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THE STATUTORY RESTRICTIONS ON THE RIGHT OF CONTRACT IN THE FEDERAL EMPLOYER'S LIABILITY ACT.

Since the federal government and most of the states have enacted Employer's Liability Acts, it becomes important to know to what extent the employer's liability is lessened or modified when the employer provides a relief department which pays a certain benefit to the employee when he is injured or killed in the course of his employment.

Of course, the employer's liability in such cases depends greatly on the wording of the particular statute, yet the case of *McNamara v. The Washington Terminal Co., Wash. Law Rep.*, Vol. 38, No. 22, p. 343, is of particular interest, in that it established, in the interest of railway employees, the constitutionality of such a clause in an act which provides: "That no contract of employment, insurance, relief benefit, or indemnity for injury or death, entered into by or on behalf of an employee, nor the acceptance of any such insurance, relief benefit, or indemnity by the person entitled thereto, shall constitute any bar or defense to an action brought to recover damages for personal injuries to or

death of such employee; provided, however, that upon the trial of such action against any common carrier the defendant may set off therein any sum it has contributed toward any such insurance, relief benefit, or indemnity that may have been paid to the injured employee, or in case of his death to his personal representatives."

The right of contract is involved in all such cases as this, but that restrictions may be placed on such right in the interest of the general public, or for the preservation of the public health, morals or safety, is unquestioned. *Holden v. Hardy,* 169 U. S., 366; *Paterson v. Bark Endora,* 190 U. S., 169.

Statutes abolishing the fellow servant's rule in the interest of railway employees are not unconstitutional. *Herrick v. Railroad,* 31 Minn., 11; *Railroad v. Mackey,* 127 U. S., 205. It has also been settled by many adjudications that where a railway company maintains a relief department and the company contributes toward the relief fund, the injured employee has an election, either to accept the benefit afforded by the relief department, or to maintain his action against the company for the injuries sustained; but if he accepts the benefit from the relief department after his cause of action arises, he is estopped from bringing an action against the company for damages. *Johnson v. Railroad Co.,* 163 Pa. St., 127; *Hamilton v. St. Louis, K. & N. W. R. Co.,* 118 Fed., 92. The courts hold that this is not a contract exempting the company from future negligence, as the cause of action has already arisen. Neither is it against public policy, as the acceptance by the employee of the benefit of the contract, so far from securing to the employer immunity from liability for damages sustained by reason of his own negligence or that of his servants and agents, in fact, gives to the employee a certainty of some compensation, whether the injury was caused by the employer's negligence or not, with the option of the employee of pursuing his ordinary legal remedy if he elects to do so, instead of receiving the benefit which his contract affords. *Johnson v. Railroad Co., supra.*

But a statute which provides that the acceptance by the employee of the benefit of the contract shall not estop him from recovering damages, notwithstanding he may have given a release, has been held to be unconstitutional. *Sturjess v. At. Coast*

Line R. R., 80 S. C., 167; *At. Coast Line Co. v. Dunning*, 166 Fed., 850. The courts so hold on the ground above given, that the acceptance of the benefit of such a contract is not against public policy, but is for the benefit of the injured employee, and a statute which attempts to take away this right of contract is unconstitutional.

As has been stated, the principal case sustained the validity of a statute which took away this right of contract; but the federal statute in that case contained a provision that the common carrier should have the right of set-off of any sum it had contributed toward the relief fund, and thus the court distinguished it from the above cases where the employee has the right of election, but is estopped from bringing an action for damages if he elects to accept the benefit.

It seems, on principle, that the case was correctly decided. Congress has the constitutional power to make the carrier responsible to employees for injuries sustained through its negligence or the negligence of its servants and agents. *Railroad v. Mackey, supra;* and where Congress acting within its constitutional powers, provides a right or confers a benefit which did not before exist, it may also provide that no contract by which that right of benefit may be waived shall be of any validity. *McGuire v. Railway*, 131 Ia., 340.

As experience shows, the employee in the time of injury is not on an equal footing with the employer to contract, and often from dire necessity, he is forced to release his right of action against the company in order to receive the benefit afforded by the relief fund. The working of this statute does not bring hardship upon the employer as he is entitled to set-off all he has contributed toward the fund, and thus is not subjected to pay twice for the same injury.

It must also be remembered, in passing upon the validity of such a statute, that a corporation is a creature of the State, and, therefore, its right to contract is subject to be regulated and restricted by its creator, as the power to create necessarily implies the power to regulate. *Railroad v. Bristol*, 151 U. S., 556; *Railroad v. Matthews*, 174 U. S., 96.

ATTORNEY'S SALE OF RIGHT TO USE NAME GROUND FOR DISCIPLINE.

That an attorney has no right to sell the use of his name as such, and that such action constitutes professional misconduct calling for the discipline of the court is the result of a recent decision of the Appellate Division of the New York Supreme Court in the case of *In re Rothschild* reported in the *New York Law Journal*, Vol. XLIV, No. 41. The respondent in this case gave a furniture company a power of attorney to sign his name without limitation to threatening letters to creditors and thus hasten their collection. In view of the fact that the present instance was the first in which the court had been called to pass upon such an offence, the guilty attorney's punishment was fixed at suspension from active practice for one year.

There is no doubt, inasmuch as attorneys are but officers of the court, as has been universally decided by the courts of this country in a vast number of cases, among which are the leading cases of *Ex parte Garland*, 4 Wall. (U. S.), 333, and *In re Cooper*, 22 N. Y., 67, that professional misconduct or neglect of duty as an attorney is good ground for suspension or disbarment. Such is the general doctrine as laid down in *In re Kirby*, 84 Fed., 606, and in *New York Bank v. Stryker*, 1 Wheeler Crim. Cases (N. Y.), 330.

In the case of *In re Kirby, supra*, one Kirby was convicted of having in his possession certain governmental stamps which he knew to be stolen. Although this act was not a felony, Congress had attached to it an infamous punishment. The court in passing judgment, quoting from *Ex parte Wall*, 107 U. S., 265, 273, said:

"It is laid down in all the books in which the subject is treated that a court has power to exercise a summary jurisdiction over its attorneys to compel them to act honestly towards their clients and to punish them by fine and imprisonment for misconduct and contempt and, in gross cases of misconduct, to strike their names from the roll."

So in the case of the *New York Bank v. Stryker, supra*, where the respondent was convicted of fraudulently issuing a check, it was said:

"If an attorney, solicitor or counsellor acts wrongfully or dishonestly in his office as such, he is answerable, and may be punished by the loss of his office."

But the question naturally arises: When is an attorney guilty of professional misconduct?

In the majority of the states of the country, statutes have been passed defining what constitutes such professional misconduct as will warrant the court in acting. But whether these statutes conclude the court from exercising its general power and thus punishing guilty attorneys for other than statutory causes is a mooted question, to which the weight of authority in this country is opposed. Such is the ruling in *Ex parte Wall, supra,* and *In re Boone,* 83 Fed., 944.

In the former case, one Wall was convicted of engaging in an unlawful and riotous gathering, which broke into the county jail in Hillsborough County, Florida, took therefrom, by force, a prisoner and hanged him to a tree nearby. The United States Supreme Court decided that this was sufficient cause for disbarment in as much as the defendant thereby, showed such an utter disregard and contempt for the law, which as a sworn attorney he was bound to support, as to totally unfit him for his position, and this, despite the fact that there was no positive statute calling for the exercise of the court's jurisdiction.

And likewise, the Federal Court in the case of *In re Boone, supra,* held that its right to discipline the attorneys practicing in its court remained unabridged by any statute.

But there is some authority opposed to this doctrine, the courts of Indiana and North Dakota holding that the right of disbarment is governed exclusively by statute. Thus, in the case of *Ex parte Smith,* 28 Ind., 47, where the defendant was found guilty of contempt of court, it was held that he could only be disbarred from practice by proceedings, which were regulated by statute, and not by any summary process of the court.

An even stricter rule was laid down and adhered to by the North Dakota courts in the case of *In re Eaton,* 4 N. D., 514, in which it was held that, where a statute enumerates grounds for

the disbarment of an attorney, no other grounds can be considered by the court. In this case, one Eaton made a false statement to another attorney in the presence of the court; he also innocently carried away a paper from the files of the court and destroyed it. In as much as there was no express provision in the statute of disbarment covering these acts, the court held that it could not act.

The New York Court, however, in the principal case, has shown no hesitancy in accepting the doctrine of the United States Supreme and Circuit Courts and holds that it has jurisdiction in such cases even without an award of jurisdiction by a positive statutory enactment. And in as much as the attorneys are but officers of the court, it seems no more than just that the courts should be allowed to regulate the actions of their officers.

Arthur Rothschild, the respondent in this case, executed a power of attorney to the Empire Furniture Co., allowing two employees of that company to use his name, unrestrained, upon all matters pertaining to the collection of the furniture company's outstanding bills. This power of attorney was for one year and in return for the use of his name, the respondent received one hundred dollars worth of furniture.

Justice Ingraham, in rendering the judgment, suspending the attorney for one year, said:

"We think it inconsistent with the performance of the duties assumed by an attorney when he accepts his office, to sell the right to use his name as an attorney; and to enter any arrangement by which others, who are not directly connected in business with him as partners or clerks are authorized to sign letters in his name or to use his name in the transaction of their business, is a serious violation of an attorney's duty to the State and is serious professional misconduct."

However, after considering the opinion of Judge Ingraham, there seems to be no debatable ground upon which the decision can be attacked. The attorney receives his title as such only because he is possessed of special mental attainments peculiar to the law, and these, it is expected, will be upheld by him while in practice. They cannot be upheld by an unprofessional appointee of his and any attempt on his part to vest these appointees with the power, which is coincident to his title, is certainly without the

spirit of good faith, which the members of the bar were justified in expecting of the respondent when they admitted him to practice.

THE ADMISSIBILITY IN EVIDENCE OF PRIVILEGED COMMUNICATIONS BETWEEN HUSBAND AND WIFE.

The defendant in *People v. Dunnigan,* 128 N. E., 180 (Mich.), was convicted of murder. The record discloses the fact that while defendant was in custody charged with some petty offense, one W. was admitted to his cell and in the course of a conversation, sugested that if the defendant wished to communicate with his wife that he, W., would deliver the message. Thereupon the defendant addressed a letter to his wife in which he used language that was construed as a confession of guilt in committing the homicide. W., instead of delivering the letter to the defendant's wife, surrendered it to the sheriff, who used it in evidence against the defendant. It was held that such a self-incriminating letter written by accused and sent to his wife, but not received by her, being intercepted by the sheriff, is not privileged within the statute which prohibits examination of spouses respecting communications between them.

Mr. Wigmore, in his treatise on Evidence, says, that the history of the privilege of communication between husband and wife is involved in a tantalizing obscurity. It was understood to exist in some shape before the end of the sixteenth century, and was firmly established by the latter part of the seventeenth century. So this principle, hitherto existing rather in principle than in rule, practically begins its existence and is defined in terms by the legislation of that period. *Wigmore on Evidence,* Sec. 2333. The earliest reported case in point is *Lady Ivy's Case,* 10 How. St. R., 555 (1684), which held that a husband will not be permitted to testify to communications from his wife.

It is difficult to distinguish the development of the privileged communication rule as to husband and wife, from that of the rule of the disqualification of either spouse as a witness. The earliest mention of the latter rule is found in an *Anonymous Case,* 1 B. & G., 47 (1651), which held that a wife would not be permitted to testify against her husband. The court said in

King v. Cliviger, 2. D. & E., 263 (1788), that a wife shall not be called to give evidence even tending to criminate her husband. She cannot be a witness either for or against him. She cannot testify for him because their interests are identical, and she cannot testify against him because it is against the policy of the law. The same was held in *O'Connor v. Marjoribanks,* 4 M. & G., 435 (1842), and it is now a firmly established rule both in England and in the United States. Most states have statutes prohibiting the examination of either spouse in regard to communications between them during the existence of the marital relation.

The courts universally hold that the preservation of the sacredness and confidence of the matrimonial relation, being a matter of public policy, the disclosure by either spouse of the confidential communications between them, should be prohibited. There is some conflict upon the application of that rule when such communication is in the form of a letter and that letter is in the hands of a third person.

There are two distinct lines of decisions; one holding that the communication is in itself inherently privileged and that the privilege can be waived only by the writer. *Mercer v. State,* 40 Fla., 216; *Scott v. Commonwealth,* 94 Ky., 511; *Wilkerson v. State,* 91 Ga., 729; *Maynard v. Vinton,* 59 Mich., 152; *Mitchell v. Mitchell,* 80 Tex., 101; *Selden v. State,* 74 Wis., 271.

Mercer v. State, supra, holds that the communication is privileged regardless of how the third party came into its possession. The court in *Scott v. Com., supra,* said that a letter from a husband to his wife cannot under any circumstances be used in evidence. In the language of *Maynard v. Vinton, supra,* the privilege is the privilege of the person making the communication and can be waived only by him personally. This rule rests upon public policy and the seal which the law has fixed upon communications between husband and wife during the existence of the marital relation. It remains forever, unless removed by both parties. The rule is followed by *Derham v. Derham,* 125 Mich., 109.

On the other hand, what seems to be the weight of authority is found in the cases which follow 1 *Greenleaf Evid.,* Sec. 254 (a), which is as follows: Though papers and other subjects of evidence may have been illegally taken from the possession of the party against whom they are offered, or otherwise unlawfully obtained,

this is no valid objection to their admissibility if they are pertinent to the issue. This court will not take notice of how they were obtained, whether lawfully or unlawfully, nor will it form an issue to determine the question.

In *State v. Buffington,* 20 Kan., 599, the defendant's wife had voluntarily surrendered the letter from the defendant to the prosecuting witness and the court said that as the letter is now in the custody and control of a third person, it is admissible in evidence. The same was held in *State v. Hoyt,* 47 Conn., 518; *State v. Hayes,* 140 N. Y., 484; *State v. Ulrich,* 110 Mo., 350. The tendency of the privilege is to prevent the full disclosure of the truth and it is therefore to be strictly construed. *Lloyd v. Pennie,* 50 Fed., 4.

The judge refused to admit the letters in evidence because of the peculiar facts in the particular case in *Bowman v. Patrich,* 32 Fed., 368.

There is no question but that the defendant in the present case intended the letter as a confidential communication to his wife and that this evidence was obtained by a culpable breach of the confidence reposed in W., and also in the collusion of the sheriff. Therefore, as this method of obtaining a conviction is most reprehensible and is plainly calculated to discourage and even destroy the sacred confidences of the matrimonial state, it seems that the interests of public policy demand that the court take cognizance of the facts that were before it and, following *Bowman v. Patrich, supra,* exclude the evidence.

INFANT'S RIGHT TO DAMAGES FOR INJURIES CAUSED BY ELECTRIFIED THIRD RAIL.

As a power conductor, the electric third rail is in many cases the most practicable, and under certain conditions, the only possible method of operating trains open to modern transportation lines. These rails invariably carry a powerful current, usually alternating, and because complete insulation would render them entirely useless, they constitute in their position on the ground and similarity to common road rails a menace to life, calling for peculiar precautions and safeguards, not demanded from owners of ordinary property.

In the case of *Riedel v. West Jersey and S. R. Co.*, 177 Fed., 374, the defendant company was held not liable for injuries sustained by a child, who in a suit by his father as next friend, based a claim on the alleged negligence of the company. The company in this case legally operated its line by means of power conveyed through an uncovered third rail, having its right of way securely fenced against intruders. The plaintiff, an eight-year-old infant, pulled a bolt from the fence and thus opened a way into the defendant's premises, where, in the capacity of a trespasser, he sustained the injuries complained of. The court found the defendant to have taken all necessary precautions to safeguard the public and to have been without negligence in any particular. Judgment was consequently entered for the defendant company.

The case of *McAllister v. Jung*, reported in 122 Ill. App., 138, involving questions similar to those found in the principal case above, and preceding it in point of time, was decided in favor of the defendant company. In this case, the plaintiff, a thirteen-year-old boy, climbed the vertical supporting trusses of an elevated railroad in search of a lost ball, and was injured upon the third rail at the top of the structure. Stress was laid by the court upon the fact that the very construction of the elevated road was in itself not only a notice and warning that no one should go upon it, but also a practical method employed by the company to render acess by the public almost impossible, and although the very danger to be thus incurred, or a child's predilection to climb, might induce a trespasser to venture upon the structure, the company could not thereby be held as negligent when the trespasser was injured.

The court laid down as a proposition of law in *Sutton v. West Jersey R. Co.*, 73 Atl. (N. J.), 256, that a company is not under any obligation to an intentional trespasser, except that no wilful injury shall be done him, and as a consequence the defendant company in this case could not be held liable as negligent where the deceased, a boy of thirteen years, had left a public highway and trespassed upon the defendant's well-fenced third rail track.

In the only other third rail case which reached a court of last resort, the defendant company, under the circumstances, was held liable. In this case, *Anderson v. Seattle & Tacoma Inter-*

urban R. R. Co., 36 Wash., 387, the plaintiff was wrongfully ejected from one of the defendant's cars, and as a result, injured by falling upon a third rail. The case may be distinguished from those preceding it, in that the plaintiff here was an adult, and not a trespasser.

Granting that the owner of property, upon which is so dangerous an instrumentality as a highly electrified third rail, may be held to an extraordinarily high degree of care in protecting the public, it would seem that the rule of reasonable care must govern, and that when, in the opinion of the court, such care has been exercised, actual negligence must be proven to render him liable for injuries sustained by reason of such third rail. "Reasonable care does not require such precautions as will absolutely prevent injuries or render injuries impossible." *Sjogrens Hall*, 53 Mich., 274.

It is also a fundamental legal proposition, that trespassers do not have such rights upon property of others as may be necessarily due those of the public who are on such property by right, of the owner's permission. "One is under no duty, as to a mere trespasser, to keep his premises in safe condition, even though the trespasser be an infant." *Frost v. Eastern R. R. Co.*, 64 N. H., 220; *Hortenstine v. Va. & Carolina R. R. Co.*, 102 Va., 914.

"Third rail" cases may be clearly distinguished from the "spring gun" cases, in that the third rails are placed upon property for a specific economic purpose, not even incidentally induced by malicious motives looking toward an intentional injury to trespassers.

A review of cases in point, and of those analogous, indicates that, where the degree of care exercised by the owner of property is commensurate with the dangerous character of instrumentalities thereon, trespassers, even though infants, will not be allowed damages for injuries caused by such instrumentalities.

APPROPRIATION OF A RAILROAD'S RIGHT OF WAY FOR ANOTHER USE.

In the case of the *Portland Railway, Light & Power Co. v. City of Portland*, 181 Fed., 832, it was held that where a city has only general charter powers to open, lay out, and establish streets, and to condemn property therefor, it has no authority to condemn

a part of a railroad's right of way in order to construct a street parallel with the same.

As a general rule, of course, property cannot be appropriated for two uses. A city has by its inherent power right to condemn certain lands for public use and such power may be conferred by operation of general laws and judicial tribunals. As to what is the proper and legal meaning of a public use two theories have been advanced. The one, that for a public use to exist there must be a literal use or right to use on the part of the public, generally without the payment of compensation therefor. While the other theory holds that a public use means a public benefit, utility or advantage and one not limited by actual use by the public in the property. The generally accepted view is that the latter theory is correct.

In *Bachus v. Lehanan,* 11 N. H., 19, it was held that the right of a city to condemn for public use must be conferred by general laws or by judicial tribunals. But when it comes to a city condemning one use for another, such authority must be specifically conferred. This principle is laid down emphatically in *Milwaukee & St. Paul Ry. Co. v. Faribault,* 23 Minn., 167, and is reiterated in *Appeal of Tyrane Township School District,* 15 Atl. (Pa.), 667, where it was held that a municipality has no authority to lay a street over grounds acquired by a railroad company. In the case of *New Jersey Southern Railroad Co. v. Commonwealth,* 39 N. J. L., 28, this principle was also recognized. *Lewis on Eminent Domain,* Sec. 266, holds with numerous authorities that a part of a railway right of way may not be taken longitudinally nor can any interference be made with the railway right-of-way. *Chicago, Rock Island & Pac. Ry. v. Town of Lake,* 71 Ill., 333.

There is, however, an exception to the general rule, where the second use does nothing to diminish or damage the prior use, and in many cases the courts have ruled according to this exception. Strictly speaking, the power of eminent domain is continuing and inextinguishable, and if the public good requires it, all property is subject to its exercise, and a second appropriation may be made where it is not inconsistent with the first and does not tend to deprive the first person acquiring it of his rights. The *South Carolina Railroad Co. v. Steiner,* 44 Ga., 546. In condemning property for a second use the circumstances and sur-

rounding conditions, as well as the needs of the community must be reckoned with. The relative importance and necessities of the two uses must be weighed, together with the extent of harm done. Certainly no municipality acting under general powers could lay out a highway through a public reservoir so as to ruin it; *In re Boston & Albany Ry.*, 53 N. Y., 574; yet, on the other hand, if a tract of land held for public purposes was so broad that it was impracticable to go around it, even though it could not be crossed without some serious harm, it might be held lawful for the way to cross it. *Wood v. Macon & Brunswick,* 68 Ga., 539. *In re Boston and Albany R. R., supra.*

The Federal Court in the *Oregon Short Line Ry. Co. v. Postal Telegraph Cable Co.*, 111 Fed., 845, lays down a rule which is extremely broad in giving a city the power of condemnation. There it was held that property already dedicated to a public use stands upon the same footing as other property and is subject to condemnation as is other property, provided the second use shall not interfere with the first use. This principle is also laid down in the case of the *Northwestern Telephone Exchange Co. v. Chicago, Minnesota, St. Paul Ry. Co.*, 76 Minn., 334.

Thus it seems to be a well settled principle that a general charter does not confer power on a municipality to convert part of one use to another use, and further that the legislative intent must appear by express words or necessary implication. Such implication never arises except as a necessary condition to beneficial enjoyment and efficient exercise of power granted and then only to the extent of necessity. *Hicok v. Hine,* 23 Ohio, 523.

A city's right to exercise a power of eminent domain rests upon the operation of constitutional provisions, the restriction of agencies selected for the exercise of the power and the question of public use. These all operate as a limitation upon the exercise of the power. The right of a city to condemn for a second use is limited to the taking of a portion of a crossing only and does not extend to the appropriation of an entire tract. Through necessity, in extreme cases, there may be an appropriation of one use for another, as in the case of a public street crossing a railroad track.. This is implied by general authority conferred upon cities

without express provision upon the subject. *Little Miami Ry. Co. v. City of Dayton,* 23 Ohio St., 510.

It seems that from the preponderance of cases noted the general inclination is not to allow one use to be condemned in part for another use. At the same time, should the second use not endanger or destroy the first one, and public convenience demand it, then there may be an appropriation for a second use.

PRIORITY OF RIGHT BETWEEN UNRECORDED TRANSFEREE OF CORPORATE STOCK, AND ATTACHING CREDITOR.

In this age of rapid development of business through the means of corporate organization, and the ever-increasing issue and sale of corporate stock, the very interesting question presents itself as to the priority of right between an unrecorded transferee of corporate stocks and an attaching creditor of the transferor. This question arose in the case of *State Banking Co. v. Taylor,* 127 N. W., 590. The statutes of South Dakota (Sections 423 and 445) provide that "transfers of stock shall not be valid except as between the parties thereto, until the same are entered on the books of the corporation; and such books shall be kept open for the benefit of any stockholder, member or creditor." Under these circumstances the court held that "notwithstanding such statutory requirements, the rights of a tranferee of corporate stocks, though the transfer is not entered on the stock books, is superior to that of a subsequent attaching creditor of the transferor, whether the creditor had notice of the transfer or not."

The courts in the different states are in irreconcileable conflict on the question whether or not the unregistered transferee is protected in his purchase. The courts of eleven states of the union, including the courts of Iowa, Illinois, California, Maine, Massachusetts, and the United States Circuit Court in *Johnson v. Laflin,* 103 U. S., 800, have held that an unregistered assignment of corporate shares is not good as against an attaching creditor of the assignor. This view is based, in some cases, on express statutory enactments, *Isbell v. Graybill,* 19 Col. App., 508; in others on implications in the statutes, requiring the transfers to be recorded on the books of the corporation, *Central National Bank v. Williston,* 138 Mass., 244; while a third class base their doctrine on

the theory that a statute, requiring the transfer to be made on the books of the company, is in the nature of a recording act, and is for the benefit of the public as well as the corporation, *Ft. Madison Lumber Co. v. Bataviana Bank*, 71 Iowa, 370.

On the other hand, a slightly larger number of the courts, in absence of a statute making the registry of the transfer on the books of the company a condition precedent to the completion of a sale of the stock, hold that an unrecorded transfer is not affected by a subsequent attachment, or execution levied on it by a creditor of the transferor. The courts of Delaware, Nebraska, New Hampshire, Louisiana, Mississippi, West Virginia, Texas, Tennessee, Rhode Island, New York, New Jersey, Missouri, and the federal courts take this view, and hold that in absence of a statutory provision requiring that an assignment be entered on the books of the company to effect a sale, a purchaser, in the absence of fraud, takes the legal title upon the assignment of the stock. *Everett v. Farmers' and Merchants' Bank*, 117 N. W., 401; *Cook on Corporations* (Sect. 486) says "the better rule and the rule that will ultimately prevail is, that an unrecorded transfer of stock is, in this respect, like an unrecorded deed of land, and gives title as against subsequent attachments or executions, even though the latter are levied in ignorance of the unrecorded transfer or deed."

The rule that he who purchases a certificate of stock for a valuable consideration is protected in his ownership of the stock, and is not affected by a subsequent attachment or execution levied on such stock for the debts of the registered stockholder, is based on the grounds that the statutes requiring the registry of the stock, are not in their nature public recording acts, but are for the benefit of the corporation and the purchaser, and not for the benefit of creditors of the stockholder. *Thurber v. Crump*, 89 Ky., 408. A review of the following cases will show that it is the opinions of the courts that a transfer by assignment of certificates leaves nothing in the assignor which can be reached by a subsequent attachment or execution, although the stock remains in his name on the books of the corporation, and that it is immaterial that the by-laws or rules of the corporation require the transfer to be made on its books: *Baldwin v. Canfield*, 26 Minn., 43; *State Insurance Co. v. Gennett*, 2 Tenn. Ch., 166; *Lipscom v. Cendon*, 56 W. Va., 416; *Mapleton Bank v. Stanwood*,

8 Idaho, 740; *Gilbert v. Manchester Iron Mfg. Co.*, 11 Wend. (N. Y.), 625.

From a consideration of the foregoing authorities, the better rule would seem to be that where the governing statute does not attempt to raise the books of the corporation to the dignity of public registration documents, and does not, by express terms, or by implication, make a transfer on the books of the corporation necessary to effect a sale of the stock, the fact that such transfer has not been made, will not give an attaching creditor of the transferor, priority over the rights of his transferee.