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NOTES.

SPENDTHRIFT TRUSTS—ASSIGNMENT BY CESTUI QUE TRUST.

As an illustration of how firmly the doctrine of spendthrift trusts is established in the law of Pennsylvania, the Supreme Court recently decided that where a testatrix gave a share of her estate to her executor to pay the income to her son, "but no part of the principal of said estate is to be given to my said son for five years after my death, and then only when in the judgment of my executors 'he shall prove himself' to be entirely competent and qualified to take proper care of the same," the son cannot assign or sell such share within five years from the death of the testatrix, and if he attempts to do so, his assignee or vendee takes no valid title.[1]

The appellant, assignee of the legatee, filed a petition ask-

[1] Siegwarth's Estate, 226 Pa. 591.

ing for an accounting by the trustee of the *cestui que* trust, treating his share of the estate as absolute; but it was held, that irrespective of the character of the estate in the legatee, there is seated upon it an active trust at least for a period of five years, and maybe longer, and inasmuch as the five-year period had not yet expired, he has not come into possession of his share which is still held by the executors in trust for the uses and purposes stated in the will; and that it is not necessary to consider or determine the kind or character of the estate given to the legatee, because the time has not yet arrived either for himself or for his assignee to demand that the estate be turned over to the person or persons ultimately entitled to the use and enjoyment of it. The hands of all parties are tied during that period.

This was clearly an attempt by the testatrix to vest the fee in the legatee, but to hold it in abeyance for a period of five years or longer at the discretion of the executors; the income to be paid to him in the meantime; for the word "estate" when used by a testator, and not restrained to a narrower signification by the context of the will, is sufficient to carry the fee. An examination of the authorities in jurisdictions where spendthrift trusts are allowed indicates that the doctrine is strictly limited to equitable life estates; for alienability and liability for the donee's debts are two necessary incidents of a fee simple estate;[2] a provision not to aliene being repugnant to the estate granted. It is respectfully submitted, therefore, that it is important to consider the kind and character of the estate given to the legatee, in determining whether the restraint sought to be imposed is valid or not.

The validity of a limitation over of a life interest is not questioned either in England or America; but where an estate was devised "unto and to the use of" a daughter, her heirs and assigns, subject to the provision that in case she should at any time be declared a bankrupt, the devise should be void, and the premises should go, remain and be unto and to the use of her children, it was *held* that the daughter took a fee simple estate, and as a condition pure and simple is repugnant to such an estate, the provision in the will was void;[3] but Chitty, J., said that had the provision been, "I give to my daughter the property for her life, and if she become bankrupt, over to somebody else, and if she does not become bankrupt, then to her in fee," it would be subject to a different construction. The conditional limitation would have been good.

[2] 50 Albany Law Journal, p. 5.

[3] *In re* Machn, L. R. 21, Ch. Div. 838.

If the trust is to *pay* the income to the beneficiary, although for his support, his creditors, if not expressly excluded, can reach all that the beneficiary is entitled to even in jurisdictions where these trusts are allowed.[4] Thus where the testator by his will gave to his wife during her life the income of all the estate "to be for her comfort and support," expressing a wish that she provide for an unmarried daughter, and that a "house and grounds be kept as a home" for them, it was *held* that after the daughter's death the wife had the absolute disposal of the income during her life, and that it might be reached by her creditors.[5] The test is, would the executors of the *cestui que* trust have a right to call for any arrears? If so, the interest is vested, and the assignee would have the right to call for the future income or interest.[6] Applying this test to the facts in *Siegwarth's Estate,* it would seem to follow that even under the doctrine of spendthrift trusts, the income might be assigned during the five-year period; but the Court does not expressly decide this point. The doctrine of spendthrift trusts is absolutely repudiated in England and in many American jurisdictions; and being of extremely doubtful public policy, and admittedly inconsistent with the rules of common law, any extension of the doctrine must be viewed with apprehension unless clearly justified by changing social conditions. G. H. B.

When May Corporations Refuse to Register on Their Books Transfers of Stock?

In the case of *O'Neil* v. *Wolcott Mining Co.*,[1] W, the owner of 3,000 shares of stock, endorsed the certificate in blank, with a power of attorney, and placed it in the hands of his agent D. D represented to C that he was owner of the shares, showing the certificate and power of attorney, and represented further that the stock would be transferred upon the books of the corporation on request. Relying upon these representations, C bought the shares, on condition that the corporation would transfer title on their books. The corporation refused to transfer title on their books. Their defense was: (1) that thirteen years before the above transaction, W had advised them that he had lost some stock certificates, and had requested

[4] Ames on Trusts, 2nd Ed., 405 Note.

[5] *Maynard* v. *Cleaves,* 149 Mass. 357.

[6] *Perry on Trusts,* § 386.

[1] 174 Fed. 527.

them not to transfer any of his stock; (2) that D, subsequent to the corporation's temporary refusal, notified them that the stock was to be retained by W.

The Court held (1) the notice given thirteen years previously was not a sufficient cause for refusal; (2) the subsequent notice was not sufficient cause, because W did not, within a reasonable time, commence any action to asert his title. The opinion was, in part, as follows: "A blank assignment and power of attorney to transfer stock endorsed upon the certificate thereof estop the transferror from claiming any further title to . . . the stock, as against subsequent *bona fide* transferees thereof, although the transfer is not recorded on the books of the corporation. . . . Where the rights of a claimant are reasonably clear, and the corporation suspends action and gives to another an opportunity to establish his opposing claim, and he neither does so before the corporation, nor commences any action to prevent the transfer within a reasonable time, it is the duty of the corporation to record the transfer demanded by the first claimant. . . . Evidence of some adverse title, interest, or lien, that at least raises a substantial doubt of the right of a demandant to a transfer of stock, is indispensable to a refusal to make it. The corporation, when it refuses, and upon trial of the issue, the Court, must be able to see from the facts established that there is some question to be tried. A mere claim of stock is not sufficient." The Court decreed for the plaintiff. The case is not a close one, on its facts, particularly as the defendants failed to call certain witnesses, whose testimony, according to the pleadings, would have been material.

The case suggests the question: When may corporations refuse to register on their books, transfers of title to their stock? This question is not necessarily affected by any preliminary inquiry as to whether title to the stock passes by delivery of the endorsed certificate or by transfer on the books of the corporation. That inquiry is beyond the scope of this note.[2]

A case very similar to, and in accord with the principal case, is *Skinner* v. *Ft. Wayne, etc., Ry.*[3] In that case R delivered to S, his creditor, certificates of stock, with a power of at-

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[2] On this question there is a conflict of authority. It is interesting to note that the late Professor Langdell, who upheld the entity theory, and Professor Pepper, who upholds the group theory, both contend that, on principle, transfer on the books is necessary to vest legal title in the transferee. C. C. Langdell, in 11 Harvard L. Rev. 537, 538; G. W. Pepper, in 52 American L. Reg. 745, 747.

[3] 58 Fed. 55.

torney to transfer title, together with the assignment of a construction contract. The several instruments, construed together, showed an intention to invest S with the legal title. R afterwards requested the corporation not to transfer title. The Court held: "So long as the validity of these instruments (the power of attorney and the assignment) remains unchallenged, the defendant has no discretion in respect to the transfer of the stock, and has no concern with equities, if any, between S and R."

When a transfer of stock is presented to a corporation for registry, if it be in doubt as to the identity of the person presenting it, whether he be the registered stockholder, or his agent, the corporation may require proof of such identity.[4] The officers have a reasonable time, after a transfer has been requested, in which to find out whether they should make it or not.[5]

It has been held that the officers of a corporation have no right to withhold their assent to a transfer because, in their judgment, the motives and purposes of the parties are improper, or because the transfer may affect injuriously the interests of the company itself.[6] On the other hand it has been held that equity will not compel a corporation to register a transfer of stock to a complainant who has not bought for value, and who seeks to obtain control of the corporation in order to wreck it.[7] *Quaere,* if complainant admit he seeks to wreck the defendant, but is a purchaser for value?[8] There seems to be no decision which squarely meets this question. *Gould* v. *Head* does not answer it, because it was not shown that complainant had paid value. It is submitted that registry should be regarded as an incident of the ownership (legal or equitable) acquired by purchase and receipt of the certificate. It would therefore seem that in such a case, defendant would have to register the transfer, in the absence of a statutory discretion in the directors to refuse same. There is a dictum to that effect in *Rice* v. *Rockefeller.*[9] This case does not however squarely meet the question, as complainant testified that he wished to become a stockholder in good faith, and the trial court accepted his testimony at face value.

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[4] *Telegraph Co.* v. *Davenport,* 97 U. S. 369 (1878).

[5] *Dunham* v. *City Trust Co.,* 115 N. Y. App. Div. 584 (1906).

[6] *Townsend* v. *McIver,* 2 S. C. (N. S.) 25 (1870).

[7] *Gould* v. *Head,* 41 Fed. 240, 248 (1890).

[8] This case is inaccurately quoted in 2 Cook, Corporations (6th Ed.), p. 1095, n. 3.

[9] 134 N. Y. 174.

Generally, the corporation can refuse a registry only when there is doubt as to the legal title of the applicant to have such registry. It follows as a necessary corollary that it may not refuse to transfer stock, on the ground that the vendor had agreed with others not to transfer the stock.[10]

In England, the directors are by charter often given a discretionary power to refuse such transfer. The directors must, however, exercise such discretion in good faith.[11]

The law of certificates of stock is by no means settled. It frequently happens that there are two claimants, one claiming by delivery of the certificate, the other by levy and execution on the transferror's interest. In such cases it is not easy for the corporation to decide who is entitled to the stock. It need not decide between such conflicting rights. Where there is a reasonable doubt as to the facts involved, or as to the respective rights of the claimants, and the corporation is sued by one of the claimants for refusing to allow a registry by him, the corporation may interplead and thus compel the claimants to ascertain their rights in a court of justice.[12] There is some doubt as to when a corporation may safely claim a right to refuse to act and to compel the claimants to litigate between themselves before it allows a registry to either. Where the rights of one claimant are reasonably clear, as in the principal case, the corporation should suspend action for a reasonable time, within which time the protesting party may bring suit, and if no such action is brought, it should allow a registry by the first claimant.[13] Where the corporation has allowed one claimant to register his transfer, or has recognized him as a stockholder, the right of the corporation to interplead is gone.[14]

It is worth noting that under the proposed uniform Certificate of Stock Act, certificates of stock will be fully negotiable.[15] Under this act, the corporation would be legally obliged to transfer title on their books to any one who had obtained the certificate *bona fide,* and for value, even though he derived title from a thief or a finder. This is a long step in advance. No statute or decision in England or America goes this far.

On the whole, the existing law on this subject seems to conform to the practical requirements of business convenience.

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[10] *Sylvania R. R.* v. *Hoge,* 59 S. E. Rep. 806 (Ga. 1907).

[11] *Re Letheby,* 1904, 1 Ch. Div. 815; *Re Bell,* 65 L. T. Rep. 245.

[12] *Leavitt* v. *Fisher,* 4 Duer (N. Y. 1854), 1.

[13] *Townsend* v. *McIver, supra.*

[14] *Mt. Holly Co.* v. *Ferrie,* 17 N. J. Eq. 117.

[15] § 3.

That the courts and the legislatures should be guided by such considerations, seems in the main, highly desirable. But it is submitted that there are also strong reasons against following mercantile custom, when such custom is too far ahead of, and contrary to, established principles of law. It is submitted that the policy of making stock certificates fully negotiable, in the uniform act, is open to question. The object of the act is to make the law uniform. Would it not be easier to have the act adopted if it sought to codify law as existing in the majority of jurisdictions, and left reforms in the law for some future and more propitious time? The experience of the English codifiers with the Partnership Act of 1890 and the Limited Partnership Act of 1907 seems to afford an affirmative answer to this question.[16] *E. A. L.*

[16] The Partnership Act of 1890 originally included sections providing for Limited Partnerships—a reform in the law of England. It was only after these sections were stricken out, that the rest of the act was passed. The Limited Partnership Act was finally passed seventeen years later. See F. M. Burdick, in 10 Col. L. Rev. 118; Pollock, Essay on Partnership; F. M. Burdick, in 6 Mich. L. Rev. 525.