LEGAL ASPECTS OF THE TRANSFER OF SECURITIES

H. BRUA CAMPBELL

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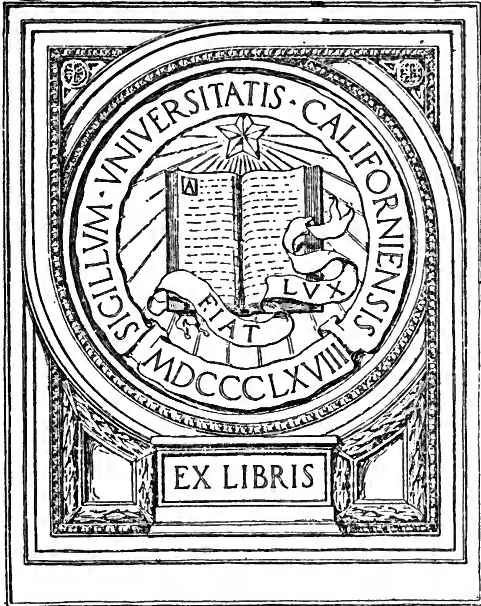

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Legal Aspects of the Transfer of Securities

BY

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Doubleday, Page & Company
for
Investment Bankers Association
of America
1920

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PREFACE

A substantial part of the work of investment banking and brokerage houses has to do with the transfer of securities. Such concerns receive certificates of stock or registered bonds from their customers or correspondents with instructions to have them transferred out of the name of the registered owner and into some other name on the books of the corporation.

In order to effect the transfer it is necessary that the stock certificates or bonds be presented at the transfer office of the corporation whose securities are sought to be transferred accompanied by the various documents and proofs required by the transfer agent for the protection of the corporation in making the desired transfer.

The transfer agent, on the one hand, is alert to exact from the registered owner all documents and proofs reasonably necessary to establish the right to have the transfer made and to afford adequate protection to the corporation in transferring the security. On the other hand, the registered owner of the security or his representative or agent is actuated solely

by the desire to effect the transfer with a minimum of inconvenience and delay.

A familiarity with the general requirements and regulations of transfer offices and with the reasons underlying such requirements will greatly promote the efficient handling by investment banking and brokerage houses of these transfers. Such an understanding will serve to expedite the desired transfers and thereby promote the best interests of customers.

For the above reasons it was the belief of the Education Committee of the Investment Bankers Association of America that a small book dealing with the legal aspects of the transfer of securities would serve a useful purpose. Accordingly the author, who has had a number of years' experience in passing upon the legal phases of transfers of securities, was requested by the committee to prepare a short volume on this subject, which is offered in the hope that it will enable a better understanding of the legal principles involved in these transfers and of the requirements generally imposed by corporations preliminary to transfer.

The author has received many valuable suggestions from the printed lectures of Messrs. F. L. Maraspin and H. B. Driver, delivered during the year 1917 before the Boston Chapter of the American Institute of Banking, and published under the title "Fundamental Principles of Stock Transfers."

Mr. Hastings Lyon and Mr. F. C. Nicodemus,

Jr., both of the New York bar, as well as Mr. E. W. Bulkley, of Chicago, and Mr. Orton Brewer, of New York, have read the manuscript, and have greatly assisted in its preparation by expert suggestion and criticism.

H. Brua Campbell.

New York City, October 4, 1920.

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SOME DEFINITIONS

A *corporation* is an artificial entity created by statute law and endowed with many of the legal capacities of individuals, as for example the power to take, hold, and convey property, make contracts, sue, and be sued.

Corporations may be divided into two classes, public and private.

A *public corporation* is a political entity created for a governmental purpose, as a county, city, and the like.

A *private corporation* is created for the promotion of some interest in which its members are concerned.

Private corporations may in turn be divided into two main classes—stock corporations, which are for private pecuniary gain, and non-stock or membership corporations which are for a variety of purposes and which comprise clubs, charitable societies, educational institutions, and the like.

Stock corporations, or *business corporations* as they are called, are formed for the purpose of enabling a number of persons to unite their capital in one enterprise, with two important results: (1) holders of stock are enabled to

transfer their stock to other holders without affecting the business of the corporation; and (2) holders of stock are exempt from any personal liability for the debts, contracts, or torts of the corporation. (Huffcut's Elements of Business Law, p. 248.)

The *capital stock* of a corporation is the amount fixed by the corporate charter to be subscribed and paid in or secured to be paid in by the shareholders of a corporation, either in money or in property, labor or services, on the organization of the corporation or afterward. The capital stock is divided into shares which usually have a specified face or par value, although in recent years many corporations have been formed having a capital stock without nominal or par value.

A *share of stock* is the interest or right which the owner has in the management of a corporation and in its surplus profits and, on a dissolution, in all of its assets remaining after the payment of its debts.

The stock of a corporation may be simply capital stock or it may be divided into classes designated as preferred and common.

Common stock has been defined to be that stock which entitles the owner of it to an equal pro rata division of profits, if there are any, no stockholder or class of stockholder having any preference or advantage in that respect over any other stockholder or class of stockholders.

Preferred stock is stock which gives the

holder a preference over the holders of common stock with respect to the payment of dividends and also in some instances with respect to the distribution of capital. (Fletcher on Private Corporations, pp. 5584-5601.)

A *stock certificate* is a written acknowledgment by the corporation of the interest of a shareholder in the corporate property and franchises. It expresses the contract between the shareholder and the corporation and his co-shareholders.

The certificate of stock is not the stock itself but merely the evidence of the holder's ownership of the stock and of his rights as a stockholder to the extent specified therein, just as a promissory note is merely the evidence of the debt secured thereby and as title deeds are merely evidence of the ownership of the land. (Cook on Corporations, 7th Ed., p. 64.)

Form of Stock Certificate

Following is a form of stock certificate:

INCORPORATED UNDER THE LAWS OF THE STATE OF NEW YORK

Shares $........each Shares $........each
Number Shares

THE UNION CONTRACTING COMPANY, INCORPORATED
Authorized Capital $..........

THIS IS TO CERTIFY THAT................is the owner of...............shares of the Capital Stock of THE UNION CONTRACTING COMPANY, INCORPORATED, transferable only on the books of the Company, by the holder hereof

in person or by duly authorized Attorney, upon surrender of this Certificate, properly endorsed.

CORPORATE SEAL

WITNESS the Seal of the Company and the signatures of its duly authorized officers this........day of............. 19.....

....
Treasurer President

Countersigned ....Trust Company
Transfer Agent
By...........................

Registered ....Trust Company
By...............................
Registrar

It will be noted that the foregoing certificate contains the following:

Number of certificate
Number of shares represented
Par value of each share
Name of corporation
State under which incorporated
Authorized capital
Name of stockholder
Signature of corporate officers
Corporate seal
Signature of transfer agent
Signature of registrar

Where the stock has been paid for in full the certificate usually states that it is full paid and non-assessable. Where there are different classes of stock the certificate usually contains an appropriate reference to the charter provisions with respect to the preferences existing in favor of one class against the other.

TRANSFERS OF STOCK

Right to Transfer Stock

Shares of stock in a corporation are personal property and it is well settled that the owner, as in the case of other personal property, has an absolute and inherent right as an incident of his ownership to sell and transfer the same at will, except insofar as the right may be restricted by the charter of the corporation or by a valid by-law, or by a valid agreement between him and the corporation, provided the transfer is in good faith and to a person capable of assuming the obligations of a stockholder. In the absence of such restrictions a bona-fide transfer does not require the consent of the corporation and cannot be prevented by it or by its officers. The right of transfer is also frequently conferred in express terms by the corporate charter or the general law under which the corporation is formed or by provisions in the corporate by-laws or the certificate of stock. (Fletcher on Private Corporations, p. 6257.)

Steps Involved in a Transfer of Stock

The transfer of one or more shares of stock generally involves the following steps:

The certificate is assigned by the transferrer to the transferee. The assigned certificate is transmitted to the corporation and an entry is made on the transfer book showing the acquisition of the stock by the transferee from the transferrer. The corporation then issues to the transferee a new certificate which evidences the ownership on the part of the newly recorded stockholder of the stock transferred. Finally, the corporation cancels the old certificate of stock and posts the transfer into the stock ledger. (Cook on Corporations, 7th Ed., p. 1152.)

Ways in Which Stock May Be Assigned

Certificates of stock may be assigned in two different ways:

(1) By a formal instrument of assignment signed by the transferrer.

This instrument of assignment may be separate from the certificate of stock or it may be printed in blank on the back of the certificate. In either case in order to make the transfer complete on the records of the corporation it is necessary for the transferrer to go to the office of the corporation and sign the transfer in the corporate transfer book whereby the transfer is recorded.

(2) By a formal instrument of assignment which contains a power of attorney author-

izing a person, whose name is usually left blank to be subsequently filled in, to sign the corporate transfer book and thereby record the transfer.

This assignment and power is usually found on the back of the stock certificate but may be and often is on a separate form.

The second method is the one usually employed for the reason that it enables the registry of the transfer on the corporate records without requiring the presence of the transferrer.

Form of Assignment

The following is one of the usual forms of assignment containing a power of attorney to transfer the shares on the books of the corporation:

KNOW ALL MEN BY THESE PRESENTS

FOR VALUE RECEIVED.................................
have bargained, sold, assigned, and transferred, and by these presents do bargain, sell, assign, and transfer unto....
....
....
............Shares of the........CAPITAL STOCK of the
...........................standing in........name
on the books of said..............................
represented by Certificate No.......herewith, and.....do hereby constitute and appoint ....
......true and lawful Attorney, irrevocable for......and in...name and stead, but to......use, to sell, assign, transfer, and set over, all or any part of the said stock, and for that purpose to make and execute all necessary acts of assignment and transfer, and one or more persons to substitute with like full power, hereby ratifying and confirming

all that . . . said Attorney or . . . substitute or substitutes shall lawfully do by virtue hereof.

Dated.................19

....

In Presence of

....

Various Provisions in Powers of Assignment

EFFECT OF WORDS OF CONVEYANCE

The first clause in the above power of assignment contains the words of sale, assignment, and transfer whereby title to the shares of stock is conveyed to the transferee upon proper execution of the power by the transferrer. Such an assignment estops the transferrer from claiming any further title in the stock as against the transferee. And this is the law even though the certificate of incorporation, charter, or by-laws provides that a transfer shall not be valid until the same is duly registered and recorded on the books of the corporation. As stated in Cook on Corporations, 7th Ed., p. 1160:

> "The courts construe these provisions of the certificate or by-laws or charter to be intended, not to affect the rights of the transferee against the transferrer, but to affect the rights of the transferee against attaching creditors of his transferrer and other third parties claiming an interest in the stock, and also to affect his right to claim dividends, the privilege of voting, and other rights of a stockholder."

And in Fletcher on Private Corporations, p. 6304, it is said:

"In the absence of express charter or statutory provision to the contrary, shares of stock may be transferred in the same manner as any other personal property. At common law, the delivery of a stock certificate with a written transfer of the same to the purchaser is sufficient to transfer the title to the shares represented thereby, and this is now the rule in many states by statute."

The learned author further says on p. 6316:

"Where a particular mode of transferring shares of stock is prescribed by the charter of the corporation or general law, or by its by-laws, compliance therewith may be necessary to render a transfer valid as against the corporation. But the fact that a transfer of shares is not made in the manner prescribed by the charter, general law, or by-laws of the corporation does not necessarily render it void as between the parties. Ordinarily a transfer which is not made in the prescribed mode, but which would be sufficient at common law, will convey at least an equitable title to the purchaser, and he will be protected therein by a court of equity."

The Uniform Stock Transfer Act which is in force in Connecticut, Illinois, Louisiana, Maryland, Massachusetts, Michigan, New Jersey,

New York, Ohio, Pennsylvania, Rhode Island, Tennessee, Wisconsin, and Alaska, provides in Section 1 thereof:

> "Title to a certificate and to the shares represented thereby can be transferred only, (a) By delivery of the certificate endorsed either in blank or to a specified person by the person appearing by the certificate to be the owner of the shares represented thereby, or (b) By delivery of the certificate and a separate document containing a written assignment of the certificate or a power of attorney to sell, assign, or transfer the same or the shares represented thereby, signed by the person appearing by the certificate to be the owner of the shares represented thereby. Such assignment or power of attorney may be either in blank or to a specified person. The provisions of this section shall be applicable although the charter or articles of incorporation or code of regulations or by-laws of the corporation issuing the certificate and the certificate itself provide that the shares represented thereby shall be transferable only on the books of the corporation or shall be registered by a registrar or transferred by a transfer agent."

THE TRANSFEREE

The instrument of assignment may be executed by the transferrer with the name of the transferee inserted or left blank. When the

name is inserted care should be taken that it is full and complete and in no way inaccurate or misleading. For example, if the transferee is an individual initials should be avoided and the name given in full. The use of initials lessens materially the certainty of identification.

Then, too, the name should not be in the alternative. It would be obviously improper to assign a certificate to "John Jones or James Smith." The owner would not be definite or certain and the corporation would not know which would be entitled to vote the stock or receive dividends thereupon.

In transferring into the name of a married woman her own Christian name, not that of her husband with "Mrs." prefixed, should be given.

Example: Mary Ellen Harris, *not*
Mrs. William H. Harris.

Prefixes and suffixes such as Judge, Major, Rev., Dr., M. D., Ph. D., etc., should be avoided.

If the ownership of the transferee is in any way qualified the certificate should clearly describe the nature and character of such ownership. Example: William Curtis, Trustee under the Last Will and Testament of Henry Parsons, deceased.

In brief, the name and title of the transferee should be full, accurate, and complete, as well as legally correct, and should clearly show the nature and character of the ownership and

whether the transferee is under any legal disability which would or might prevent his acting in his absolute discretion with respect to the stock.

NUMBER OF SHARES

Following the name of the transferee the number of shares should be inserted. If the assignment is to cover all the shares represented by the certificate the word *all* may properly be inserted. If the number to be transferred is less than the number so represented the transfer office should be advised as to what disposition is to be made of the remaining shares.

POWER OF ATTORNEY

As has been seen the usual form of assignment includes a power of attorney. This power is customarily left blank as it is generally impracticable for the transferrer himself to make the transfer on the books of the corporation. Subsequently, the name of the officer or employee of the corporation who actually records the transfer on the books is inserted.

Generally both the name of the transferee and that of the attorney are left blank. Such a certificate may be transferred from hand to hand and any purchaser thereof may fill up the blanks and insert his own name. He may also fill in his own name as transferee and the name of an attorney to make the transfer or may leave the latter blank and allow the clerk making the

transfer to fill in his name as is generally done. (Cook on Corporations, 7th Ed., p. 1161.)

The death of the transferrer in no way affects the right of the owner of the certificate to fill in the blank assignment and power of attorney.

POWER OF SUBSTITUTION

The attorney named in the power of assignment is given "full power of substitution in the premises." If the name of the attorney is filled in before the certificate is presented to the transfer office it should be accompanied by a blank power of substitution signed by the attorney. This power of substitution should be substantially in the following form:

I hereby irrevocably constitute and appoint........... ....my substitute to transfer the within named stock under the foregoing power of attorney, with like power of substitution.
Dated..........
Signed and acknowledged
in the presence of: ....

The above power of substitution when signed in blank may be completed at the transfer office in the same manner as the blank power of assignment.

DATE

An assignment does not have to be dated to be valid. If it bears a date, the fact that the certificate was presented long after such date is not a good ground for questioning the assign-

ment or holding up the transfer. If the date of a separate power of assignment is prior to the date on which the certificate was issued, the corporation is justified in rejecting the transfer on the ground that the certificate was not in existence when the power was executed.

SIGNATURE

The usual notation which appears at the foot of the power of assignment is as follows:

> "The signature to this assignment must correspond with the name as written on the face of the certificate in every particular, without alteration or enlargement or any change whatever."

This is a reasonable and proper requirement on the part of the corporation.

If the name on the face of the certificate is Walter F. Jones the assignment should be so endorsed and *not* W. F. Jones. If the certificate is in the name of Walter F. Jones, Trustee under the Will of James Bradley, deceased, the assignment should be signed in the same manner and not simply Walter F. Jones.

WITNESSES

It is not necessary to the validity and sufficiency of an endorsement that the signature be witnessed. In some cases, however, the signing of a certain name as witness is accepted as full and satisfactory proof of the identity of the person signing the power of transfer.

It is held by some transfer offices that where

a cashier of a bank signs his name as witness and also gives his official designation this is equivalent to a guarantee by the cashier's bank of the signature of the endorser, and so also is the signature as witness of a member of a stock exchange firm regarded as tantamount to a guarantee by that firm of the signature to the assignment.

There may be circumstances where a particular name as witness may afford complete assurance to the transfer authorities that the endorsement is proper in every respect. On the other hand, the fact that the signature is witnessed fails in many cases to furnish adequate verification. No general rule can be laid down as to this. The transfer office will seek to satisfy itself that the person signing the instrument is the one who rightly and properly should do so and the proof that is required to establish this is largely dependent upon the circumstances of the particular case.

GUARANTEE

A common requirement of transfer offices in New York is that the signature of the transferrer be guaranteed by a firm having membership on the New York Stock Exchange. The guarantee of Stock Exchange firms is sought because of their recognized financial responsibility. Often certificates are sent in with the signatures guaranteed by a bank or trust company. This latter guarantee has frequently been questioned on the ground that the

charter powers of such banks and trust companies do not give the power to make these guarantees.

NOTARIAL ACKNOWLEDGMENTS

It is the regulation of many transfer agencies that a notarial acknowledgment of the signature will be accepted in lieu of a guarantee by a firm having membership on the New York Stock Exchange. The guarantee, however, is generally regarded as furnishing more satisfactory protection.

The following forms of notarial acknowledgment have been prescribed among others by the Committee on Securities of the New York Stock Exchange:

ACKNOWLEDGMENT BY AN INDIVIDUAL BY WHOM AN ASSIGNMENT OR A POWER OF SUBSTITUTION IS EXECUTED

State of............ }
County of.......... } ss.

On this......day of...............19...... before me a Notary Public for the County of............personally appeared..................to me known, and known to me to be the individual named in the within Certificate, and described in and who executed the foregoing Instrument and acknowledged to me that he executed the same

....

Seal ....

ACKNOWLEDGMENT BY A FIRM

State of .... }
County of............ } ss.

On this......day of...............19......before me a Notary Public for the County of.............. personally appeared..................to me known, and

known to me to be one of the firm of. . . . . .named in the within Certificate, and described in and who executed the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said firm.

. . . .

Seal . . . .

MISTAKES IN ISSUANCE OF CERTIFICATE

Where through error or inadvertence a certificate has been issued in the wrong name the best way to rectify the error is by an assignment from the erroneous to the proper transferee. If the erroneous transferee is not an actual person and it is therefore impossible to secure a proper assignment of the new certificate the corporation will in all probability agree to cancel the new certificate and issue a certificate in proper form if it is furnished by the applicant with adequate indemnity against all liability growing out of the re-issue of the certificate.

KINDS OF TRANSFERS

Transfers may be divided into the following general classes:

By Individuals,
By Tenants,
By Partnerships,
By Corporations,
By Fiduciaries.

Transfers by Individuals

The simplest form of transfer is that where an individual owner of a certificate makes an assignment of the same. Transfers of this character rarely present any difficulties. The following are the general requirements which a corporation usually exacts preliminary to such a transfer:

(a) A proper endorsement of the assignment by the transferrer.

(b) A guarantee of signature by a firm having membership on the New York Stock Exchange or in lieu thereof a notarial acknowledgment of the signature.

(c) One or more witnesses to the signature of the transferrer, although this is not essential.

(d) Payment of the proper Federal and

State transfer taxes evidenced by the affixing of the required transfer tax stamps.

(e) The full name and address of the transferee.

MARRIED WOMEN

At common law a married woman was incapable of making any binding contracts. This disability has been removed by statute but in some states a married woman cannot contract with her husband nor can she act as surety for him. On the question of the right of a married woman to transfer stock the statutes of the state or states involved should be consulted. As respects such transfers it would seem that the law of the domicile of the married woman would govern the respective rights of the parties to the transfer but that the duty of the corporation in connection with the transfer would be determined by the law of the state in which the corporation was organized. (Cook on Corporations, 7th Ed., pp. 62, 954.)

It has been held that although by the law of a state a sale of stock by a married woman to her husband without an order of court is void, nevertheless a corporation which transfers stock on its books pursuant to such a sale cannot be held accountable to her therefor unless, at the time it made the transfer or before the stock got in the hands of an innocent purchaser, it had notice of the marital relation existing between the parties. (Fletcher on Private Corporations, p. 6436.)

INFANTS AND OTHER PERSONS UNDER LEGAL DISABILITY

The rule has been laid down that a corporation is liable if it recognizes a power of attorney to transfer shares executed by a person under legal disability, as an infant or insane person, and allows a transfer to be made under such power on its books.

If, however, an infant sells his stock and executes a power of transfer and under the law the sale is not void but voidable, the corporation is in duty bound to register the transfer provided it has not been avoided by the infant at the date of the application for registration.

It is provided in the Uniform Stock Transfer Act that nothing therein "shall be construed as enlarging the powers of an infant or other person lacking full legal capacity . . . to make a valid endorsement, assignment, or power of attorney." (Fletcher on Private Corporations, p. 6436.)

ATTORNEYS IN FACT

An *attorney* has been defined as "one who acts for another by virtue of an appointment by the latter." (I Bouv. Law Dict., 8th Ed., p. 282.)

The term *attorney in fact* is employed to designate "persons who act under a special agency, or a special letter of attorney so that they are appointed in factum, for the deed, or special act to be performed; but in a more extended sense it includes all other agents employed in any

business or to do any act or acts *in pais* for another." (Story, Agency, Sec. 25.)

A corporation when presented with an assignment executed on behalf of the registered owner by an attorney in fact will require that it be furnished with satisfactory proof that the attorney is acting under a valid designation of authority. The corporation in its discretion may see fit to request the production of the original power under which the attorney in fact essays to act or it may be content with a certified copy thereof. An examination of the instrument will disclose whether it clothes the attorney with authority to execute the assignment. The corporation will also call for the customary proof as to the authenticity of the attorney's signature, i. e., a guarantee of the signature by a New York Stock Exchange firm or a notarial acknowledgment of the signature.

If the power of attorney is presented a considerable length of time after the date of its execution, the corporation will require that it be furnished with satisfactory evidence that the power continues in full force and effect. Some offices are disposed to question a power that is more than six months old while in others no exception is taken unless the power is more than a year old.

ASSIGNEE OR TRUSTEE IN BANKRUPTCY

One who has made an assignment for the benefit of creditors or whose affairs are in

bankruptcy is divested of all control over his property and thereafter an assignment by him of stock registered in his name will not be recognized. To effect a transfer a power executed by the assignee or trustee in bankruptcy will be required as well as a certified copy of the order of appointment of the assignee or trustee so that the corporation may be assured that the person making the transfer has the requisite authority. In addition, the customary proof as to the authenticity of the signature will be called for.

Transfers by Tenants

"A *joint tenancy* exists when a single estate in property, real or personal, is owned by two or more persons, other than husband and wife, under one instrument or act of the parties." (23 Cyc. 483.)

"A *tenancy in common* is where two or more persons hold undivided interests in property, real or personal, under separate instruments, or under an instrument which shows an intent that each shall hold his interest as a separate and individual one." (Huffcut's Elements of Business Law, p. 268.)

"The essential difference between joint tenants and tenants in common is that joint tenants hold the property by one joint title and in one right, whereas tenants in common hold by several titles or by one title and several rights." (23 Cyc. 484.)

Another difference is that when one of the joint tenants dies the survivors take his share to the exclusion of his heirs or devisees. If one of the tenants in common dies his interest is a part of his separate estate.

It is now generally provided by statute that all conveyances to two or more persons shall be deemed to create tenancies in common unless otherwise expressed.

If, therefore, it is desired to transfer stock into the name of two or more individuals as joint tenants the assignment should be in favor of "John Brown and Henry White, as joint tenants."

A transfer out of the names of joint tenants or tenants in common should be endorsed by all who are named on the face of the certificate, except that where a joint tenant has died an endorsement by the survivors is sufficient.

Transfers by Partnerships

> "A *general partnership* is a voluntary association of two or more persons under an agreement to carry on in common, as if they were one person or an entity, a business or occupation, and to share as common owners the profits of the enterprise." (Huffcut's Elements of Business Law, p. 236.)

Stock Exchange houses are usually partnerships and accordingly a large proportion of the

transfers made on the books of a corporation are in or out of the name of some firm.

In the conduct of the business of the partnership each partner is an agent for his co-partners. Stock certificates may be endorsed on behalf of the firm by any of the general partners.

If stock is to be transferred out of the firm name into the name of one of the partners individually it is advisable that some partner other than the transferee endorse the power in the name of the firm.

The assignment by a partner to his wife of stock standing in the name of the firm would doubtless be questioned and proof required in order to establish the propriety of the transaction.

Transfers by Corporations

The management of a corporation is vested in its board of directors. Pursuant to the authority granted by the by-laws the corporate officers are appointed by the board of directors. The powers of the officers are usually defined in the by-laws but if not the directors may prescribe them.

Certificates of stock standing in the name of a corporation in order to be transferred must be assigned by a duly-authorized officer of the corporation. The by-laws may vest in certain officers the power to assign and convey securities of the corporation. If the by-laws are silent as to this such authority may be granted by the board of directors. It may apply generally

to all transfers or only to securities specifically designated.

In support of a transfer of stock out of the name of a corporation the transfer office will ask that it be furnished with a certified copy of the by-laws of the corporation evidencing the authority of the particular officers to make the transfer in question; also a certificate of the secretary or other satisfactory proof that the person signing the power was duly elected to the office of president, let us say, of the corporation and now holds that office.

If this power is not conferred by the by-laws on any particular officer then a certified copy of the resolutions of the board granting this authority should be supplied. The certification should be somewhat in the following form:

> I, John Wilson, Secretary of Blank Corporation do hereby certify that the foregoing preamble and resolution was adopted by the Board of Directors of the corporation at a meeting duly called and held pursuant to the by-laws of the corporation at the principal office of the corporation in the City of New York, on the 10th day of June, 1920, at which a quorum was present.
>
> ....
>
> Secretary.
>
> Dated June 12, 1920.

The certification of the by-laws or of the minutes of the board should be by an officer other than the one executing the assignment.

MEMBERSHIP CORPORATIONS AND UNINCORPORATED ASSOCIATIONS

Educational, charitable, fraternal, and religious organizations and social clubs may be incorporated or unincorporated associations. In either event before transferring securities out of the name of such an association the transfer agent will doubtless call for a certified copy of the by-laws of the organization or of any other record or proof which will show in whom the management thereof is placed, so that it may be determined whether the power of transfer is signed by a properly constituted and duly-authorized official of the organization.

Fiduciaries

A *fiduciary* is one who stands in an especial relation of trust or confidence with respect to the property of another. Fiduciaries may be divided into the following classes: Executors, Administrators, Trustees, and Guardians.

Transfers by Executors

An *executor* is "one to whom another man commits by his last will the execution of that will and testament." (1 Bouv. Law Dict., p. 1134.)

Upon the admission to probate of the will of a decedent letters testamentary are issued to the executor named in and qualifying under the will.

Letters testamentary may therefore be defined as "the tangible written authorization to an executor, duly tested, signed by an officer

and under seal of the court." (Jessup-Redfield's Surrogates' Courts, p. 561.)

Any one of the following persons under the law of New York may offer a will for probate:

(1) A person designated in the will as executor, devisee, legatee, testamentary trustee, or guardian.

(2) Any person interested in the estate.

(3) Any creditor of the decedent.

(4) Any party to an action in which the decedent, if living, would be a proper party.

The validity and effect of wills in so far as the disposition of personal property is concerned is governed by the law of the testator's domicile at the time of his death, and as respects the disposition of real estate or the creation of any interest therein, by the law of the place where the property is situated. (40 Cyc. 1383.)

The personal property of a decedent vests immediately in the executor or administrator for the purposes of his trust while real estate passes directly to the heir or devisee, subject to such personal exceptions as may be created by the will. Title to the real estate may thereafter be divested for the purpose of applying the same to meet legal obligations of the estate when the personal estate is insufficient to satisfy all liabilities.

Notwithstanding the fact that many corporations derive their profits in a certain sense from the use of real estate, stock is held to be personal property and goes to the executors or adminis-

trators to be applied and distributed as a part of the assets of the estate.

As illustrating the general requirements of transfer offices when stock belonging to the estate of a decedent is presented for transfer out of the name of said decedent, let us assume that John Smith, a resident of Philadelphia, is the registered owner of a certificate for 100 shares of the common stock of X Railway Company, a corporation organized and existing under the laws of the State of Missouri. The said John Smith dies leaving a last will and testament which is admitted to probate in the Orphans Court of Philadelphia County and letters testamentary thereunder are issued to one George Brown. The executor in order to pay certain debts of the decedent desires to sell this stock and it is therefore forwarded to a brokerage firm in New York City, where the Railway Company has a transfer office for the convenience of its security holders, with the request that it sell the same for and on account of the estate. The firm of brokers effects a sale of the stock and the next step is the transfer of the certificate into the name of the purchaser or his nominee on the books of the Railway Company. The usual documents and proofs which the Railway Company would require before making this transfer are the following:

(1) An officially certified copy of the last will and testament and of all codicils thereto of the decedent.

(2) An officially certified copy of the decree or a probate certificate of recent date evidencing the appointment and qualification of the executor or executors, and that such appointment remains unrevoked. In New York these probate certificates are sometimes called surrogate's certificates.

(3) Stock certificate properly assigned by George Brown "as Executor of the Estate of John Smith, deceased," with signature guaranteed by a firm having membership on the New York Stock Exchange, or a notarial acknowledgment of the signature in lieu of said guarantee.

(4) Waiver of the Comptroller of the State of New York consenting to the transfer under the Inheritance Tax laws of said state.

(5) Waiver of the proper authority of the State of Missouri consenting to the transfer under the Inheritance Tax laws of said state.

(6) New York State and Federal Transfer Tax stamps in the proper amounts.

It is believed that no waiver under the Inheritance Tax laws of Pennsylvania would be required in this case.

In certain states executors have no power to sell without an order of court. Where this is the case a certified copy of an order of the probate court in which the estate of the decedent is being administered authorizing the sale of the stock will also be required.

If under a statute a court order is necessary

to authorize a sale of stock, it is the duty of the corporation, if it desires to protect itself against possible liability, to know that the order has been complied with.

The case of *Citizens' Street Railway Company vs. Robbins*, 128 Ind. 449, 26 N. E. 116, shows that it is not enough that the order has been issued. That case involved a statute of Indiana which required an administrator to sell personal property, including corporate stock, at public sale, or if at private sale, under order of court. An administratrix was required by order of court to take security for the purchase price of stock in the Citizens' Street Railway Company. She took the individual note of the purchaser without security. The sale was on a credit of ten years although the administratrix had no power to give more than a twelve months' credit. No return of the sale was made to the court or entered on its records. When the shares were presented for transfer the company examined the order authorizing the sale but did not ascertain whether or not the sale was made in accordance with the order. The company was held liable to the estate for the loss occasioned by its lack of diligence.

By the laws of some states a distribution within a fixed period is forbidden. Where such a law is applicable a corporation will not make a transfer in distribution before the statutory period has expired, unless it is furnished with proof that all debts of the estate have either been paid or provided for.

If there is no such statute, or if the courts have construed the provision as being intended solely for the protection of the executor, then the corporation is not bound to, and usually will not, inquire as to the payment of or provision for claims against the decedent's estate.

If stock of an estate is sought to be transferred into the name of an executor individually, the transfer agent will ascertain whether the executor is a legatee under the will, and if so will make the transfer upon proof in the form of an affidavit on the part of some one having knowledge of the facts (the attorney representing the estate, for example) showing that all debts of the estate and also the other legacies have either been paid or provided for.

Where the executor is not having the transfer made to himself as legatee, but as a result of a sale to himself individually, the corporation cannot with safety make the transfer unless it is clearly established that the transaction is a fair and equitable one. As is said in 18 Cyc. 287:

> "An executor or administrator cannot be allowed to acquire individual interests inconsistent with the representative capacity he sustains for the benefit of the estate, nor to make a personal profit out of his dealings with the property of the estate, and transactions in which the representative as an individual deals with himself in his representative capacity are always regarded with suspicion and will be set aside if inequitable."

There are times when corporations see fit to question an executor's power of sale because of the lapse of time since the executor's appointment. If the will does not either expressly or by implication confer upon the executor the power or function of a trustee, his power of sale ought not to be questioned whatever the lapse of time since his appointment. It is the duty of an executor to sell estate stock and wind up the estate. Therefore all that appears to the corporation is that the executor is doing his duty, although tardily, and the delay is no reason for the corporation preventing the executor from performing his duty.

Frequently the executor is also trustee, and in such cases he is generally so styled. However the function of trustee, as distinguished from the ordinary function of executor, may arise by virtue of any provision which requires the executor to retain the estate or a part thereof in his hands for the purpose of accumulating or applying income. In all such cases the corporation will desire information as to the capacity in which he is acting, provided more than a reasonable time, say eighteen months, has elapsed since the issue of letters testamentary.

Where the two functions of executor and trustee are invested in the same person, a formal accounting or transfer from the executor as such, to himself as trustee, is not essential to terminate the powers and functions of the executor and reveal those of the trustee. When

the purpose for which the peculiar powers of an executor are conferred by law has been accomplished, those powers cease and the powers and functions of a trustee appear. If after the lapse of time ordinarily adequate for the settlement of an estate, an executor seeks to exercise the powers of an executor as distinguished from those of a trustee, persons dealing with him are put on inquiry to ascertain that the facts and his purpose justify a continuance of the exercise of such powers. Before the lapse of such time it may ordinarily be presumed that he is acting in the ordinary course of administration and settlement of the estate, and is entitled to exercise the powers of an executor.

We have seen that a corporation in connection with the transfers of stock standing in the name of the decedent will call for certified copy of the will and a certificate showing its probate and the granting of letters testamentary to the executor, and that the appointment is in full force and effect. The reasonableness of these requirements is obvious. The will may contain an express disposition of the stock. It may create trusts whereby the corporation will be under a duty to inquire whether the stock is held by the executors or by trustees under the will. It is not necessary, however, that a certified copy of the will be lodged permanently with the corporation. It would seem to be enough to exhibit a certified copy and leave a plain copy for filing with the other documents constituting the record of the transfer. Some

corporations, however, request that a certified copy be permanently lodged with them.

Transfers by Administrators

An *administrator* is a person appointed by the Surrogate's or Probate Court to administer the affairs and to manage and distribute the estate of a decedent who has not disposed of his estate by a valid will, or who has failed to name an executor, or whose executor for any reason fails to act. The court has power to designate a temporary administrator to take charge of the estate pending the appointment of the permanent administrator.

Where a testator has neglected to name an executor, or where the executor for any reason fails to act, the court will appoint a permanent administrator who is termed *administrator cum testamento annexo*—administrator with the will annexed.

Where the administrator has begun the work of administration, but for any reason fails to continue the same, the court will appoint a successor who is termed an *administrator de bonis non*—administrator of the goods not yet administered.

Where an executor has begun the work of administration but fails to complete the same, his successor appointed by the court is termed an *administrator cum testamento annexo de bonis non*—administrator with the will annexed of the goods not yet administered.

By *letters of administration* is meant the certificate of authority which evidences the appointment and qualification of an administrator.

The usual documents which are required to be submitted to the transfer agent before a transfer for purposes of sale of stock standing in the name of a decedent will be made upon the endorsement of an administrator, are as follows:

(1) An officially certified copy of the decree evidencing the appointment and qualification of the administrator, and that such appointment remains unrevoked. If the representative is appointed administrator cum testamento annexo, an officially certified copy of the will and of any codicils should also be furnished.

(2) Stock certificate properly assigned by the transferrer "as administrator of the estate of John Smith, deceased," with signature guaranteed by a firm having membership on the New York Stock Exchange or a notarial acknowledgment of signature in lieu of said guarantee.

(3) Waivers of the proper authorities consenting to the transfer under the Inheritance Tax laws of the various states concerned (See Transfers by Executors, supra).

(4) State and Federal Transfer Tax stamps in the proper amounts.

The requirements exacted in the case of a transfer by an administrator for purposes of

distribution, and also in the case of a transfer to an administrator individually, are similar to those which are called for in respect of transfers by executors under like circumstances and which have already been discussed.

Transfers by Trustees

A *trustee* is "a person in whom some estate, interest, or power in or affecting property of any description is vested for the benefit of another, or one to whom the property has been conveyed to be held or managed for another." (3 Bouv. Law Dict., p. 3334.)

A trustee may be appointed (1) by a written agreement or indenture of trust, or (2) by a testator in his last will and testament. In the latter case he is termed a testamentary trustee.

An agreement or indenture of trust not only designates the trustee, but defines the powers and duties of the trustee, in the matter of the administration of the trust for which he is appointed. It usually provides also for the appointment of a successor trustee in the event that the trustee named dies, renounces the trust, fails to qualify, resigns, or is removed.

Generally, under the probate laws of the various states, a testamentary trustee is confirmed by the action of the court in admitting the will to probate. It frequently happens that in the will an individual or trust company is named as executor and trustee. Should the per-

son or corporation so designated fail to qualify for any reason, and the will contain no clause providing for a successor, the court nevertheless may appoint a successor trustee.

Transfers of corporate stock by testamentary trustees may be classified as follows:

(1) Transfers made necessary by the death, resignation, or removal of one or more trustees.

(2) Transfers for purposes of sale.

(3) Transfers for purposes of distribution.

TRANSFERS UPON DEATH, RESIGNATION, OR REMOVAL OF TRUSTEE

If it is provided in the will that the trusts created shall be administered by not less than two trustees and one trustee dies or resigns, the court on application of the other will appoint a trustee to fill the vacancy. The next step is to have the stock held under the trust transferred out of the names of the old trustees and into the new. An assignment executed by the applicant as trustee will be sufficient to accomplish this.

If, however, both of the former trustees have died or resigned and it is impossible to secure an assignment by either, it would seem that the corporation would make the transfer upon receipt of a certificate evidencing the appointment of the successor trustees, which certificate will usually show that they were appointed in the place and stead of the former trustees.

A trustee presenting stock for transfer for purposes of sale will be asked to submit a certified copy of the will under which he is acting as well as a certificate evidencing his appointment. The will is required in order that the corporation may ascertain whether the power to sell is expressly given or arises by implication. If the instrument does not confer this power, it will be necessary to secure an order of court authorizing the sale of the securities in question.

A trustee who has express power to invest may not sell stock under such power unless by reason of certain provisions in the will or certain special circumstances a power of sale is implied. It is well settled that the power to invest does not of itself carry with it a power of sale express or implied.

Where the instrument creating the trust specifies certain securities as constituting the trust estate and the trustee is given the power to invest, this could probably be construed as an implied power to sell the securities *once* and to invest the proceeds. Any other construction would render the power to invest meaningless. It would seem that a single exercise of the power would in this case exhaust it.

Where a trustee is given the power to invest and re-invest he may sell stock held in the trust estate for the reason that it would be impossible to exercise this power of investment and re-investment without converting the securities into cash.

A trustee who is given a general power "to manage" the trust fund or "to manage and control" the same has an implied power to sell securities belonging to the estate.

When a trustee has made an unauthorized investment in stock, the corporation should allow a transfer on the theory that the trustee has an implied power of sale under such circumstances in order that the securities may be converted into cash and a proper investment made.

In the case of a testamentary trust for the benefit of a life tenant with power of appointment over, the corporation will desire evidence showing whether the life tenant is living and whether the shares are being sold by the trustee for re-investment under the trust. If it appear that the transfer is in distribution, the question of inheritance taxes will have to be considered and proper waivers obtained.

Transfer offices are in many instances inclined to question a transfer from a banking firm to a trustee where the power is signed by the member of the firm in his favor as trustee. No objection is made, however, to a transfer from a trustee to a banking firm of which the trustee is a member where the trustee has power of sale, the transfer being accepted on the assumption that it is made to effect a bona fide sale.

For the protection of a corporation in allowing stock held in trust to be transferred to the trustee individually, an order of the court having jurisdiction of the trust authorizing the sale or transfer should be obtained.

In connection with the transfer of stock by a trustee for purposes of distribution, it will be necessary to furnish a certified copy of the will together with a certificate showing the trustee's appointment.

As in cases of sale by a trustee, the corporation must determine whether the distribution sought to be made by the trustee is in accord with the provisions of the will establishing the trust and defining the powers thereunder.

Transfers by testamentary trustees for purposes of distribution are made necessary because of various situations. For example, a trust is created for the benefit of A for his life, and upon his death the trust terminates and the trust estate goes to B, the remainderman. In this case, before transferring stock into B's name, proof of the death of A, the life tenant, will have to be presented. If under the trust the life tenant has a power of assignment over it will be necessary before the corporation will make the transfer to produce evidence of the payment of whatever inheritance taxes are imposed under the law or waivers by the proper authorities consenting to such transfer.

Then again a trust may provide that when a certain beneficiary attains a designated age the trust shall terminate. To establish that this age has been attained, a birth certificate or an affidavit by a person having knowledge of the facts will have to be supplied.

The transfer agent is not properly concerned as to whether the distribution of particular shares is being made in equal proportions. It is a justifiable assumption that the other beneficiaries are receiving their proportionate share of the trust property in other securities.

Action by Joint Fiduciaries

It is well settled that where the administration of a trust is vested in co-trustees they all form a unit and must execute the duties of their office jointly and that their power being equal and undivided they all must join in sales, conveyances, or other disposition of trust property. Accordingly, it is necessary that all the trustees join in the execution of powers of transfer unless it is otherwise provided in the trust instrument.

On the other hand, it is the established rule that in the case of co-executors one executor may act alone in the administration of the estate and his acts will bind the estate. Under this rule a power executed by an executor would be sufficient to justify a transfer, but nevertheless it is commendable practice to obtain the signatures of all executors whenever practicable. Many transfer officers are disposed to require this.

Transfers by Guardians

A *guardian* is a person who legally has the care and management of the person, or the estate, or both, of a child during his minority.

A *guardian ad litem* is a person who has been appointed to represent the infant in legal proceedings to which he is a party defendant.

The *guardian by nature* or *natural guardian* of an infant is the father, and on his death the mother.

Testamentary guardians are appointed by the deed or last will of the father. They have control of the person and the real and personal estate of the child until he arrives at full age. In a majority of cases guardians are those appointed by the court pursuant to statute.

In support of applications for transfers of stock by a guardian, the corporation will ask that it be furnished with a certificate of recent date showing his appointment as guardian.

The powers of a guardian depend so much upon state laws that it is necessary to examine with care the various statutes involved—to see whether there is any limitation upon the authority of the guardian to make the transfer in question.

If the transfer sought is in the nature of a sale the power of the guardian to make the sale can only be determined by reference to the statutes of the state concerned. If under the statutes the guardian is forbidden to sell securities held by him for his ward without obtaining specific authority, an order of court authorizing the sale will have to be obtained.

Liability of Corporation for Refusal to Transfer

Where a corporation wrongfully refuses to make a transfer of stock upon its books the transferee (1) may treat the refusal to transfer the shares as a conversion and sue the corporation for their value, or (2) he may bring an action in equity to compel the corporation to register the transfer, or (3) he may assert his ownership of the shares irrespective of the registry and sue for dividends declared upon them.

> "As a general rule the measures of damage to which a transferee is entitled for the refusal of the Corporation to register the transfer is the value of the stock not at the time of trial, or at any intermediate period, but at the time of the demand and refusal to register, together with interest thereon from the time of such refusal to the time of trial, or time of judgment. The value of the stock, within the meaning of this rule, is ordinarily its market value, and in the absence of evidence of actual sales its par value, if it is fully paid up, is presumptively its market value, but if the stock has no market value its actual value constitutes the measure of damages. According to some decisions, however, the transferee can recover the highest market value reached by the stock at any time after the refusal to transfer and before trial." (14 C. J. 771.)

Liability of Corporation for Erroneous or Wrongful Transfer

A corporation is under a duty to protect its shareholders from unauthorized transfers and is liable to such shareholders for any loss sustained by the negligence or misconduct of its officers and agents resulting in an erroneous or unlawful transfer of its stock.

The obligation of the corporation in this regard is well stated in the case of *Geyser-Marion Gold Mining Company vs. Stark*, 106 Fed. 558,560 as follows:

> "It is bound to use reasonable diligence in every case to ascertain whether or not a transfer of stock requested is duly authorized by the former owner, to make those transfers that are so authorized, and to prevent those that are unauthorized; and for every breach of this obligation, it is legally liable to the parties injured for the damage it thus inflicts."

Where a corporation makes a transfer upon a forged power of attorney or assignment, the owner is not deprived of his ownership of the stock but may sue the corporation for a conversion of the shares or to compel a cancellation of the transfer and the issuance of a new certificate to the rightful owner.

> "Where shares stand in the name of a person, as 'executor', 'guardian', or 'trustee',

there is a legal presumption that he holds in a fiduciary capacity and without the power of disposition unless that power is given by the terms of the trust or by the assent of the cestui que trust, and the corporation is liable for a transfer made by such person in violation of his trust, if by the exercise of reasonable care it could have prevented it."

As a general rule, where a corporation wrongfully transfers a person's shares on its books and issues new stock to someone else, the measure of damages is the value of the stock at the time of transfer. There is authority, however, which holds the proper measure of damages to be the highest value of the shares between the time of such transfer and the commencement of the action. (14 C. J. 776–778.)

Stock Transfer Tax and Inheritance Transfer Tax Laws

It is not practicable in this book to cover or even to enumerate the different transfer and inheritance tax laws of all of the states. For that reason in addition to the Federal tax laws those of but one State—New York—are briefly considered.

In presenting stock for transfer in addition to the various proofs required, it will be necessary to provide for the payment of whatever transfer taxes are imposed by law upon the transfer.

If the transfer office of the corporation is located in New York, it will be necessary to provide for the payment of both Federal and New York State Stock Transfer taxes.

New York State Stock Transfer Tax

The tax imposed on the transfer of stock in New York is that provided for by Secs. 270–280 of the Tax Law, Ch. 62, Laws of 1909, as amended.

By this act a tax is laid on "all sales or agreements to sell, or memoranda of sales of stock and upon any and all deliveries or transfers of shares or certificates of stock, in any domestic or foreign corporation made after the 1st day of June, 1905," of two cents on each hundred dollars of face value or fraction thereof except in cases where the shares or certificates of stock are issued without designated or monetary value, in which case the tax shall be at the rate of two cents for each and every share of such stock. Payment of the tax must be denoted by an adhesive stamp or stamps affixed in the manner adapted to the circumstances of the sale.

A violation of the act by a transfer without payment of the tax is made a misdemeanor and may be punished by a fine or imprisonment or both, and the offender is also subject to certain civil penalties for each violation to be recovered by the State Comptroller in any court of competent jurisdiction.

The statute further provides that no transfer

of stock without payment of the tax shall be made the basis of any action or legal proceeding, nor shall proof thereof be offered or received in evidence in any court in this state.

The transfers covered by the foregoing statute are those which relate to transactions between living persons and not to devolution of title caused by death.

The statute is applicable to sales or transfers of shares or certificates of stock in "associations and companies" as well as in corporations.

The Attorney-General of the State of New York has ruled that the transfer of stock from the name of a decendent to his executor or administrator as such is not taxable under the above law, there being no change of beneficial ownership, but that the subsequent transfer thereof by the executor or administrator to the legatee or next of kin falls within the provisions of the law and is subject to the payment of the tax.

The Attorney-General has also ruled that a transfer of stock from an executor to himself as trustee is taxable, executors in the eyes of the law being distinct persons from trustees.

Federal Stock Transfer Tax

Under the Federal Revenue Act of 1918, a similar tax is imposed upon "all sales, or agreements to sell, or memoranda of sales or deliver-

ies of, or transfers of legal title to shares or certificates of stock or of profits or of interest in property or accumulations in any corporation, or to rights to subscribe for or to receive such shares or certificates, whether made upon or shown by the books of the corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale, whether entitling the holder in any manner to the benefit of such stock, interest, or rights, or not, on each $100 of face value or fraction thereof, 2 cents, and where such shares are without par or face value, the tax shall be 2 cents on the transfer or sale or agreement to sell on each share, unless the actual value thereof is in excess of $100 per share, in which case the tax shall be 2 cents on each $100 of actual value or fraction thereof."

The act provides that the tax shall not be imposed upon deliveries or transfers to a broker for sale, nor upon deliveries or transfers by a broker to a customer for whom or upon whose order he has purchased the same, but such deliveries or transfers shall be accompanied by a certificate setting forth the facts.

As in the case of the New York State Transfer Tax the payment of the Federal tax is denoted by stamps, affixed in the manner provided by the statute. Likewise, a violation of the act by a transfer without payment of the tax is made a misdemeanor punishable by a fine of not exceeding $1,000 or imprisonment of not more than six months, or both.

The act applies to transfers made after April 1, 1919.

Under Regulations promulgated by the United States Commissioner of Internal Revenue, the transfer of stock to or by trustees is subject to the tax; so also is the transfer of stock from parties occupying fiduciary relations to those for whom they hold stock.

The transfer of stock by an executor or administrator to the legatee or distributee is subject to the tax but not the transfer from the decedent to the executor or administrator.

We have seen that in connection with transfers of stock out of the names of decedents it is necessary to obtain and file with the corporation certain inheritance tax waivers.

An inheritance tax waiver is a written statement made by an authorized state official in which consent is given to a transfer of stock standing in the name of or in trust for a deceased person.

These waivers or consents are proof that the transfer is one not taxable under the inheritance tax laws of a particular state or that the inheritance tax due thereon has been paid or provided for.

In connection with transfers made in New York of stock standing in the name of a decedent, it is customary for the corporation to require a waiver of the Comptroller of the State of New York consenting to the transfer under the inheritance tax laws of that state.

Secs. 220–245 of the New York Tax Law, Ch. 62, Laws of 1909, as amended, contain the provisions of the New York Inheritance Tax Law.

The tax is imposed on all transfers of property real or personal made

(1) By will or by the intestate laws of New York.

(2) By deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor, or donor, or intended to take effect in possession or enjoyment at or after such death.

(3) By the exercise of a power of appointment.

(4) By right of survivorship.

When the decedent dies a resident of New York the tax is upon the transfer of all the decedent's real property situated within said state and upon all his tangible and intangible personalty wherever situated.

Where the decedent dies a non-resident of New York the tax is upon:

(a) Real property, or goods, wares, and merchandise within New York.

(b) Shares of stock of New York corporations and of national banking associations located in said state.

(c) Shares of stock of foreign corporations, etc., and bonds, notes, mortgages, or other evidences of interest in any corporations, etc. (this does not apply to securities of moneyed, railroad or transportation corporations, nor to public service or manufacturing corporations as defined by the laws of New York) which represent real property wholly or partly in New York, and interests in partnership business conducted wholly or partly in said state, in an amount determined by the proportion which the value of the real property of such corporation in said state bears to its entire property, or in case of a partnership, by the proportion which the value of its entire property in said state bears to its entire property.

(d) Capital invested in business in New York by a non-resident doing business in said state either as principal or partner.

Sec. 221 of the Act provides for the exemption of certain transfers from taxation and the rates of tax are set forth in Sec. 221-a thereof.

The rate of tax upon any transfer to a father, mother, husband, wife, or child of the decedent above the exemption of $5,000 is:

Up to and including $25,000, one per cent.

Upon the next $75,000, two per cent.

Upon the next $100,000, three per cent.

Upon the entire balance, four per cent.

The tax upon any transfer to a brother, sister,

wife, or widow of a son, or husband of a daughter of decedent, or to any child to whom decedent stood in relation of a parent continuously for ten years, beginning before the child's fifteenth birthday upon the entire amount if over $500 is:

Up to and including $25,000, two per cent.
Upon the next $75,000, three per cent.
Upon the next $100,000, four per cent.
Upon the entire balance, five per cent.

The tax upon any transfer to any other person or corporation, upon the entire amount, if over $500 is:

Up to and including $25,000, five per cent.
Upon the next $75,000, six per cent.
Upon the next $100,000, seven per cent.
Upon the entire balance, eight per cent.

Sec. 221-b provides for an additional tax of five per cent. on the transfer of investments or secured debt as defined by Article 15 of the New York Tax Law (i. e., any bond, note, debenture, etc., forming part of a series payable one year or more from date) unless the tax has been paid and stamps affixed, as provided by said article, or unless it can be proved that a personal property tax was assessed on such investments or unless decedent was engaged in the purchase and sale of such investments as a business in the State of New York and had used the property in question for such business and had owned it for not more than eight months prior to his death.

The above transfer taxes are payable at the

time of transfer. A discount of five per cent. is allowed on taxes paid within six months from accrual. The tax is a lien upon all property transferred until paid and the person to whom the property is transferred and the executors, administrators, and trustees of every estate are personally liable for the tax until paid.

Executors, administrators, and trustees have power to sell property to secure funds for the payment of the tax in the same manner as for the payment of debts, and shall deduct the tax from all legacies, and may require payment of the tax before delivering specific legacies or property subject to the tax.

Section 227 of the above act provides that stocks or obligations of corporations shall not be transferred without the payment of the tax and no safe deposit company, trust company, corporation, bank, or other institution or person having possession or control of securities, deposits, or other assets belonging to or standing in the name of a decedent who was a resident or non-resident, or belonging to or standing in the joint names of such decedent and one or more persons, including the shares of the capital stock of, or interest in, the safe deposit company, etc., shall deliver or transfer the same to executors, administrators, or legal representatives of decedent, or to the survivor or survivors when held in the joint names of decedent and one or more persons, unless notice of the time and place of such intended delivery or transfer be served upon the State Comptroller

at least ten days prior thereto, nor without retaining a sufficient amount to pay any tax and interest which may be assessed on account thereof, unless the State Comptroller consents thereto in writing.

For a failure to comply with this section a party is liable to pay the tax and interest due and in addition thereto a penalty of not less than five nor more than twenty-five thousand dollars.

The interpretation placed upon this section by the State Comptroller is that under its provisions no individual or corporate transfer agent acting within the State of New York or subject to its jurisdiction, without becoming subject to the act and its prescribed penalties, can make any change in the registered ownership of stock or bonds, whether of a domestic or foreign corporation, standing in the name of a decedent, either resident or non-resident, unless notice is given to the State Comptroller or his consent to the transfer is obtained in the manner stated in the statute.

Federal Estate Tax

The Federal Estate Tax, being Title IV of the Revenue Act of 1918, effective February 25, 1919, imposes a tax "upon the transfer of the net estate of every decedent dying after the passage of this Act whether a resident or non-resident of the United States."

The Federal Estate Tax was first imposed by the Revenue Act of 1916 which taxed the entire

net estate of every person dying on or after September 9, 1916. The Act of 1916 was amended by the Act of March 3, 1917, and by the Act of October 3, 1917, both of which increased the rate of tax. The Revenue Act of 1918, effective February 25, 1919, supersedes all prior acts as to the estates of all decedents dying on or after February 25, 1919.

The New York Inheritance Transfer Tax is a tax upon the right of succession and is assessed on the clear market value of any property, real or personal, so transferred and upon any interests therein or income therefrom in trust or otherwise, to persons or corporations with certain prescribed limitations and exceptions.

The Federal Estate Tax, on the other hand, is not laid upon the property but upon its transfer from the decedent to others. It is an estate tax and it is imposed upon the entire net estate and not upon any particular legacy, devise, or distributive share. It is not an individual inheritance tax such as the New York Tax, it being the purpose and intent of the law unless otherwise directed by the will of the decedent that the tax shall be paid out of the estate before distribution.

The tax is upon the transfer of the net estate of every resident decedent which exceeds $50,000 and on so much of the estate of a non-resident decedent as is situated within the United States.

The amount of the tax is obtained by finding the percentage of the net estate in accordance with the following table:

EXCEEDING	NOT EXCEEDING	PER CENT.
———	$ 50,000	1
$ 50,000	150,000	2
150,000	250,000	3
250,000	450,000	4
450,000	750,000	6
750,000	1,000,000	8

and so on.

The tax is due and payable one year from the date of death. The executor or administrator is personally liable for the payment of the tax to the amount of the full value of the assets of the estate which have come into his hands.

Lost or Destroyed Certificates of Stock

When a certificate of stock has been lost or destroyed, a corporation in lieu thereof may voluntarily issue a new certificate. If, however, the corporation refuses to issue the duplicate certificate it may be compelled to do so in a proper case even in the absence of any statutory provision on the subject.

In many states there are statutes which provide for the issuance of duplicate certificates in place of those lost or destroyed. The Uniform Stock Transfer Act contains the following provision with reference to this subject:

> SEC. 178. *Lost or destroyed certificate.* Where a certificate has been lost or destroyed, a court of competent jurisdiction may order the issue of a new certificate there-

for on service of process upon the corporation and on reasonable notice by publication, and in any other way in which the court may direct, to all persons interested, and upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient surety to be approved by the court to protect the corporation or any person injured by the issue of a new certificate from any liability or expense, which it or they may incur by reason of the original certificate remaining outstanding. The court may also in its discretion order the payment of the corporation's reasonable costs and counsel fees. The issue of a new certificate under an order of the court as provided in this section shall not relieve the corporation from liability in damages to a person to whom the original certificate has been or shall be transferred for value without notice of the proceedings or of the issuance of the new certificate."

Frequently the matter is covered by an appropriate provision in the corporate by-laws.

Right of Corporation to Require Bond of Indemnity

The courts have generally held that except in cases of the clearest proof of loss, the corporation shall not be required to issue a new certificate unless a bond of indemnity against its liability to possible legal holders of the lost cer-

tificate be given. The reasonableness of this requirement is obvious. A corporation issuing a certificate of stock thereby represents that the person named therein owns a specific number of shares and has a right to transfer the same. The corporation will be estopped to deny this representation as against a bona-fide transferee, at least to such an extent as to entitle such bona-fide transferee to recover damages. So if the owner of a certificate should transfer it and then, representing that it had been lost or destroyed, induce or compel the corporation to issue to him a new certificate and afterward transfer this latter certificate, the corporation would incur liability upon both certificates. (Fletcher on Corporations, p. 5796, Cook on Corporations, 6th Ed., p. 1049.)

Statutes in some states expressly require the giving of indemnity. As has been seen, the Uniform Stock Transfer Act contains such a provision.

The usual requirements which are exacted by corporations before voluntarily issuing a duplicate certificate in lieu of that lost or destroyed are the following:

(1) Affidavit of the owner of the certificate in question giving a full and complete description of such certificate and stating in detail all the facts and circumstances surrounding its loss or destruction; also one or more corroborative affidavits by persons familiar with the facts.

(2) Bond of indemnity with surety and in form satisfactory to the corporation, in double the face value of the certificate claimed to have been lost or destroyed, indemnifying the corporation against any damage which may arise from the issue of the duplicate certificate.

The corporation will sometimes require, in addition to the foregoing, proof of the publication in a newspaper of general circulation published in the county, city, or town in which the owner resides, of notice of the loss of the certificate; such proof should disclose that a reasonable interval of time (not less than six months) has elapsed since the advertisement of loss and that the certificate has not been found.

Stolen or Lost Certificates Endorsed in Blank

If the holder of a promissory note, endorsed in blank, loses it or it is stolen from him, a subsequent bona-fide purchaser of such note is protected as against the person who lost it. This rule is held not to be generally applicable to certificates of stock as they are not negotiable instruments. In some cases, however, certain characteristics of negotiability are imparted to certificates of stock. As is said in Fletcher on Private Corporations, p. 6296:

"While certificates of stock are not negotiable instruments in any proper sense the

courts in view of the extensive dealings in such securities and the interest, both of the public and of the corporations issuing them, in making them readily transferable and convertible have largely by application of the equitable doctrine of estoppel clothed them with some of the characteristics of negotiable paper. They are frequently said to be quasi-negotiable, and the trend of modern decisions is to make them as nearly negotiable as possible. 'Such certificates,' said Mr. Justice Davis, 'although neither in form nor character negotiable paper, approximate to it as nearly as practicable.' So title to them will pass, as between the parties, by endorsement and delivery of the certificates, as in the case of negotiable instruments, they are not subject to lis pendens, and the transferee may, under certain circumstances, acquire a better title than his transferrer has."

It is well settled, therefore, that unless the owner of a certificate of stock is for some reason estopped to assert his title, the transfer of the certificate even to a bona-fide purchaser or pledgee by one who has no title or authority to transfer the same confers upon the transferee no title as against the owner.

"In accordance with this principle it has repeatedly been held that a bona-fide purchaser or pledgee of a certificate of stock acquires no title thereto where he takes the same under a forged assignment and power of attorney.

This is true not only where the certificate is lost or stolen, and the assignment and power of attorney is forged by the finder or thief, but also where the forgery is committed by one to whom the certificate has been entrusted as agent or bailee. The same principle applies where an assignment of a certificate of stock is endorsed thereon by a person without any authority or apparent authority from the owner although without any fraudulent intent. And even where a lost or stolen certificate has been endorsed in blank by the person appearing on the books of the corporation as owner, a bona fide transferee acquires no title as against the true owner, unless the latter has been guilty of such negligence as will estop him from asserting his title." (Fletcher on Corporations, p. 6433.)

With respect to the applicability of the doctrine of estoppel to this question the same author says (pp. 6477-78):

"The doctrine that a bona-fide purchaser of shares under a forged or unauthorized transfer acquires no title as against the true owner does not apply where the circumstances are such as to estop the latter from asserting his title. Such an estoppel may arise either from acts or from negligence. It is a well-settled principle that, where the owner of property clothes another with apparent title to the same, or apparent authority to dispose

of the same, he will be estopped to deny such apparent title or authority as against third persons dealing with the other party on the faith thereof. And in accordance with this principle it has been repeatedly held that the owner of shares is estopped from asserting his title as against a bona-fide purchaser or pledgee of the shares from one whom he has intentionally or through negligence clothed with apparent title thereto or with apparent authority to transfer the same. In the case of stock the estoppel generally arises from the fact that the owner has delivered his certificate to a third person, together with an assignment and power of attorney to transfer the same on the corporate books executed in blank."

In protecting the title of the bona-fide purchaser or pledgee in these various cases the Courts frequently place reliance upon the legal maxim that where one of two innocent parties must suffer by reason of a wrongful or unauthorized act the loss must fall on the one who first trusted the wrongdoer and put in his hands the means of inflicting such loss. (*National Safe Deposit Savings & Trust Company vs. Hibbs, 229 U.S. 391; Moore vs. Metropolitan National Bank, 55 N. Y. 41.*)

A frequently cited case on the question of estoppel is that of *Knox vs. Eden Musee Company*, 148 N. Y. 441, in which it was held that the fact that the president of a business corporation in a single instance relied upon its manager, an

employee who had theretofore proved trustworthy, to cancel in pursuance of his directions, certain certificates of stock endorsed in blank and surrendered for transfer and that for that purpose the uncancelled certificates were left in a safe to which the manager had access, does not constitute such actionable negligence as will estop the company from claiming such certificates as against a bona-fide holder to whom the manager thereafter wrongfully and fraudulently delivered them, as security for a loan to himself, or render the corporation liable to such holder for the value of the certificates. Generally, however, if a certificate endorsed in blank is entrusted to an agent for a particular purpose only, and in violation of his instructions he sells or pledges it to another, the latter will take title as against the original owner. So also where a certificate so endorsed is delivered to a broker or other person as security for a loan or as a margin, or to be sold or pledged by him for the benefit of the owner, and the person to whom it is so delivered sells or pledges it as his own; or where the certificate is pledged with authority to re-pledge it to the extent of the pledgor's indebtedness and it is re-pledged as security for a larger amount than so specified. (See Fletcher on Corporations, p. 6485, and cases therein cited.)

The question as to what acts or circumstances constitute negligence is not free from difficulty. It has been held that a person is not guilty of negligence in leaving a certificate of stock en-

dorsed in blank in a safe deposit box used by himself and another jointly so as to be estopped from asserting his title after the certificate has been stolen by the other and sold or pledged to a bona-fide purchaser or pledgee. (*Bangor Electric Light & Power Company vs. Robinson*, 52 Fed. 520.)

And it has also been held that the owner of a certificate of stock is not negligent in placing it endorsed in blank in a drawer of his safe to which his employee has access, where he has no reason to doubt the latter's honesty. (*The Farmers' Bank vs. The Diebold Safe & Lock Company*, 66 Ohio St. 367.)

It is said in Cook on Corporations, 7th Ed., p. 1210, that the law of estoppel has been applied to protect a bona-fide purchaser of stock to such an extent that excepting in cases of certificates transferred in blank and lost or stolen without negligence on the part of the owner a bona-fide purchaser is protected now in almost every instance where he would be protected if he were purchasing a promissory note or other negotiable instrument.

The author further states that the courts are extending the law of estoppel and that in the course of time it is possible that certificates of stock may become more negotiable than negotiable instruments.

It is provided in the Uniform Stock Transfer Act that the delivery of a certificate to transfer title, in accordance with Sec. 162 of said act, is effectual with certain exceptions though made

by one having no right of possession and having no authority from the owner of the certificate or from the person purporting to transfer the title.

And the Act also provides that if the delivery of a certificate was made without authority from the owner the possession of the certificate may be reclaimed and the transfer thereof rescinded, unless the certificate has been transferred to a purchaser for value in good faith without notice of any facts making the transfer wrongful. (See Appendix, Uniform Stock Transfer Act, Secs. 166–168.)

In *Miller vs. Doran*, 151 Ill. App. 527, affd. 245 Ill. 200, it was held that the above Act provides for the protection of a bona-fide purchaser or pledgee of a certificate which is stolen after it has been endorsed in blank.

It appears from the foregoing that certificates of stock are inherently non-negotiable. It also appears that under certain circumstances the quality of the negotiability is imparted when by reason of the negligence of the owner the certificate is permitted to pass into the hands of a bona-fide holder, endorsed in blank for transfer. It is impracticable to lay down a general rule which will state with precision the acts and circumstances constituting such negligence as will bring this rule into play. Each case must of necessity turn upon its own particular facts. Nor is it practicable as yet to state definitely how far the law on this subject has been modified or affected by the provisions of the Uniform Stock Transfer Act.

The Act, it is believed, goes far toward conferring the elements of negotiability upon a stock certificate which, endorsed in blank for transfer, passes into bona-fide hands, and such would seem to be the construction placed upon it by the highest court of at least one state. (*Miller vs. Doran*, supra.)

Transfer of Corporate Bonds

A *bond* of a corporation is an instrument executed under the seal of the corporation acknowledging a loan and agreeing to pay the same upon the terms set forth therein.

The instrument usually contains a description of the particular issue of bonds to which it belongs and likewise a reference to the mortgage security therefor. The mortgage securing the bond issue is made to a trustee for the benefit of all the bondholders. The bonds are signed by the proper corporate officials and the corporate seal affixed.

Sometimes these instruments are issued without a seal in which case although technically not bonds they are usually classed as such. (Huffcut's Business Law, p. 169.)

Corporate bonds may be divided into two general classes—*negotiable bonds* and *non-negotiable bonds.*

It was the rule at common law that an instrument under seal was not negotiable.

It is now well settled that bonds of a corporation which are in the form and possess the re-

quisites to negotiability in other instruments are negotiable even if they are under seal. (See Fletcher on Private Corporations, p. 1972, and cases therein cited.)

By negotiability is meant that quality which enables an instrument to be transferred from hand to hand in the same fashion as money.

The principal results of negotiability in an instrument are:

(1) The transferee acquires a legal title and can sue in his own name.

(2) If the transferee is a holder for value and has no notice of any defenses which his predecessor in title could have asserted against the instrument and has obtained title before maturity he takes free and clear from those defenses.

A holder for value without notice is subject, however, to defenses which wholly invalidate the contract. For example, he is free from personal defenses, such as fraud, duress, want of title in the transferrer, but takes subject to absolute defenses such as forgery, alteration, infancy of maker, or the defense that the instrument is void by statute.

Negotiable Instruments Law

The law as to negotiable instruments has been embodied in a Uniform Negotiable Instruments Law, which has been adopted by practi-

cally every state in this country. The Act sets forth the various requirements to which an instrument must conform in order to be negotiable.

Among these requirements are the following:

(1) It must be in writing and signed by the maker or drawer.

(2) It must contain an unconditional promise or order to pay a sum certain in money.

(3) It must be payable on demand or at a fixed or determinable future time.

(4) It must be payable to order or bearer.

The courts have held that this Act is applicable to corporate bonds so as to make them non-negotiable if they are wanting in respect of any requirement of the statute.

Coupon Bonds

Coupon bonds are bonds payable to a named person or order or to bearer, and which have attached to them "coupon" notes or warrants for each installment of interest as it falls due.

These coupons are payable to order or bearer and when detached are negotiable. They are cut off and presented at their maturity for the payment of interest or they may be severed before maturity and negotiated like a promissory note.

The usual form of negotiable bond is a coupon

bond payable to bearer. When negotiable bonds are made payable to some payee or his order they are transferable by endorsement and delivery. When they are made payable to a payee or bearer or simply to bearer they are transferable by mere delivery. (9 C. J. 51.)

As was stated in the case of *Benwell vs. Newark* 55 N. J. Eq. 260, coupon bonds payable to bearer.

> "——may be passed from hand to hand without any formality except the mere tradition of the paper. This ease of transfer gives this class of securities its peculiar value. The collection of interest is made by simply detaching the coupon and presenting it at the place of payment, either directly or through the usual course of bank exchanges, where it is paid without inquiry as to the ownership of the bond from which it has been cut. The disadvantage of this sort of security is the danger of its loss by theft or fire."

Registered Bonds

A registered bond is one which is payable to a particular individual whose name is entered on the books of the corporation as the registered owner. On the interest days payment thereof is made directly to the registered holder without presentation of the bond usually by check drawn to his order and sent by mail.

The courts have held with practical unanimity

that registered bonds are not negotiable. Among the cases so holding may be cited:

Scollans vs. Rollins, 173 Mass. 275.
Benwell vs. Newark, 55 N. J. Eq. 260.
Chester County Guarantee Trust & Safe Deposit Company vs. *Securities Company*, 165 N. Y. App. Div. 329.
Cronin vs. Patrick County, 89 Fed. 79.

As is pointed out by Daniels in his work on Negotiable Instruments, p. 1683, bonds are in fact registered so as to make them transferable in such manner as to exclude equities between the original parties only by registry upon the books of the corporation issuing them.

With reference to registered bonds Fletcher in his work on Private Corporations, p. 1920, says:

"The peculiar value of this class of securities lies in the fact that it is not necessary to produce them to the debtor each time the interest is due, and that the danger of loss by robbery, fire, etc., is entirely removed. It follows that if such bonds are stolen from the owner he has the right to recover them wherever found, and if they cannot be found he may recover their value from those who were instrumental in changing them from registered to negotiable bonds."

In order to transfer title to a registered bond a form of assignment is required to be executed

by or on behalf of the registered holder. It is similar to that used in transferring stock and when not found on the back of the bond a detached form is used.

The following is an accepted form of assignment with power of attorney to transfer the bonds on the books of the corporation:

KNOW ALL MEN BY THESE PRESENTS

THAT...
FOR VALUE RECEIVED, have bargained, sold, assigned, and transferred, and by these presents do bargain, sell, assign, and transfer unto.......................................
....................Bond of the.....................
....
....
No...
For $...
standing in........name on the books of said........
AND........do hereby constitute and appoint.............
......................true and lawful Attorney, IRREVOCABLE, for........and in........name and stead but to........use, to sell, assign, transfer, and set over...
....................the said Bond and for that purpose to make and execute all necessary acts of assignment and transfer, and to substitute one or more persons with like full power, hereby ratifying and confirming all that.......
said Attorney or...........substitute or substitutes shall lawfully do by virtue hereof.

Dated.....................19

Signed and Acknowledged in the Presence of

....

..........................[SEAL]

Bonds may be registered as to principal only or as to both principal and interest. In the former case the registration is made by writing

the name of the holder in a space provided for that purpose on the bond and making a record on the books of the corporation.

In the event that the bond is to be registered as to both principal and interest, the bond is usually surrendered and a registered bond issued to the bondholder. The registration is also recorded on the corporate books.

Generally the conditions governing the transfer of registered bonds, the exchange of bearer bonds for registered bonds, and the discharge of the latter from registry are fully set forth in corporate mortgages securing the bonds in question.

The various questions which arise in the case of the transfer of stock are also presented in connection with the transfer of registered bonds. The different rules and principles heretofore considered are in the main applicable in respect of both stock and bonds. In each case the necessity for proper description of the assignor and assignee exists, also for proof of signatures and of authority to make the transfer.

So also are these rules and principles applicable to the transfer of United States bonds. The Treasury Department in its Department Circular, No 141, promulgated September 15, 1919, has prescribed certain rules and regulations governing "transactions involving the interchange of Liberty Bonds and Victory Notes of different denominations, the interchange of coupon and registered bonds and notes, and the

transfer of registered bonds and notes." Certain of these rules and regulations are set forth in the Appendix to this volume.

The principles governing the liability of a corporation for refusal to transfer its stock or for an erroneous or unlawful transfer thereof which have been briefly stated in a previous section are equally applicable to the transfer of bonds.

The corporation making the stock or bond transfer on its books will be equally alert to see that the transferrer (individual, trustee, or fiduciary) is authorized to make the transfer and will require in the case both of bonds and stock whatever proofs are deemed essential to the adequate protection of the company and to the proper safeguarding of the rights and obligations of transferrer and transferee.

The Stock Transfer Tax Acts are of course inapplicable to the transfer of bonds. As respects Inheritance Transfer Tax Acts, the statutes of the state or states concerned should be examined to determine whether or not they cover transfers of bonds and whether or not inheritance tax waivers should be obtained preliminary to transfer.

Lost or Destroyed Bonds

The owner of lost or destroyed negotiable bonds has the same rights as in the case of any other negotiable instrument. He may compel the corporation to issue new ones to him upon

proof of the loss or destruction and the giving of adequate indemnity (*Miller vs. Rutland & W. R. Company*, 40 Vt. 399; *Chesapeake & Ohio Canal Company, vs. Blair*, 45 Md. 102).

Stolen Bonds

It is well settled that where negotiable bonds are stolen and are acquired by a bona-fide purchaser, the owner from whom they were stolen cannot recover from the corporation. The title to stolen negotiable bonds vests in the transferee provided he is a bona-fide holder.

Where bonds are stolen after maturity, the purchaser although otherwise a bona-fide holder takes no title as against the true owner.

If the bonds are not negotiable the transferee acquires no title. Thus, the owner of registered bonds which have been stolen and transferred by means of forged endorsements may reclaim them in the hands of the transferee even though new bonds have been issued to the transferee in his own name in place of the stolen ones. (*Chester County Guarantee Trust & Safe Deposit Company vs. Securities Company* 165 N. Y. App. Div. 329.)

APPENDIX

APPENDIX

Uniform Stock Transfer Law

The Uniform Stock Transfer Law, which has been incorporated into the law of a number of states, was drafted by the Commission for the Promotion of Uniformity of Legislation. It is found in Article 6 of the Personal Property Law of New York (Laws 1913, ch. 600, in effect September 1, 1913) and its provisions are as follows:

§162. *How title to certificates and shares may be transferred.* Title to a certificate and to the shares represented thereby can be transferred only,

(a) By delivery of the certificate indorsed either in blank or to a specified person by the person appearing by the certificate to be the owner of the shares represented thereby, or

(b) By delivery of the certificate and a separate document containing a written assignment of the certificate or a power of attorney to sell, assign, or transfer the same or the shares represented thereby, signed by the person appearing by the certificate to be the owner of the shares represented thereby. Such assignment or power of attorney may be either in blank or to a specified person.

The provisions of this section shall be applicable although the charter or articles of incorporation or code of regulations or by-laws of the corporation issuing the certificate and the certificate itself provide that the shares represented thereby shall be transferable only on the books of the corporation or shall be registered by a registrar or transferred by a transfer agent.

§163. *Powers of those lacking full legal capacity and of fiduciaries not enlarged.* Nothing in this article shall be

construed as enlarging the powers of an infant or other person lacking full legal capacity, or of a trustee, executor, or administrator, or other fiduciary, to make a valid indorsement, assignment, or power of attorney.

§164. *Corporation not forbidden to treat registered holder as owner.* Nothing in this article shall be construed as forbidding a corporation,

(a) To recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, or

(b) To hold liable for calls and assessments a person registered on its books as the owner of shares.

§165. *Title derived from certificate extinguishes title derived from a separate document.* The title of a transferee of a certificate under a power of attorney or assignment not written upon the certificate, and the title of any person claiming under such transferee, shall cease and determine if, at any time prior to the surrender of the certificate to the corporation issuing it, another person, for value in good faith, and without notice of the prior transfer, shall purchase and obtain delivery of such certificate with the indorsement of the person appearing by the certificate to be the owner thereof, or shall purchase and obtain delivery of such certificate and the written assignment or power of attorney of such person, though contained in a separate document.

§166. *Who may deliver a certificate.* The delivery of a certificate to transfer title in accordance with the provisions of section one hundred and sixty-two is effectual, except as provided in section one hundred and sixty-eight, though made by one having no right of possession and having no authority from the owner of the certificate or from the person purporting to transfer the title.

§167. *Indorsement effectual in spite of fraud, duress, mistake, revocation, death, incapacity, or lack of consideration or authority.* The indorsement of a certificate by the person appearing by the certificate to be the owner of the shares represented thereby is effectual, except as provided

in section one hundred and sixty-eight, though the indorser or transferor

(a) Was induced by fraud, duress, or mistake to make the indorsement or delivery, or

(b) Has revoked the delivery of the certificate, or the authority given by the indorsement or delivery of the certificate, or

(c) Has died or become legally incapacitated after the indorsement, whether before or after the delivery of the certificate, or

(d) Has received no consideration.

§168. *Rescission of transfer.* If the indorsement or delivery of a certificate,

(a) Was procured by fraud or duress, or

(b) Was made under such mistake as to make the indorsement or delivery inequitable; or

If the delivery of a certificate was made

(c) Without authority from the owner, or

(d) After the owner's death or legal incapacity, the possession of the certificate may be reclaimed and the transfer thereof rescinded, unless:

1. The certificate has been transferred to a purchaser for value in good faith without notice of any facts making the transfer wrongful, or

2. The injured person has elected to waive the injury, or has been guilty of laches in endeavoring to enforce his rights.

Any court of appropriate jurisdiction may enforce specifically such right to reclaim the possession of the certificate or to rescind the transfer thereof, and, pending litigation, may enjoin the further transfer of the certificate or impound it.

§169. *Rescission of transfer of certificate does not invalidate subsequent transfer by transferee in possession.* Although the transfer of a certificate or of shares represented thereby has been rescinded or set aside, nevertheless, if the transferee has possession of the certificate or of a new certificate representing part or the whole of the same shares of stock, a subsequent transfer of such certificate

by the transferee, mediately or immediately, to a purchaser for value in good faith, without notice of any facts making the transfer wrongful, shall give such purchaser an indefeasible right to the certificate and the shares represented thereby.

§170. *Delivery of unindorsed certificate imposes obligation to indorse.* The delivery of a certificate by the person appearing by the certificate to be the owner thereof without the indorsement requisite for the transfer of the certificate and the shares represented thereby, but with intent to transfer such certificate or shares, shall impose an obligation, in the absence of an agreement to the contrary, upon the person so delivering, to complete the transfer by making the necessary indorsement. The transfer shall take effect as of the time when the indorsement is actually made. This obligation may be specifically enforced.

§171. *Ineffectual attempt to transfer amounts to a promise to transfer.* An attempted transfer of title to a certificate or to the shares represented thereby without delivery of the certificate shall have the effect of a promise to transfer and the obligation, if any, imposed by such promise shall be determined by the law governing the formation and performance of contracts.

§172. *Warranties on sale of certificate.* A person who for value transfers a certificate, including one who assigns for value a claim secured by a certificate, unless a contrary intention appears, warrants—

(a) That the certificate is genuine,
(b) That he has a legal right to transfer it, and
(c) That he has no knowledge of any fact which would impair the validity of the certificate.

In the case of an assignment of a claim secured by a certificate, the liability of the assignor upon such warranty shall not exceed the amount of the claim.

§173. *No warranty implied from accepting payment of a debt.* A mortgagee pledgee, or other holder for security of a certificate who in good faith demands or receives payment of the debt for which such certificate is security, whether from a party to a draft drawn for such

debt, or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such certificate, or the value of the shares represented thereby.

§174. *No attachment or levy upon shares unless certificate surrendered or transfer enjoined.* No attachment or levy upon shares of stock for which a certificate is outstanding shall be valid until such certificate be actually seized by the officer making the attachment or levy, or be surrendered to the corporation which issued it, or its transfer by the holder be enjoined. Except where a certificate is lost or destroyed, such corporation shall not be compelled to issue a new certificate for the stock until the old certificate is surrendered to it.

§175. *Creditor's remedies to reach certificate.* A creditor whose debtor is the owner of a certificate shall be entitled to such aid from courts of appropriate jurisdiction, by injunction and otherwise, in attaching such certificate or in satisfying the claim by means thereof as is allowed at law or in equity, in regard to property which cannot readily be attached or levied upon by ordinary legal process.

§176. *There shall be no lien or restriction unless indicated on certificate.* There shall be no lien in favor of a corporation upon the shares represented by a certificate issued by such corporation and there shall be no restriction upon the transfer of shares so represented by virtue of any bylaw of such corporation, or otherwise, unless the right of the corporation to such lien or the restriction is stated upon the certificate.

§177. *Alteration of certificate does not divest title to shares.* The alteration of a certificate, whether fraudulent or not and by whomsoever made, shall not deprive the owner of his title to the certificate and the shares originally represented thereby, and the transfer of such a certificate shall convey to the transferee a good title to such certificate and to the shares originally represented thereby.

§178. *Lost or destroyed certificate.* Where a certificate has been lost or destroyed, a court of competent jurisdiction may order the issue of a new certificate therefor on

service of process upon the corporation and on reasonable notice by publication, and in any other way which the court may direct, to all persons interested, and upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient surety to be approved by the court to protect the corporation or any person injured by the issue of a new certificate from any liability or expense, which it or they may incur by reason of the original certificate remaining outstanding. The court may also in its discretion order the payment of the corporation's reasonable costs and counsel fees. The issue of a new certificate under an order of the court as provided in this section shall not relieve the corporation from liability in damages to a person to whom the original certificate has been or shall be transferred for value without notice of the proceedings or of the issuance of the new certificate.

§179. *Rule for cases not provided for by this act.* In any case not provided for by this act, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent, executors, administrators, and trustees, and to the effect of fraud, misrepresentation, duress, or coercion, mistake, bankruptcy, or other invalidating cause, shall govern.

§180. *Interpretation shall give effect to purpose of uniformity.* This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

§181. *Definition of indorsement.* A certificate is indorsed when an assignment or a power of attorney to sell, assign, or transfer the certificate or the shares represented thereby is written on the certificate and signed by the person appearing by the certificate to be the owner of the shares represented thereby, or when the signature of such person is written without more upon the back of the certificate. In any of such cases a certificate is indorsed though it has not been delivered.

§182. *Definition of person appearing to be the owner of certificate.* The person to whom a certificate was originally issued is the person appearing by the certificate to be the owner thereof, and of the shares represented

thereby, until and unless he indorses the certificate to another specified person, and thereupon such other specified person is the person appearing by the certificate to be the owner thereof until and unless he also indorses the certificate to another specified person. Subsequent special indorsements may be made with like effect.

§183. *Other definitions.* 1. In this article, unless the context or subject-matter otherwise requires—

"Certificate" means a certificate of stock in a corporation organized under the laws of this state or of another state whose laws are consistent with this act.

"Delivery" means voluntary transfer of possession from one person to another.

"Person" includes a corporation or partnership or two or more persons having a joint or common interest.

To "purchase" includes to take as mortgagee or as pledgee.

"Purchaser" includes mortgagee and pledgee.

"Shares" means a share or shares of stock in a corporation organized under the laws of this state or of another state whose laws are consistent with this act.

"State" includes state, territory, district, and insular possession of the United States.

"Transfer" means transfer of legal title.

"Title" means legal title and does not include a merely equitable or beneficial ownership or interest.

"Value" is any consideration sufficient to support a simple contract. An antecedent or preëxisting obligation, whether for money or not, constitutes value where a certificate is taken either in satisfaction thereof or as security therefor.

2. A thing is done "in good faith" within the meaning of this act, when it is in fact done honestly, whether it be done negligently or not.

§184. *Article does not apply to existing certificates.* The provisions of this article apply only to certificates issued after the taking effect of this article.

§185. *Inconsistent legislation repealed.* All acts or parts of acts inconsistent with this article are hereby repealed.

Rulings of New York State Comptroller

On December 1, 1919, the Comptroller of the State of New York issued the following rulings governing the collection of taxes on the transfers of stock:

1. The application and scope of the Stock Transfer Tax Law has been considerably broadened by the amendments thereto, effected by chapter 352 of the Laws of 1911, chapter 292 of the Laws of 1912, chapter 779 of the Laws of 1913, chapter 206 of the Laws of 1914, and chapter 552 of the laws of 1916, with the result that the rulings heretofore made asserting exemptions from the tax are not now as a rule controlling.

2. A tax is imposed upon all sales or agreements to sell and upon all deliveries or transfers of shares or certificates of stock of any and all associations, companies and corporations, whether domestic or foreign at the rate of two cents on each hundred dollars of face value or fraction thereof, except where shares or certificates of stock are issued without designated monetary value, in which case the tax shall be two cents for each and every share of such stock.

3. The statute does not apply to the original issue of stock; but all sales or transfers made subsequent thereto, whether intermediate or final, are taxable.

4. It is not necessary to render it taxable that the transaction involve a sale. By the statute, as amended, a tax is imposed upon all sales or transfers of shares or certificates of stock, whether operating to convey the beneficial interest in or merely the legal title to said stock, or possession or use thereof, for any purpose. *The only exceptions to this rule are those expressly provided for in section 270 of the law.*

5. The transfer to and from voting trustees is taxable, also the transfer of voting trust certificates.

6. The mere surrender of a certificate of stock for re-issue in smaller denominations is not taxable; but if re-issued in part to the original owner and in part to a third party it is taxable to the extent of the transfer to the third party.

7. Likewise the mere surrender of a certificate of stock held by a deceased person for issuance in the name of his executor or administrator is not taxable; but all transfers

made by the latter, whether to trustees, legatees, or other persons, are taxable.

8. The law applies to the stock of foreign as well as domestic corporations and to residents and non-residents alike.

9. While the law has no extra territorial operation, nevertheless, where it appears that the transfer of the stock on the corporate books within this state is essential to render the transfer effectual, it subjects it to a tax although in all other respects made without the state.

10. It is the duty of the person making or effectuating the sale or transfer to pay the required tax by procuring, affixing, and canceling the stamps, except that where a sale or transfer is shown only by the books of the corporation, the person making the sale must secure, and the corporation affix and cancel, the stamps to its books. (Sec. 270.)

11. Where the sale or transfer is effected by the delivery or transfer of a certificate the stamp must be placed upon the surrendered certificate. In case of an agreement to sell, or where the sale is effected by the delivery of the certificate assigned in blank, there must be made and delivered by the seller to the buyer a bill or memorandum of such sale, to which the stamps shall be affixed and canceled. This bill or memorandum with stamp attached must be affixed to the certificate, or properly identified as provided by section 276, when presented for transfer.

A strict compliance with these requirements will be insisted upon.

12. Every such bill or memorandum of sale, agreement to sell, or sales ticket must show:

(a) The date of the transaction which it evidences.

(b) The name of the seller.

(c) The stock to which it relates and the number of shares thereof; and all such memorandum of sale or sales ticket as are not used for the purpose of transfer must be kept by the broker for two years from their respective dates.

(d) And an identifying number as provided by section 270.

13. All persons liable for the payment of the tax and all persons acting as agents or brokers for any such persons or

for the corporation whose stock is transferred, who in any manner assists in consummating a sale or transfer without payment of the required tax, are guilty of a misdemeanor.

14. Likewise corporations, and persons acting as transfer agents for corporations, are forbidden to transfer stock on the books of the corporation until the required tax has been paid; and for a failure to perform this duty they are guilty of a misdemeanor.

15. Every stamp used to denote the payment of the tax must be canceled by the user by writing or stamping thereon the initials of his name and the date upon which the stamp is attached or used. He must also cut or perforate the stamp in a substantial manner so that it cannot again be used. A failure so to do renders the party guilty of a misdemeanor.

16. Under no circumstances may a stamp erroneously attached to a certificate or memorandum be removed. An adequate remedy in such cases, in the nature of a refund, is provided by section 280 of the act.

17. Every broker is required to keep a just and true book of account in the form prescribed by the Comptroller (see form designated "account book to be kept by brokers" on page 2) wherein shall be plainly and legibly recorded in separate columns:

(a) The date of making every sale, agreement to sell, delivery or transfer of shares or certificates of stock.

(b) The name of the stock and the number of shares thereof.

(c) The face value thereof.

(d) The name of the seller or transferrer.

(e) The name of the purchaser or transferee.

(f) The identifying number of the bill or memorandum of sales as provided by section 270.

These books must be kept for a period of at least two years subsequent to the date of such entry made therein and are subject to examination by the Comptroller or his representatives at all times between 10 A. M. and 3 P. M. (Saturdays, Sundays, and legal holidays excepted.)

18. Every corporation or its transfer agent shall keep a

just and true book of account in the form prescribed by the Comptroller (see form designated "account book to be kept by corporations and transfer agents" on page 2), wherein shall be plainly and legibly recorded in separate columns:

(a) The date of making every transfer of stock.

(b) The name of the stock and the number of shares thereof.

(c) The serial number of each surrendered certificate.

(d) The same of the party surrendering each certificate.

(e) The serial number of the certificate issued in exchange therefor.

(f) The number of shares represented by said certificate.

(g) The name of the party to whom said certificate was issued.

(h) The evidence of the payment of the tax as provided by section 276.

It shall also keep and retain a stock certificate book and all surrendered or canceled shares or certificates of its stock and memoranda relating to the sale thereof for a period of two years from the date of the delivery thereof.

All such books and papers are subject to the examination by the Comptroller or his representative at any time between the hours of 10 A. M. and 3 P. M. (Saturdays, Sundays, and legal holidays excepted).

19. It is imperative that these books, records, and memoranda be kept and retained strictly in the form and manner provided by the statute and severe penalties are imposed for a failure so to do.

20. Severe penalties, civil and criminal, are also provided by the act for the illegal sale or use of stamps, for the removal or re-use thereof, for the failure to pay the tax imposed, and for the violation of the other requirements of the statute. Furthermore, the failure to pay the tax constitutes an absolute defense to an action to recover the purchase price of the stock.

21. Every person, firm, company, association, or corporation engaged in whole or in part in the making or negotiating of sales, agreements to sell, deliveries, or transfers of

shares or certificates of stock, or conducting or transacting a stock brokerage business, shall within ten days after July 1, 1913, or within ten days after engaging in such business, file with the State Comptroller, either in Albany or New York City, a certificate setting forth the name under which such business is or is to be conducted or transacted and the true and real full names of the person or persons conducting or transacting the same, with the post-office address or addresses of said persons, or in the event of a change in the persons conducting such business or change of address, like certificate setting forth the facts shall within ten days thereafter be filed. Such certificate shall be duly acknowledged. A failure to perform this duty is a misdemeanor.

22. Every stock association, company, or corporation which shall maintain a principal office or place of business within the state or which shall keep or cause to be kept within the State of New York a place for the sale, transfer, or delivery of its stock shall within ten days after April 7, 1914, if such certificate shall not have been theretofore filed, or within ten days after engaging in or maintaining a place for such business, file with the State Comptroller, either in Albany or New York City, a certificate setting forth the name of the company, the place of business and when and where incorporated, or in the event of a change in the persons or change of address like certificate setting forth the facts shall within ten days thereafter be filed. Such certificates shall be duly acknowledged by the president or secretary of the corporation. A failure to perform this duty is a misdemeanor.

23. The Comptroller will be pleased at any time to advise interested parties as to the provisions and requirements of the law.

EUGENE M. TRAVIS, COMPTROLLER
State of New York
Albany, N. Y.

WILLIAM BOARDMAN,
DEPUTY COMPTROLLER,
No. 233 Broadway,
New York, N. Y.

December 1, 1919.

A Corporation's Transfer Rules

The transfer rules below are those compiled and printed by a leading corporation having its transfer office in New York City and sent out in answer to inquiries respecting its transfer requirements:

1. Registered securities of this Company, when accompanied by a proper form of assignment executed by the registered owner thereof (or his legal representative) and duly dated and witnessed, will be accepted for transfer if (a) the signature of the transferer is known at this office; or if (b) the signature of the registered holder on the assignment is guaranteed by some person, firm, or corporation acceptable to this office as a guarantor.

2. Securities registered in the name of a decedent, executors or administrators, when presented for transfer, must be accompanied by letters testamentary bearing a recent date; and, if there be a will, a properly certified copy of same must be presented for examination. A waiver from the New York State Comptroller must also be filed. When securities are registered in the name of executors or administrators, the form of registration should identify the will or estate.

3. Securities registered in the name of a corporation, society, or association, when presented for transfer, must be accompanied by (a) a copy of the resolution authorizing such transfer; and (b) a copy of the By-Law, which authorizes the execution of assignments of bonds or stock certificates so registered, both certified by the Secretary thereof and sealed with its seal. The certification should be in substantially the following form:

> I,............Secretary of the............. hereby certify that the foregoing is a true copy of a resolution adopted by the Board of Directors of said............. ......at a meeting held on the........day of........ 19....; that the attached is a true copy of a By-Law adopted by the Directors of said...................... at a meeting held on the........day of.............. 19....; that said meetings were duly called; that a quorum of said Directors was present at each of said

meetings; and that said resolution and said By-Law are now in full force and effect.

Such certificate must be acknowledged before a notary or other proper officer, who must certify that he compared the copy of the resolution and By-Law with the originals of same and that they are true copies thereof, and that he knew the person making the acknowledgment to be the officer in question.

4. When securities are to be registered in such form as to indicate that they are impressed by a trust, the instrument creating such trust must be exhibited and a certified copy thereof must be filed in this office before such registration. Securities so registered may be transferred only when accompanied by a proper form of assignment executed by all of the trustees in interest, unless the trust deed authorize less than all to pass title.

5. Detached powers of assignment must accurately describe the securities affected; and they should bear a date subsequent to the date of registration of the securities presented.

6. A registration running to two or more persons (not as trustees, executors, administrators, or partners) will be treated as an estate in common, unless it appear conclusively from the form of the registration that it is a joint estate.

7. Signatures to assignments must correspond in every respect with the registration of the security in question, except that in case of a change in the name of the registered holder subsequent to the date of registration the assignment may be signed thus:................formerly .... Or it may be signed thus: ....now...........................

8. When securities are presented for transfer on an assignment, executed under a power of attorney, the original must be exhibited and a certified copy of same must be filed in this office.

9. The signatures of notaries not known at this office must be verified by the proper County Clerk; and all documents required by the foregoing rules (except assignments which comply with Rule I) when executed beyond

the territory of the United States, must be verified by a U. S. Consul.

10. Certificates of stock left for transfer must be accompanied by Federal and New York State transfer tax stamps of two cents each per share.

11. When stock certificates are forwarded for transfer they should be sent by registered mail or express, and the name of the proposed transferee and attorney should be omitted from the assignment until it be decided that the certificates are in proper shape for transfer.

Rules of New York Stock Exchange Relating To Transfers

Article XXXIII of the By-Laws and Rules of the New York Stock Exchange relates to Transfers and Registry. It provides:

Sec. 1. Corporations whose shares are admitted to dealings upon the Exchange will be required to maintain a Transfer Agency and a Registry Office in the City of New York, Borough of Manhattan. Both the Transfer Agency and the Registrar must be acceptable to the Committee on Stock List, and the Registrar must file with the Secretary of the Exchange an agreement to comply with the requirements of the exchange in regard to registration.

Sec. 2. When a corporation purposes to increase its authorized capital stock, thirty days' notice of such proposed increase must be officially given to the Exchange, before such increase may be admitted to dealings.

Sec. 3. When the capital stock of a corporation is increased through conversion of convertible bonds, already listed, the issuing corporation shall give immediate notice to the Exchange and the Committee on Stock List may, thereupon, authorize the registration of such shares and add them to the list.

Sec. 4. The Governing Committee may suspend dealings in the securities of any Corporation previously admitted to quotation upon the Exchange, or it may summarily remove any securities from the list.

Sec. 5. After the admission of a security to dealings

upon the Exchange no change in the form of certificate, or of the Transfer Agency or the Registrar of shares, or of the Trustee of bonds shall be made without the approval of the Committee on Stock List.

Rules for Delivery of Securities

Following are the Rules for Delivery prescribed by the Committee on Securities of the New York Stock Exchange:

1. Securities admitted to dealings upon the New York Stock Exchange Registered and Transferable in the Borough of Manhattan, City of New York, in conformity with the requirements of Section 1, Art. XXXIII of the Constitution, are a delivery:

(a) Certificates of Stock for 100 shares or odd lots aggregating 100 shares, with irrevocable Assignment for each Certificate, and in the name of a member or a member's firm, registered and doing business in the Borough of Manhattan. Certificates for the exact amount or aggregating the amount of an odd lot.

(b) Or with irrevocable Assignment witnessed by a member; or correctness of signature guaranteed by a member or a member's firm.

(c) Or with irrevocable Assignment and each Power of Substitution witnessed by a member or correctness of signature guaranteed by a member or a member's firm.

(d) Coupon Bonds payable to Bearer, in denominations of $500 or $1,000 each, with proper coupons of the bond's number securely attached. Small bonds, under $500, or large bonds over $1,000, only in special transactions, except that in transactions in United States Victory or Liberty Loan coupon bonds, denominations of $10,000 when such pieces are exchangeable for $1,000 or $500 denominations, may be delivered.

The money value of a missing coupon may be substituted only with the consent of the Committee on Securities for each delivery.

Coupon Bonds exchangeable into Registered Bonds

and Convertible Bonds must carry all unpaid and unmatured Coupons.

(e) Registerable Coupon Bonds in denominations of $500 or $1,000 registered to Bearer, or when transfer books are closed with an Assignment to Bearer for each bond by a member or his firm or witnessed by a member, or the correctness of the signature guaranteed by a member or his firm, registered and doing business in the Borough of Manhattan.

(f) Registered Bonds in denominations not exceeding $10,000 properly assigned.

2. Securities contracted for in amounts exceeding 100 shares of Stock or $10,000 in Bonds, may be tendered in lots of 100 shares of Stock or $10,000 in Bonds, or any multiple of either, and must be accepted and paid for as delivered.

3. Securities with Assignment, or Power of Substitution, signed by an Insolvent, are not a delivery. During the close of transfer books, such securities held by other than the insolvent, are a delivery if accompanied by an affidavit for each certificate or bond, that said securities were held on a date prior to the insolvency.

Securities with Assignment or with Power of Substitution, guaranteed by a member or his firm, suspended for Insolvency, are not a delivery and must be reguaranteed by a solvent member or his firm.

4. Securities with an Assignment or a Power of Substitution executed by a firm that has ceased to exist are not a delivery, except during the closing of the transfer books. The assignment must be proved or acknowledged before a Notary Public. (Form No. 3, and for witness No. 9.)

Securities with either the Assignment or any Power of Substitution witnessed by a deceased person are not a delivery.

5. Securities assigned, or a Power of Substitution by a firm that has dissolved and is succeeded by one of the same name, are a delivery, when the new firm shall have signed the statement "Execution guaranteed," under a date subsequent to the formation of the new firm.

6. Securities in the name of a corporation or an institution, or in a name with official designation, are a delivery only when the statement, "*proper papers for transfer filed by assignor*" is placed on each assignment and signed by the Transfer Agent.

7. Securities with an Assignment or a Power of Substitution signed by a deceased person, Trustees, Guardians, Infants, Executors, Administrators, Assignees, and Receivers in Bankruptcy, Agents or Attorneys, are not a delivery.

8. Securities assigned by a *Married Woman* are not a delivery. A joint assignment and acknowledgment by husband and wife before a Notary Public will make such security a delivery only *while the transfer books are closed.* (Form No. 4.)

9. Securities in the name of an *Unmarried Woman,* with the prefix "Miss," are a delivery without notarial acknowledgment, when signed "Miss."

10. Securities in the name of an *Unmarried Woman* (without the prefix "Miss"), or a *Widow* are a delivery only when the Assignment is acknowledged before a Notary Public. (Form No. 5.)

11. Securities of a Company whose transfer books are closed indefinitely for any reason, legal or otherwise, the Assignment and each Power of Substitution must be acknowledged before a Notary Public. (Forms Nos. 2, 3; for witness, 8 and 9.)

12. Securities in the name of Foreign Residents are not a delivery on the day the transfer books are closed for payment of a Dividend or Registered interest, *and reclamation can only be made on that day.*

13. Securities in the name of Foreign Residents must be accompanied by an acknowledgment before a United States Consul or Morgan Grenfell & Co., London, when required by transfer agents.

Several companies having transfer offices at Grand Central Station, New York, make this requirement.

14. Certificate of stock on which the name of a transferee has been filled in error may be made a delivery during the closing of the transfer books by ruling of the Committee on Securities. Necessary form of release, cancella-

tion, and reassignment will be furnished on application to the Committee on Securities.

15. An endorsement by a member or his firm registered and doing business in the Borough of Manhattan of (or the signature as a witness by such a member of a signature to) an Assignment or a Power of Substitution, is a guarantee of its correctness. Each Power of Substitution, as well as the Assignment, must be so guaranteed, or witnessed.

16. The Receiver of Stock may demand delivery by transfer when the transfer books are open, and must give ample time in which to make transfer. The Seller may demand payment for the securities at the time and place of transfer. The Seller may make delivery by transfer when personal liability attaches to ownership.

17. When a claim is made for a dividend on Stock after the transfer books have been closed, the party in whose name the stock stands may require from the claimant presentation of the certificate, a written statement that he was the holder of the Stock at the time of the closing of the books, a guarantee against any future demand for the same, and the privilege to record on the certificate evidence of the payment by Cash or Due Bill.

18. "*Coupon Bonds issued to Bearer, having an endorsement upon them not properly pertaining to them as a security, must be sold specifically as 'Endorsed Bonds,' and are not a delivery, except as 'Endorsed Bonds.'*"

Extract from Resolutions of Governing Committee, adopted May 23, 1883.

A definite name of a person, firm, corporation, an association, etc., such as "John Smith," "Brown, Jones & Co.," "Consolidated Bank," appearing upon a Coupon Bond, and not placed there for any purpose of the Company by any of its officers, implies ownership, and is an "Endorsed Bond" under the above resolution.

19. Any endorsement on a Coupon Bond, stating that it has been deposited with a state for bank circulation or insurance requirement, may be released and release acknowledged before a Notary Public; it will then be a delivery as a "Released Endorsed Bond."

Rules and Regulations Governing the Transfer of Liberty Bonds and Victory Notes

Following are certain of the rules and regulations prescribed by Treasury Department Circular No. 141, promulgated September 15, 1919:

Transfers of Registered Bonds and Notes

11. *Assignments.*—In order to effect the transfer of a registered bond or note, the registered holder thereof, or some one duly authorized to act for him, must go before one of the officers authorized by the Secretary of the Treasury to witness assignments, must establish his identity, and in the presence of such witnessing officer must execute an assignment on the form appearing on the back of the bond or note. No alterations or erasures should be made in assignments; assignments bearing alterations or erasures not explained to the satisfaction of the Treasury Department will be rejected. *Detached assignments will not be accepted.* Assignments of registered bonds and notes should be made to the transferee, or, if desired, to the Secretary of the Treasury for transfer into the name of the transferee, who should be named. Assignments must *not* be made to "The Secretary of the Treasury for transfer," or to "The Secretary of the Treasury." Registered bonds and notes may be assigned in blank, but when so assigned are in effect payable to bearer and lack the protection which registration affords. If the assignment is made by any one other than the registered owner, appropriate evidence of the authority of such person must be produced and must accompany the bond or note, unless already on file with the Secretary of the Treasury. Powers of attorney to assign registered bonds or notes must be acknowledged in the presence of one of the officers authorized to witness assignments. Registered bonds or notes presented for transfer or exchange with assignments which are imperfect or not supported by the required authority, will be passed for transfer or exchange only when the imperfections have been corrected or the required authority furnished; if in the mean-

time the transfer books close in anticipation of an interest payment, action with respect to any such transfer or exchange will not be taken until the transfer books reopen, and interest accordingly will be paid to the holder of record at the time the transfer books closed. Reference is hereby made to the Treasury Department regulations in force in relation to United States bonds for further details as to assignments of registered bonds and notes.

12. *Assignments in case of death of registered owner.*—In case of the death of the holder of registered bonds or notes, if the decedent leave a will which is duly admitted to probate, or die intestate and the estate is administered in a court of competent jurisdiction, assignment may be made only by the duly-appointed representative of the estate. Assignments made by executors or administrators, or other duly-appointed representatives, must be supported by a duly-executed certificate under seal from the court appointing such representative, dated not more than 90 days prior to the execution of the assignments, showing the appointment and qualification of such representative and that the appointment is still in force, or, in the absence of such a certificate, by duly-certified copies of the representative's letters of appointment. If the decedent die intestate and the gross value of the estate, both real and personal, does not exceed $250 in value, or the estate of such decedent is expressly exempt from administration under the laws of the state of the decedent's domicile, assignments by the person or persons entitled to the bonds or notes under the laws of the state of the decedent's domicile may be recognized, without administration, upon presentation of proof satisfactory to the Secretary of the Treasury that the funeral expenses and debts of the decedent have been paid or provided for, and that such person or persons are entitled to the bonds or notes. Such proof will, in general, include affidavits of the persons claiming to be entitled, setting forth all the facts in detail, supported by affidavits of at least two disinterested persons, and by the official certificate or other proof of death of the registered holder; and in cases where any of the persons entitled are minors or under disability no

assignment will be permitted unless to them, or upon compliance with the Treasury Department regulations as to assignments by or for such persons. The Secretary of the Treasury may also require in any such case a bond of indemnity with satisfactory sureties.

13. *Assignments in case of disability of registered owner.*—In case of mental disability or other legal incompetency of the holder of registered bonds or notes, assignments may be made by the guardian or other legally appointed representative of the holder upon presenting proof satisfactory to the Secretary of the Treasury of his appointment and authority to assign such bonds or notes.

14. *Assignments for minors.*—Bonds or notes registered in the name of a minor or of a guardian for a minor may be assigned during minority only by the guardian legally appointed by a court of competent jurisdiction, or otherwise legally qualified, or pursuant to order or decree of a court of competent jurisdiction; provided, however, that in cases where such bonds or notes have been purchased by the natural guardian of the minor out of his own funds as a gift to the minor, or otherwise purchased for the benefit of the minor, and registered in the name of the minor, or in the name of such natural guardian for the minor, and the entire gross value of the minor's estate, both real and personal, does not exceed $250, assignments by the natural guardian for transfer or for exchange into coupon bonds or notes, may be recognized upon presentation of proof satisfactory to the Secretary of the Treasury that the proceeds of the bonds or notes so assigned are necessary, and are to be used for the support or education of the minor. The Secretary of the Treasury may also require in any such case a bond of indemnity with satisfactory sureties.

15. *Bonds or notes registered in the names of two or more persons.* When bonds or notes are registered in the names of two or more persons, in substantially the form "John Jones and Mary Jones," or "John Jones or Mary Jones," or "John Jones and Mary Jones, or the survivor," the bonds or notes are deemed to be held in joint ownership, with right of survivorship, and during the lives of the co-owners the Treasury Department will require assignments

by all in cases of transfer. Interest will be paid to any one of such co-owners. In case of the death of any such co-owner, the Department will, upon satisfactory proof of death and survivorship, recognize the survivor or survivors as owners, and will honor assignments by such survivor or survivors without regard to any administration of the estate of the deceased co-owner. Bonds and notes should not be registered in the form "John Jones or Mary Jones, or either of them," but if so registered, assignments by all the co-owners will be required in cases of transfer, and no right of survivorship will be recognized.

16. *Officers authorized to witness assignments.*—The following officers are authorized to witness the execution and acknowledgment of the assignment of United States registered bonds and notes:

Judges and clerks of United States Courts;

United States district attorneys;

United States collectors of customs;

United States collectors of internal revenue;

Assistant treasurers of the United States at Boston, New York, Philadelphia, Baltimore, Cincinnati, Chicago, St. Louis, New Orleans, and San Francisco.

Executive officers of the Federal Reserve Banks located in Boston, New York, Philadelphia, Cleveland, Richmond, Atlanta, Chicago, St. Louis, Minneapolis, Kansas City, Dallas, and San Francisco, and of the branches thereof;

Executive officers (authorized to perform acts attested under the seal of their respective institutions) of incorporated banks and trust companies in the United States (including incorporated savings banks), whether or not members of the Federal Reserve System, and the branches thereof, domestic and foreign, and of incorporated banks and trust companies in Alaska and the insular possessions of the United States doing business under Federal charter or organized under Federal law; and, in addition, managers of branches of such incorporated banks and trust companies whose signatures are certified to the Treasury Department under the seal of the parent institution;

Commanding officers of the Army, Navy, and Marine

Corps of the United States (for members of the military and naval establishments of the United States);

Diplomatic and consular representatives and commercial agents of the United States on duty abroad;

Registered bonds and notes may also be assigned at the Treasury Department, Washington. If in a foreign country, assignments should be made before a diplomatic or consular representative or commercial agent of the United States; if no such officer is accessible, the assignment may be made before a notary public, or other competent officer, but his official character and jurisdiction must be duly certified to the Treasury Department.

17. *A notary public, a justice of the peace, or a commissioner of deeds is not authorized to witness an assignment.*—In the event that none of the officers authorized to witness assignments is readily accessible, the Secretary of the Treasury will, upon application, make special provision for the particular case. In all cases the witnessing officer must affix to the assignment his official signature, title, address and seal, and the date of the assignment; officers of incorporated banks and trust companies must affix the seal of the bank or trust company. If the officer does not possess an official seal that fact should be made known and attested. Witnessing officers must require positive identification of assignors as known and responsible persons. No officer of the United States, at home or abroad, is authorized to charge a fee for witnessing the assignment of United States registered bonds or notes, and banks and trust companies generally impose no charge for the service.

18. *Presentation of registered bonds or notes for transfer.*—After the assignment of a registered bond or note has been duly executed, the bond or note should be forwarded, at the risk and expense of the owner, direct to the Secretary of the Treasury, Division of Loans and Currency, Washington, D. C., or to a Federal Reserve Bank, accompanied by specific instructions for the issue and delivery of the new bond or note, which must in all cases be in accordance with the assignments. (Use Form L. & C., 144, hereto attached, copies of which, or of a substantially simi-

lar form, may be obtained from any Federal Reserve Bank or from the Treasury Department.)

Miscellaneous Provisions Concerning Registered Bonds and Notes

19. *Change of name or correction of name of owners of registered bonds or notes.* Assignments to cover change of name or correction of name of the owner must be witnessed and acknowledged as provided in the case of transfers. If a bond or note stands in the maiden name of a woman who has since married and it is desired (1) to transfer the bond or note to another person, or (2) to correct the registration record, the bond or note should be appropriately assigned in such manner that both maiden name and married name appear in the signature to the assignment; e. g., Miss Mary Jones, now by marriage Mrs. Mary Brown. A married woman's personal (legal) name must be used and not her husband's. If an error has been made in inscribing the name of the owner of a registered bond or note, the owner should return the bond or note to the Secretary of the Treasury, Division of Loans and Currency, for correction. If the directions for the issue of such bond or note were transmitted by a bank or trust company or through a Federal Reserve Bank, the bond or note should be returned by the owner through such bank or trust company, or Federal Reserve Bank, accompanied by full explanation and instructions. Bonds or notes so returned for correction should be assigned to the owner in the correct name and assigned by him in the name as it appears on the face of the bond or note. If the correction involves a substantial change in name, the Department may require additional certification.

Lost, Stolen, or Destroyed Bonds or Notes

23. *Coupon bonds and notes* are payable to bearer and title thereto passes by delivery; if they are lost or stolen the Treasury Department can grant no relief under existing law, but if destroyed, duplicates may be issued. In

case of the loss, theft, or destruction of *registered bonds or notes*, the bonds or notes may be replaced, unless assigned in blank. All cases of lost, stolen, or destroyed bonds or notes should be reported to the Secretary of the Treasury, Division of Loans and Currency, Washington, D. C. The Treasury Department assumes no responsibility whatever with respect to coupon bonds or notes so reported, but if subsequently the coupon bonds or notes are presented for exchange or otherwise, attempt will be made to advise the person who reported the loss. In cases of registered bonds or notes reported lost, stolen, or destroyed, caveats will be entered against the transfer, exchange, or payment of such bonds or notes. In the event that bonds or notes reported lost, stolen, or destroyed subsequently are recovered, report thereof should be made to the Secretary of the Treasury. The law requires with respect to claims for the issue of duplicates of destroyed coupon bonds or notes that the bonds or notes shall be identified by number and description; accordingly, all holders of coupon bonds or notes should keep a careful and authentic record of their holdings. Full information with respect to submitting claims for the issue of duplicate bonds or notes may be had upon application to the Secretary of the Treasury, Division of Loans and Currency, Washington, D. C.

Other Miscellaneous Provisions

If the assignor is a corporation, some officer of such corporation should execute the assignment, and this office should be furnished with a certified copy of a resolution passed by the Board of Directors of the corporation. A resolution along the lines indicated in Forms 2406 and 2407 will meet the requirements of the Department.

If the assignor is a co-partnership, some member of the firm should execute the assignment, affixing his signature thereto in the following manner: "Smith, Jones & Co., a co-partnership, by.................a member of the firm."

If the assignor is an unincorporated firm, having a sole

owner, the assignment should be executed by such sole owner in the following manner: "John Brown Hardware Co., unincorporated, by.........................., sole owner."

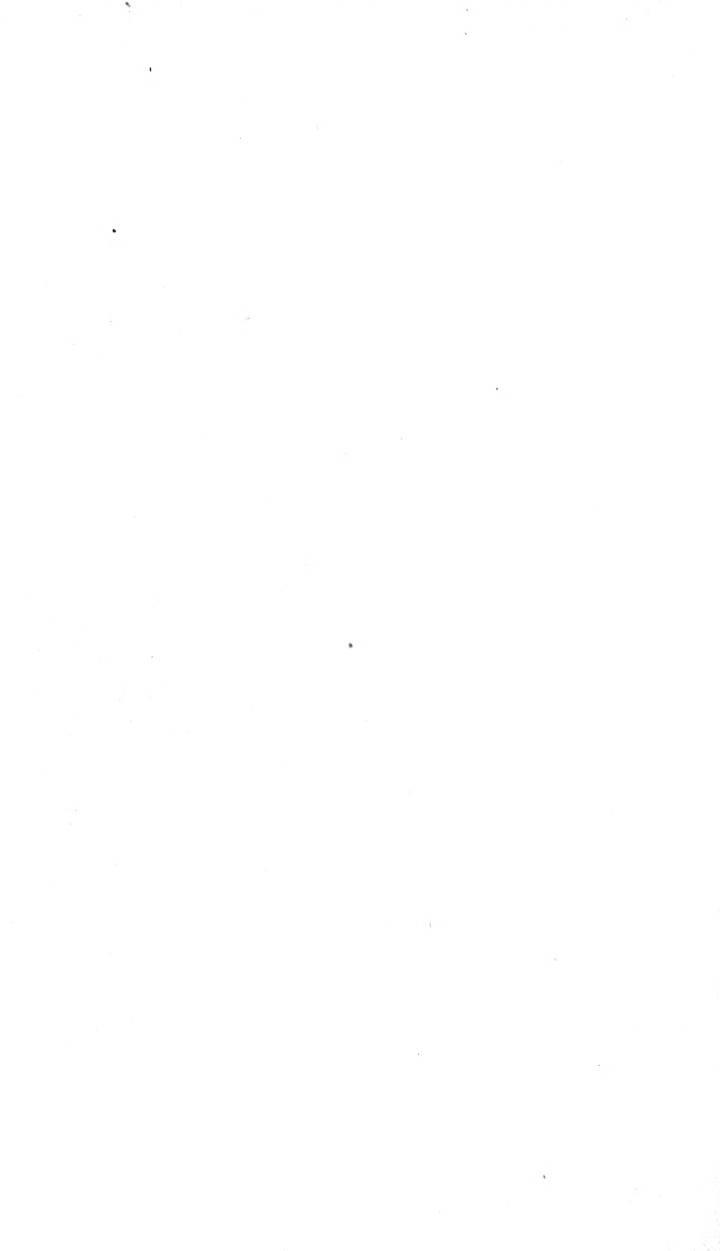
Bonds Standing in the Name of Churches, Lodges, Associations, etc.

If incorporated, it is requested that this office be furnished with a resolution of its *governing body* authorizing certain officers to make assignments.

If not incorporated but having a constitution or by-laws, it is requested that you furnish this office with an extract from so much of the constitution or by-laws as shows where the authority to deal with the funds of that ....is vested in the governing body, a resolution from that governing body similar to the one requested above should be furnished. The extract must be sworn to by two executive officers of the.............., one of whom must have custody of the records thereof, before a notary public.

On the other hand, if this...................... is not incorporated and has no constitution or by-laws, in lieu of the papers referred to above you should furnish this office with a sworn extract from the minutes of a meeting of this.............., at which it was voted to authorize...................., to assign this bond. This extract must be sworn to in the same manner as the extract above referred to.

THE END



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