377; Ang. & A, Corp. (10th Ed.) §§ 534, 535.

In Bank v. Lanier, 11 Wall. [78 U. S.] 369, it was held that the owner of shares in a national bank may transfer the same by a delivery of the certificates, and the transferee may compel the bank to transfer and enter the shares on the books. The duty of the bank to make transfer is a corporate duty, and it is liable if it refuses to perform it. Where the certificates provided that the shares were transferable on the books of the bank, in person or by attorney, only on surrender of the certificates, if the bank transfers the stock without the surrender of the certificates, it is liable to a subsequent purchaser of the stock who obtained and held the certificates, and who bought without notice of the previous sale, and who, if he had examined the books of the bank, would have seen that his vendor had previously sold and transferred the stock on the books of the bank. "Whoever in good faith buys the stock and produces to the corporation the certificates, regularly assigned, with power to transfer, is entitled to have the stock transferred"—even if the transferrer is the debtor of the bank. Id.

Transferee must be liable.—Mr. Heritage owned one hundred shares of stock in the Merchants' Company, which he directed his broker to sell, and the shares were sold in the ordinary way to a firm of stock jobbers on the stock exchange, as to whose liability see Maxted v. Paine, L. R. 6 Exch. 132. The jobbers reported one Hankey as the purchaser. Heritage executed a transfer of the shares to Hankey, and the company registered the transfer. On the ground that Hankey had not accepted the shares, the court removed his name from the register of shareholders, and subsequently held that Heritage was liable as a stockholder. Lord Romilly, master of the rolls, said: "If shares are once taken properly and bona fide by a person, those shares remain the shares of the person who took them from the company, and cannot be altered, except by a declared forfeiture, or by some valid transfer from the person who took them to some other person. It is no doubt a very hard matter for a man not to have got rid of his shares when he has taken every step that

depended on him for the purpose; but it necessarily follows that if he has not duly transferred the shares, they remain in him. The court has determined that no valid transfer was made from Mr. Heritage, and, therefore, Mr. Heritage remains the shareholder. His name is, therefore, properly on the list of contributories, and I cannot remove it. But I am asked to strike off the name of Mr. Heritage, the result of which would be simply to cancel the shares. I do not find any case in which anything of the kind has ever been done, and I am at a loss to understand on what principle it could be done." In re Merchants' Co. (Heritage's Case, 1869) L. R. 9 Eq. 5; s. p. Symons' Case, 5 Ch. App. 298, 300.

Mode of transfer.—Mere delivery, without assignment of certificates of stock, by one in whose name the stock stands, though for value, will not give a legal title. Title can only be obtained by a transfer of the shares into the name of the transferee; "and, perhaps, also," says Lord Hatherley, "but I think that has not been quite decided, it may be necessary that he should obtain a registry" on the books of the corporation. Shropshire Union Railways & Canal Co. v. The Queen, L. R. 7 H. L. 496, 513. But delivery of stock certificates with blank transfers will entitle bona fide vendee to have the transfer registered. In re Tahiti Cotton Co. (Ex parte Sargent) L. R. 17 Eq. 273; German Union Bldg. & Sav. Fund Ass'n v. Sendmeyer, 50 Pa. St.

67; Leavitt v. Fisher, 4 Duer, 1. The directors cannot refuse to register a bona fide transfer of stock unless power to do so is given them in the articles of association. Weston's Case, 4 Ch. App. 20. Although there is a provision requiring directors' assent to a transfer of the shares, this discretion must be exercised in a reasonable manner, and they must have some valid reason for refusing to register a transfer. Nation's Case, L. R. 3 Eq. 77; Fyfe's Case, 4 Ch. App. 768, 769, note; Lowe's Case, L. R. 9 Eq. 589; Allin's Case, L. R. 16 Eq. 449; Ex parte Penney, 8 Ch. App. 446. And even where the directors have express authority to refuse to register a transfer, if the transfer is colorable and the transferrer procures the registration of the transfer by deceiving the directors, he may, notwithstanding the sale and registry, be treated as the owner of the shares when the corporation is wound up. In re Imperial, etc., Ass' n, L. R. 9 Eq. 223; Kintrea's Case, 5 Ch. App. 95.

An infant cannot become purchaser and transferee of shares so as to relieve transferrer of liability as a shareholder (Nickalls v. Merry, L. R. 7 H. L. 530). even although the transfer to the infant be registered (Symons' Case, 5 Ch. App. 298; Weston's Case, Id. 614); but if the infant does not repudiate the transfer on coming of age, he may become liable though holding as trustee for another (Mitchell's Case, L. R. 9 Eq. 363). "The original shareholder remains a shareholder, even in cases where he is entirely innocent of the transaction, and not aware that the shares were being transferred to an infant." Lord Chancellor Hatherley, Weston's Case, 5 Ch. App. 614, 620. But a subsequent registered transfer by the infant to an adult may relieve the original seller. Gooch's Case, 8 Ch. App. 266. A director who took, stock in the name of his infant children held liable as a contributory: Ex parte Wilson, Id. 45. Transfer of shares to a pauper, or man of straw: In re Imperial, etc., Ass' n, L. R. 9 Eq. 223; Maxted v. Paine, L. R. 6 Exch. 132. Liability under the English companies act of 1862 (section 38) of past members to contribute on the winding up of the company: Helbert v. Banner, L. R. 5 H. L. 28.

See reference to principal case and criticism upon it in Thompson on Liability of Stockholders—a valuable essay on the subject treated—published since the foregoing was written.

[1] {Reported by Hon. John F. Dillon, Circuit Judge, and here reprinted by permission. 17 Alb. Law J. 117, 6 N. Y. Wkly. Dig. 181, and 25 Pittsb. Leg. J. 119, contain only partial reports.}

[2] {Affirmed in 103 U. S. 800.}

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