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## CORPORATIONS - TRANSFER OF STOCK - LIABILITY TO REMAINDERMAN FOR ABSOLUTE TRANSFER AT INSTANCE OF LIFE TENANT

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CORPORATIONS — TRANSFER OF STOCK — LIABILITY TO REMAINDERMAN FOR ABSOLUTE TRANSFER AT INSTANCE OF LIFE TENANT — *X*, life tenant of certain stock of defendant company under a will, endorsed the certificates as life tenant; *Y* Company guaranteed his signature and itself endorsed in blank. Defendant, with knowledge of *X*'s limited interest, transferred the stock on the books and issued new certificates to *Y* Company absolutely. Learning of their interests after *X*'s death, plaintiff-remaindermen demanded certificates for the stock from defendant, which refused. In their action for conversion, *held*, that defendant breached its fiduciary duty to plaintiffs in making an absolute transfer with knowledge that the transferee had only a life interest and no power to sell or consume.<sup>1</sup> Biddle, J., dissenting, interpreted the will as

<sup>1</sup> Section 1 (a) of the Uniform Stock Transfer Act was held to be inapplicable because *X* "did not appear 'by the certificate to be the owner of the shares represented thereby.'" And section 3 of the Uniform Fiduciaries Act did not protect defendant because "the statute does not authorize the transfer of the whole title . . . [by] one who possesses nothing more than a life interest therein." Principal case, 107 F. (2d) at 62, 63.

making the life tenant a quasi-trustee with power to sell and buy securities, so that defendant could properly transfer the stock at his direction. *Seymour v. National Biscuit Company*, (C. C. A. 3d, 1939) 107 F. (2d) 58.

This case, an exemplification of one aspect of the liability of a corporation to the true owner for an unauthorized transfer of stock on its books,<sup>2</sup> is perhaps more interesting because of the disagreement among the judges than for the actual decision. The rationale<sup>3</sup> of the rule involved seems to be universally accepted, but its relation to a given set of facts is, of course, open to diverse opinion. Obviously the difficulty lies in determining which transfers are "unauthorized" from the corporation's standpoint. Transfer by an executor charges a corporation with notice of the will,<sup>4</sup> and any transfer inconsistent therewith induces liability.<sup>5</sup> Hence, if the stock passes to one with only a life interest, the corporation must beware lest an attempt be made to transfer beyond the life tenant's authority.<sup>6</sup> A correlative to liability for aiding such a transfer is the right to refuse to issue certificates without showing thereon that the interest is limited.<sup>7</sup> Since a corporation can be held liable to a transferee for refusal to make a legitimate transfer,<sup>8</sup> the authority in a life tenant to transfer absolutely should be clearly stated in order to impose a duty on the corporation to record the transfer. Otherwise, the corporation must determine the question of scope of authority by mere conjecture and this could put it in a serious dilemma. But,

<sup>2</sup> For other situations involving this liability, see the discussion in 45 L. R. A. (N. S.) 1076 (1913). On the general problem, see 6 THOMPSON, CORPORATIONS, 3d ed., § 4435 (1927); 12 FLETCHER, CYCLOPEDIA CORPORATIONS, perm. ed., § 5549 (1932).

<sup>3</sup> A common explanation is that the corporation "is made the custodian of the shares . . . and is clothed with power to protect the rights of everyone from unauthorized transfer. It is a trust . . . for the protection of individual interests, as well as its own, and like every other trustee, it is bound to execute the trust with proper diligence and care, and is responsible for any loss sustained by its negligence or misconduct." *Cox v. First Nat. Bank of Wilson*, 119 N. C. 302 at 304, 26 S. E. 22 (1896).

<sup>4</sup> *Lowry v. Commercial & Farmers' Bank*, 15 F. Cas. 1040, No. 8581 (1848); *Wooten v. Wilmington & Weldon R. R.*, 128 N. C. 119, 38 S. E. 298 (1901); 12 FLETCHER, CYCLOPEDIA CORPORATIONS, perm. ed., 481, 493 (1932).

<sup>5</sup> Usually the executor has power to sell. If so, the corporation is liable when he transfers in abuse of the power only when it knows of or has reasonable ground to suspect misconduct. *Lowry v. Commercial & Farmers' Bank*, 15 F. Cas. 1040, No. 8581 (1848). When the transfer is to a legatee, the corporation has been said to be acting at its peril. *Wooten v. Wilmington & Weldon R. R.*, 128 N. C. 119, 32 S. E. 298 (1901).

<sup>6</sup> "If it be conceded that the executor had the right . . . to have the stock transferred to the owners of the defeasible estate, this does not affect the question of [the corporation's] liability, as the wrong done to the plaintiffs, which caused the loss of their stock, was in permitting and aiding in the sale to Proctor, when the defendant knew, in law, that the seller did not have an absolute estate, and that if he died without issue the stock would belong to plaintiffs." *Baker v. Atlantic Coast Line R. R.*, 173 N. C. 365 at 371, 92 S. E. 170 (1916).

<sup>7</sup> *Lynn v. General Motors*, (App. Div. 1937) 298 N. Y. S. 976. See CHRISTY, THE TRANSFER OF STOCK, § 76 (1929).

<sup>8</sup> 18 C. J. S. 1055 (1939).

in the one case which the writer found denying recovery to the remainderman, it did quite clearly appear from the will that the life tenant had "plenary powers to sell . . . whenever in the exercise of her judgment a change in the investment became necessary."<sup>9</sup> The principal case is apparently in accord with those involving similar testamentary provisions as to the life tenant's powers.<sup>10</sup> The dissentient's view that an absolute transfer would not have been a wrong to the remaindermen is somewhat difficult to sustain on the facts appearing in the report of the case.

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<sup>9</sup> *Hughes v. Drivers' & Mechanics' Nat. Bank of Baltimore*, 86 Md. 418 at 423, 38 A. 936 (1897). There the will read: "all of which [stock] is to be transferred to her in her own name, to use the interest thereof as long as she may live, and at her death to be equally divided among her children, unless she becomes a widow, then she is to have full control of this bequest, to do with it as she pleases."

<sup>10</sup> *Caulkins v. Memphis Gas-Light Co.*, 1 Pickle (85 Tenn.) 683, 4 S. W. 287 (1887); *West v. American Tel. & Tel. Co.*, 54 Ohio App. 369, 7 N. E. (2d) 805 (1936). In the latter case the life tenant was still alive, and it was held that remainderman's right to the stock was not accelerated but that he could demand certificates so issued as to protect the interests of all concerned or, upon refusal, he could bring a damage action. In *West v. American Tel. & Tel. Co.*, (C. C. A. 6th, 1939) 108 F. (2d) 347, the same facts were involved, but the circuit court of appeals held that no demand was necessary and hence the cause of action, arising in 1927 and not in 1934 (when demand was first made), was barred by the 4-year limitations statute; that even if demand were necessary, the remaindermen would be barred by laches. The refusal of the Ohio Supreme Court to certify the record in the first case was regarded as making no law and the federal court was held not bound by the judgment of the inferior state court.