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CORPORATIONS - POWER OF ATTORNEY TO TRANSFER STOCK ON THE BOOKS OF THE CORPORATION

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CORPORATIONS — POWER OF ATTORNEY TO TRANSFER STOCK ON THE BOOKS OF THE CORPORATION — Although a power of attorney to transfer stock on the books of the corporation is found almost as a matter of course on the reverse side of stock certificates, along with a form for assignment of the certificate, there is suprisingly little to be found in the authorities, as to *why* it is there. An inquiry into the reasons, if any, for such a provision is the purpose of this discussion. A

decision of last summer, by the New York Supreme Court, New York County,[1] lends present emphasis to the query. Three certificates of stock which had been indorsed in blank by the stockholders of record were lost or stolen from the registered mail. Before mailing, the brokers, who were owners, had stamped their name on each certificate in the blank left for insertion of the name of an attorney to transfer the stock on the books of the corporation. In a suit to recover the certificates from a bona fide purchaser, Rosenman, J., held that the presence of a specified firm as attorney to transfer, prevented the certificate from being "indorsed in blank" within the meaning of section 162 of the Personal Property Law,[2] so that the title did not pass by delivery, or at least that such power of attorney would put a prospective purchaser on inquiry. Here at least is a possible effect of the power of attorney to transfer. We shall refer to it later. The great mass of cases tacitly assume that this power of attorney is necessary, and will be used, and usually it is complied with as a matter of customary form, so no trouble is caused. The few cases where the question is raised usually rest content with pointing out that the articles, by-laws, or certificate provide for transfer of stock only on the books of the corporation by the registered owner thereof in person, or by his attorney,[3] that such is a reasonable regulation, and must be complied with.[4] There is abundant authority that a corporation may make reasonable regulation as to the mode of transfer of its stock,[5] and where by regulation stock is made trans-

[1] Sun Insurance Office Ltd. v. United States Fidelity & Guaranty Co., (N. Y. S. Ct.) N. Y. L. J., Aug. 11, 1936, p. 387. (Decided Aug. 11, 1936. This report of the case gives only the decision of the court. The facts set out were obtained from plaintiff's counsel, through the Commerce Clearing House Service.)

[2] 40 N. Y. Consol. Laws (McKenney 1917), § 162 (Uniform Stock Transfer Act, § 2): "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. . . ."

[3] GERSTENBERG, MATERIALS OF CORPORATE FINANCE 77 (1924), gives the United States Steel Corporation by-law, which is typical: "Transfer of shares—Shares in the capital stock of the Company shall be transferred only on the books of the Company by the holder thereof in person, or by his attorney, upon surrender and cancellation of certificates for a like number of shares."

[4] Mechanics' Banking Assn. v. Mariposa Co., 26 N. Y. Super. (3 Rob.) 395 (1865); Kjellman v. Scandia Fish Co., 128 Ill. App. 544 (1906); Shirley Farmers' Grain & Coal Co. v. Douglass, 130 Ill. App. 285 (1906).

[5] CHRISTY, TRANSFER OF STOCK, § 30, p. 60 (1929); 1 MORAWETZ, PRIVATE CORPORATIONS, 2d ed., § 169 (1886); BALLANTINE, PRIVATE CORPORATIONS, § 145

ferable only on the books in person or by attorney, the corporation may insist on compliance, at least as to being a prerequisite to transfer of the stock on the books.[6]

But that does not answer our query. Whether or not required by the by-laws, of what useful purpose is the power of attorney? For if there is no useful purpose, why should it be made a part of the by-laws, especially, as will be indicated later, if it may cause trouble?

I.

The provision for power of attorney is involved with the other common provisions that the stock is transferable only on the books of the corporation, and it is in this connection that we may find some explanation of the function the power of attorney was intended to serve. Some of the earlier cases reflect the idea that the book transfer requirement meant what it said, that it was a necessary act of the owner himself to execute a transfer on the books, in order to transfer title.[7] By accepted principles of agency, any act he could do himself, he could give a power of attorney to another to do in his stead. The theory of such cases would seem to be that the registered holder remains legal owner until there is a transfer on the books, and that the act of transfer on the books is an act of ownership, exercisable only by the legal owner or his attorney. Some cases have held that compliance with by-law mode of transfer is necessary for a valid transfer between the parties.[8] Other decisions have said that transfer without registry on the books would be binding between vendor and vendee, but not as to the corporation, or third parties,[9] some saying that equitable title to the stock passes on delivery of the certificate.[10] What are

(1927); Sylvania & G. Ry. v. Hoge, 129 Ga. 734, 59 S. E. 806 (1907); Dane v. Young, 61 Me. 160 (1872).

[6] Supra notes 4 and 5.

[7] Thus in Mechanics' Banking Assn. v. Mariposa Co., 26 N. Y. Super. (3 Rob.) 395 at 402 (1865), the court said: "he [owner of record], and he alone, was the party to call upon the defendant [the corporation] to allow him to exercise his *jus dispondi* over the stock; nay, more, McDowell himself [the owner] by the very conditions upon which he held the stock, could demand of the defendant its concurrence and aid in the exercise of his right to dispose of the stock only upon the surrender of his own certificate, and by his own execution of an act of transfer upon the books of the defendant at its office. . . ." And in Shirley Farmers' Grain & Coal Co. v. Douglass, 130 Ill. App. 285 at 289 (1906), it is asserted that, "The transfer of the stock on the books is no idle form. The title to the stock is created thereby. . . ."

[8] Dane v. Young, 61 Me. 160 (1872). By-law requiring transfer to be in writing, with signature witnessed by cashier.

[9] Shirley Farmers' Grain & Coal Co. v. Douglass, 130 Ill. App. 285 (1906); Realty & Rebuilding Co. v. Fillmore Arcade Co., 65 Cal. App. 757, 224 P. 1020 (1924); Hexter v. Shahan, 66 Colo. 156, 180 P. 92 (1919).

[10] State ex rel. Hyland v. Superior Service Laundries, 158 Wash. 1, 290 P. 427

probably the more advanced views now hold that full rights to the stock, whether equitable or legal, pass with the certificate, and that the provision for register of transfer on the books is only for the protection of the corporation, to enable it to treat the registered holder as owner for payment of dividends, and other corporate rights.[11] Although there has been no complete alteration of view in all the states, and although the states are by no means agreed, it will be seen that the constant tendency of the law has been to render the certificates of stock more negotiable. This trend has reached its culmination in the states which have adopted the Uniform Stock Transfer Act,[12] by which legal title to stock is transferable only by delivery of indorsed certificate,[13] which cuts off outstanding equities.[14] The object of the act was to render the law more in accord with mercantile custom, and make the certificate as much as possible representative of the shares.[15] Some writers and one court have now suggested that the stock certificate is now completely negotiable.[16]

But what has happened to the *raison d'être*, which might once have been found to justify the existence of the power of attorney to transfer on the books? The use of the provision in by-laws and on certificates has persisted,[17] practically unquestioned. But by the better rule, it is no longer a necessary act of the owner to transfer stock on the books of the corporation, to give complete ownership of the stock to the transferee.

2.

Let us look for a moment at the transfer of ownership of a certificate of stock. It is frequently asserted that in the absence of statute, charter, or by-law regulations on transfer of stock, title to stock can be transferred by any mode sufficient in law to pass absolute title to

(1930); Walker Caldwell Prod. Co. v. Menefee, (Tex. Civ. App. 1922) 240 S. W. 1023.

[11] Johnston v. Laflin, 103 U. S. 800, 26 L. Ed. 532 (1881); Hudson Trust Co. v. American Linseed Co., 190 App. Div. 289, 180 N. Y. S. 17 (1920); 67 L. R. A. 656 (1905); Benson v. Saffert-Gugisberg Cement Const. Co., 159 Minn. 54, 198 N. W. 297 (1924).

[12] Now adopted in twenty-four states and Alaska. 6 UNIFORM LAWS ANNOTATED (1936 Supp.); 32 COL. L. REV. 894 (1932).

[13] Uniform Stock Transfer Act, § 2, 6 U. L. A. 8 (1922).

[14] Ibid., § 5.

[15] Ibid., §§ 1, 5; Commissioners' Notes, 6 UNIFORM LAWS ANNOTATED 2, 10 (1922).

[16] BALLANTINE, PRIVATE CORPORATIONS, 473 (1927); 1 WILLISTON, SALES, 2d ed., 717 (1924); Peckinpaugh v. H. W. Noble & Co., 238 Mich. 464, 213 N. W. 859 (1927).

[17] CHRISTY, TRANSFER OF STOCK, § 63, p. 114 (1929).

any other incorporeal personal property.[18] Therefore, fundamentally, all we should need for property represented by a document would be assignment of the document with intent to pass title, and delivery. This is precisely what is provided by the Uniform Stock Transfer Act.[19] This should deprive the transferor of *all* his interest in the property, including the right to register the transfer on the corporate books, and at the same time vest *all* of these ownership rights in the transferee. Why should we provide by contract that there must also be a "power of attorney to transfer on the books of the corporation?" One writer has suggested that the second "transfer" on the books is superfluous, and used only for convenience of the corporation.[20] Why not come to the point and say that the only transfer necessary is by the certificate, and regard the stock transfer book more properly as a record of transfers, on which the corporation will have by contract a right to rely? Then it will be easier to say that no power of attorney is necessary, and that the transferee can in his own right have the stock "transferred" or rather the transfer recorded on the books.[21] That a right vested in the transferee is the practical effect of giving the assignee an irrevocable[22] power of attorney to transfer, is pointed out by Lowell and Lowell, *Transfer of Stock*.[23] This "right to transfer on the books," which is said to be given by the power of attorney, normally is and in substance should always be in the real owner. It can be said to pass on mere assignment and delivery by virtue of being a right inherent in the ownership, or that by the assignment to the transferee the transferor gives implied authority to transfer on the books. Some of the above reasoning may not be applicable in states where statutes are

[18] BALLANTINE, PRIVATE CORPORATIONS 456 (1927); CHRISTY, TRANSFER OF STOCK, § 30 (1929); Young v. New Pedrara Onyx Co., 48 Cal. App. 1, 192 P. 55 (1920); Lipscomb's Admr. v. Condon, 56 W. Va. 416, 49 S. E. 392, 67 L. R. A. 670 (1904).

[19] Uniform Stock Transfer Act, § 1, 6 U. L. A. 2 (1922).

[20] Kenneson, "Purchase for Value Without Notice," 23 YALE L. J. 193 at 201 (1914).

[21] See Uniform Stock Transfer Act, § 1; Commissioners' Note, 6 UNIFORM LAWS ANNOTATED 2 (1922).

[22] Such a power to a purchaser of stock is irrevocable. CHRISTY, TRANSFER OF STOCK, § 64, p. 115 (1929).

[23] LOWELL and LOWELL, TRANSFER OF STOCK IN PRIVATE CORPORATIONS 43 (1884): "where the power is irrevocable, the attorney does not really act as the substitute of the principal . . . because the principal has, in fact, transferred to the agent a power to act in his own right. It is not merely that the principal . . . has contracted that he will transfer the stock as the attorney desires, or even that he will accept as his own the future act of the attorney; but he has, in effect, granted away the right to sell, and the attorney transfers by virtue of a right that has become vested in himself."

interpreted to make transfer on the books mandatory to pass title,[24] but the latter theory, of implied authority to transfer on books from the assignment to the transferee, would seem to be a valid basis for doing away with the requirement of a power of attorney there. If the mere assignment should convey all the rights of the assignor to the assignee, it should also give implied authority to the assignee to transfer on the books, if by statute such transfer is necessary to complete title.[25]

It has frequently been said that the transfer of stock in a corporation is a novation of a debtor[26] or contract[27] relationship between the corporation and the stockholder, and that the transfer on the books completes this novation, evincing the consent of the corporation.[28] Modern concepts attached to ownership of stock might be as satisfactorily explained by considering the stock certificate as evidencing title to certain rights in the owner, by virtue of his part ownership of the corporation, rather than by virtue of a debtor or contract relationship between corporation and stockholder.[29] Certainly the corporation cannot normally refuse to give its "consent" to the transfer of ownership, when the transfer is made in the prescribed manner,[30] so the idea of consent to a novation is fictitious. But the novation theory, even if accepted, offers no obstacle to abolition of the requirement of the power of attorney, since the request to give the corporate "consent" could as well come from the transferee as the transferor, the right to make the request vesting in the transferee by virtue of his real ownership of the stock, or by virtue of the implied authority from the transferor, as mentioned above, without necessity for a power of attorney.

Bills of lading and warehouse receipts also would appear to involve contract relations between the parties, and furnish a good analogy to stock certificates in the business world's manner of handling. Yet they are held to represent the goods completely, and to pass full title on

[24] Realty & Rebuilding Co. v. Fillmore Arcade Co., 65 Cal. App. 757, 224 P. 1020 (1924); De Nunzio v. De Nunzio, 90 Conn. 342, 97 A. 323 (1916); Walker Caldwell Producing Co. v. Menefee, (Tex. Civ. App. 1922) 240 S. W. 1023.

[25] 1 MORAWETZ, PRIVATE CORPORATIONS, § 192 (1886); and see below.

[26] Talbot v. Talbot, 32 R. I. 72, 78 A. 535 (1911).

[27] Kenneson, "Purchase for Value Without Notice," 23 YALE L. J. 193 (1914); 1 MORAWETZ, PRIVATE CORPORATIONS, § 197, p. 194 (1886).

[28] Supra, notes 26, 27.

[29] 3 CORP. PRAC. REV., No. 9, p. 67 (1931).

[30] BALLANTINE, PRIVATE CORPORATIONS 455 (1927); Citizens' Bank of Shelbyville v. Mutual Trust & Deposit Co., 206 Ky. 86, 266 S. W. 875 (1924); Commercial Bank v. Kortright, 22 Wend. (N. Y.) 348 (1839).

assignment and delivery.[31] A power of attorney is not required on subscription warrants.[32]

The discussion sometimes found to the effect that the corporation should demand the power of attorney be signed, and should be sure of its authenticity,[33] is only to guard against the liability which the corporation is subject to for transfer of stock on a forged indorsement.[34] If the power of attorney be no longer set up as a requirement, the corporation will be as fully protected by making certain of the genuineness of the indorsement signature.[35] Allowing the transferee to compel transfer on the books in his own right would not prevent the corporation from continuing to treat the registered holder as entitled to corporate rights of voting, dividends, etc., so the power of attorney is not required for that purpose. Any claims of the corporation against the stock as a lien can effectively be reserved by stipulations on the certificate, without power of attorney, as should be done in any case,[36] and as is provided in the Uniform Stock Transfer Act.[37]

On the other hand, are there any interests of the transferor of stock which would require the power of attorney to transfer on the corporate books for protection? Securing immediate transfer on the books, to avoid attachment on the books by creditors of the transferor, where this is still possible,[38] would be to the interest primarily of the transferee, rather than the transferor. Immediate transfer on the books is seldom secured, or demanded, by the vendor, under the present practice, and if desired to escape possible stockholder's liability, could as well be secured without power of attorney as with it, by having the transfer recorded at the time sale is made, or if necessary bringing action against the vendee to compel him to make the transfer on the

[31] GODDARD, BAILMENTS AND CARRIERS, 2d ed., 76, 192 (1928).

[32] Butts v. King, 101 Conn. 291, 125 A. 654 (1924).

[33] CHRISTY, TRANSFER OF STOCK, § 44, p. 85 (1929); Western Union Telegraph Co. v. Davenport, 97 U. S. 369, 24 L. Ed. 1047 (1878); Palmer v. O'Bannon Corp., 253 Mass. 8, 149 N. E. 112 (1925).

[34] CHRISTY, TRANSFER OF STOCK, § 242, p. 435 (1929); BALLANTINE, PRIVATE CORPORATIONS 476 (1927); Western Union Telegraph Co. v. Davenport, 97 U. S. 369, 24 L. Ed. 1047 (1878).

[35] It is customary now with large corporations to require the signature to be guaranteed by a bank or trust company. CHRISTY, TRANSFER OF STOCK, § 44, p. 85 (1929).

[36] CHRISTY, TRANSFER OF STOCK, § 22, p. 46 (1929).

[37] Uniform Stock Transfer Act, § 15, 6 U. L. A. 20 (1922).

[38] The weight of authority is that an unregistered transfer is valid as against a subsequent attaching or execution creditor of the transferor, in absence of estoppel or fraud. BALLANTINE, PRIVATE CORPORATIONS 465 (1927). Prior attachments on the corporate books will be valid, unless seizure of certificate or injunction against transfer of the certificate is required by statute, as by the Uniform Stock Transfer Act, § 13, 6 U. L. A. 17 (1922); BALLANTINE, PRIVATE CORPORATIONS 466 (1927); note, 67 L. R. A. 656 (1905).

books.[39] The one primarily interested in transfer on the books in the normal case is not the corporation, nor the transferor, but the transferee, and the right to so transfer on the books should belong to him without necessity for an added power of attorney or consent from a disinterested party.[40]

3.

The conclusion submitted is that the charter or by-law requirement of a power of attorney to transfer stock on the books of the corporation is a hangover from outmoded concepts of ownership and transfer of ownership in stock of a corporation, with no present sound basis, and that it could as well be done away with. Direct authority for such a proposition is negligible. Ballentine states that "it seems that a power of attorney is not necessary."[41] And Fletcher states "But in the absence of such a provision [requiring transfer on books in person or by attorney], a power of attorney is not necessary, for authority to make a transfer on the books, either on part of the transferor or transferee, is to be implied from an assignment of the certificate of stock."[42] The case authority cited to support these propositions does not do so, however.[43] Where the by-laws of a national bank require only that the stock be transferred on the books, with no mention in the case that the transfer be by the holder in person or by attorney, it has been held that a person showing a prima facie legal right to claim such transfer may demand it of the officer in charge.[44] There is also authority that there need be no transfer on the books to give stockholders full rights, unless so required by charter or by-laws.[45] By analogy, these cases would also apply to the use of a power of attorney.

[39] Johnston v. Laflin, (C. C. Mo. 1878) Fed. Cas. No. 7393, affd. 103 U. S. 800, 26 L. Ed. 532 (1881).

[40] "The name to be inserted concerns only the purchaser. The transfer of the stock on the books does not concern the seller; its object is the protection and convenience of the assignee. Hogg v. Eckhardt, 343 Ill. 246." 3 CORP. PRAC. REV., No. 9, p. 67 at 68 (1931).

[41] BALLANTINE, PRIVATE CORPORATIONS 454 (1927).

[42] 12 FLETCHER, CYCLOPEDIA CORPORATIONS, § 5491, p. 312 (1931).

[43] Both of these writers cite the case of Johnston v. Laflin, both district and Supreme Court decisions. (C. C. Mo. 1878) Fed. Cas. No. 7393, affd. 103 U. S. 800, 26 L. Ed. 532 (1881). But the problem of necessity of the power of attorney was not raised in that case. The stock certificates involved had been indorsed in blank, with a power of attorney, and the statements that the assignee is entitled to have the stock transferred assumes that the assignment has included a power to transfer. Fletcher also cites Webster v. Upton [91 U. S. 65, 23 L. Ed. 384 (1876)], which likewise does not say that the vendee has a right to make the transfer without a power of attorney.

[44] Case v. Citizens' Bank, 100 U. S. 446, 25 L. Ed. 695 (1880).

[45] Sylvania & G. Ry. v. Hoge, 129 Ga. 734, 59 S. E. 806 (1907); Hilton v.

4.

If we accept the proposition that assignment and delivery of the certificate pass full title to the assignee, as under the Uniform Stock Transfer Act,[46] it may be arguable that such full title should include the right to demand transfer on the books, even though a by-law does say such transfer shall be "in person or by attorney." If the by-law provision could be held unreasonable because unnecessary, or contrary to the statute, such result should follow.[47] This may seem to be more of a leap, but there is dicta which would lend support. In *Sargent v. Franklin Insurance Co.*, a by-law providing that certificates should be transferable only at the office of the company, by the holder personally, or by attorney, and that the transfer be authenticated by the president was held invalid.[48]

A Rhode Island court, in holding valid a gift to a trustee of stock certificates, as to some of which no power of attorney was given, without transfer on the books,[49] gave as a reason that "the delivery of the certificates or assignments makes the donee substantially *dominus* of the shares, since he needs no further assistance from the donor, and can compel registration by the corporation."[50] A California case held

Sylvania & G. Ry., 8 Ga. App. 10, 68 S. E. 746 (1910); Sayles v. Bates, 15 R. I. 342, 5 A. 497 (1886).

[46] Uniform Stock Transfer Act, § 1, 6 U. L. A. 2 (1922).

[47] 65 A. L. R. 1159 at 1164 (1930); McNulta v. Corn Belt Bank, 164 Ill. 427, 45 N. E. 954 (1896); Driscoll v. West Bradley & C. Mfg. Co., 59 N. Y. 96 (1874).

[48] 8 Pick. (25 Mass.) 90 at 96 (1829), in a suit for damages for failure to transfer, Putnam, J., said: "We think it cannot be maintained, that the right to the shares in the capital stock of this corporation cannot be transferred without a literal compliance with the by-laws. It is personal property. . . . It might be conveyed by will; it might descend from an intestate to his heir. It may be assigned without deed, by delivery of the certificate with an indorsement upon it for a valuable consideration. . . . And in such cases the legatee, heir, or assignee would be entitled to have a transfer made in the books, and to a certificate of his property. A by-law which limits the transfer of the stock to be made only at the office personally or by attorney, and with the assent of the president, would be in restraint of trade and contrary to the general law of the Commonwealth, which permits the right to personal property and incorporeal hereditaments to be transferred in various other ways. The purchaser or other person entitled should make his right known to the corporation, that it may be entered upon their books; to the end that they may have proper evidence to whom the dividends or profits should be paid." In this case there was a power of attorney to a partnership, and the demand was made by one of the partners, so the statement as to the power of attorney in the case may be dicta.

[49] By weight of authority, a valid gift of stock may be made by delivery of a certificate without indorsement or power of attorney. BALLANTINE, PRIVATE CORPORATIONS 455 (1927); Herbert v. Simson, 220 Mass. 480, 108 N. E. 65 (1915). *Contra*: Matthews v. Hoaglund, 48 N. J. Eq. 455, 21 A. 1054 (1891).

[50] Talbot v. Talbot, 32 R. I. 72 at 99, 78 A. 535 at 546 (1911). There were

that title to stock passed by a contract of exchange, and that the true owner could resort to equity to compel the corporation to register on the books.[51] The certificates themselves seem to have been in the hands of a third party pledgee, and it does not appear that a power of attorney was given. As is so commonly found, the courts in these cases do not recognize the power of attorney as presenting any distinct issue, and hence the language which would apply to the question of necessity of transfer in person or by attorney is not wholly satisfactory authority.

5.

By this time, the reader has undoubtedly asked why all this academic pother over a formality of transfer which is easily and customarily complied with and which, when complied with, creates no trouble. But the law should provide a sound and just result for the unusual as well as the commonplace problem. In the unusual case the thoughtless or accidental failure to follow the common practice in regard to the power to transfer may lead to undesirable results. In the recent New York case referred to at the beginning of this comment,[52] it would not require a great stretch of the imagination to suppose that the name was stamped on as an attorney to transfer more as a matter of routine, than with any definite intent to restrict the negotiability of the otherwise blank indorsed certificate.[53] As is sometimes true, the reported facts[54] do not reveal whether the stock involved was governed by a by-law or other regulation requiring transfer on the books by the holder in person or attorney. If the question of the necessity of the

two transfers of stock in question and it appears from the statements of fact that as to the "Gordon stock" the donor had executed both a separate assignment and a power of attorney, but as to the "Silversmith's stock" only an assignment and not a power to transfer was executed. By-laws required transfer on books in person or by attorney. As both gifts were held valid, the quoted language seems to support the proposition that in spite of a provision for transfer by holder in person or by attorney, a transferee could compel registration of stock for which no power to transfer had been given.

[51] Young v. New Pedrara Onyx Co., 48 Cal. App. 1, 192 P. 55 (1920).

[52] Sun Insurance Office, Ltd. v. United States Fidelity & Guaranty Co., (N. Y. S. Ct.) N. Y. L. J., Aug. 11, 1936, p. 287. See note 1, supra.

[53] If it be argued that this was an intended effect, to restrict the negotiability of the certificate, and that this is one useful function of the power of attorney, the answer would be that as much protection against a bona fide purchaser acquiring title to a lost or stolen certificate under Uniform Stock Transfer Act, §§ 5, 7, 6 U. L. A. 10, 12 (1922) [see BALLENTINE, PRIVATE CORPORATIONS 473 (1927)], can be had with as little trouble by not using a blank indorsement. In either case the person whose name is filled in must take action to give the transferee a transfer on the books, since under traditional rules, only the attorney named could compel transfer on the books.

[54] Supra, note 1.

power of attorney had been considered and decided, a possible finding, under either of the hypotheses suggested above, that the power was not necessary would have given support to defendant's contention that the filling in of the power was mere surplusage, and could be disregarded.

Certainly in *Mechanic's Banking Association v. Mariposa Company*,[55] existence of the by-law requirement allowed the corporation to make a technical defense excusing their refusal to transfer the stock on the books. In this case the name of the corporation secretary had been filled in as attorney, and under the orders of other corporation officers, he refused to act as attorney, leaving the transferee high and dry. The corporate transfer agent may also lawfully refuse to fill in his name on a blank power.[56] Such refusal would be an especial inconvenience where certificates are mailed in for transfer on the books. Legal results founded on accident, on mere formality, or on arbitrary action of some individual may often work injustice. Dissenting Judge Monell, in the *Mariposa Company* case, pointed out that the equitable rights of the real owner of the certificate should not be defeated by the arbitrary action of the corporation.[57] Suppose the transferor, after having through some inadvertence failed to execute a power of attorney to transfer,[58] capriciously refuses to execute one on the transferee's request? To be sure, the latter could bring a bill in equity to force such action,[59] but such a suit seems an unreasonable nuisance price to secure compliance with a formality which we may conclude serves no useful purpose. It is submitted that it would be much better to avoid such possibilities by elimination of the unnecessary and potentially obstructive formality.

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[55] Mechanics' Banking Assn. v. Mariposa Co., 26 N. Y. Super. (3 Rob.) 395 (1865).

[56] Palmer v. O'Bannon Corp., 253 Mass. 8, 149 N. E. 112 (1925).

[57] Mechanics' Banking Assn. v. Mariposa Co., 26 N. Y. Super. (3 Rob.) 395 (1865).

[58] This, of course, is not the normal occurrence, especially where a form on the reverse of the certificate is used, but would be more likely to occur when an assignment on a separate paper is used, as in Talbot v. Talbot, 32 R. I. 72, 78 A. 535 (1911), as was explained above, note 50.

[59] Herbert v. Simson, 220 Mass. 480, 108 N. E. 65 (1915).