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Corporations

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terms of the deed are not discharged by acceptance of the deed. Accordingly, the Court of Appeals of Ashland County held that when a buyer contracted for the purchase of land and for the construction of a house in accordance with detailed plans and specifications, and where the buyer accepted the deed, paid the consideration, and moved into the house, the execution of the contract was not merged in the deed as to latent defects which a normal inspection would not reveal. Thus the buyer was permitted to recover for such defects.²

ROBERT C. BENSING

CORPORATIONS

Of the twenty corporation cases reported in 1956, four are of sufficient interest to warrant discussion. Two of these cases involve the Uniform Stock Transfer Act and two cases are concerned with questions of control of the corporation. None of the cases involves the application of the new General Corporation Law, which became effective October 11, 1955.

Transfer of Shares

*Estate of Merrick*¹ is the first case in Ohio on the effect of Section 10 of the Uniform Stock Transfer Act.² The Act provides that an attempted transfer of title to a certificate, without delivery, has the effect of a promise to transfer, and the obligation of the promise shall be governed by the local law governing the formation and performance of contracts generally. Thus an endorsement without delivery is ineffective in the gift situation, but might raise a promise to deliver where consideration has passed to the shareholder. In the *Merrick* case the deceased endorsed a certificate to his nephew, but did not transfer title on the books of the corporation and retained possession of the certificate until his death. The court held that this amounted to an attempt to transfer title. The only evidence of consideration was the fact that the deceased lived in a house belonging to the nephew and made no rental payments. The court pointed out that the use of a home, provided by a close relative, is normally presumed to be a gift. However, the rule is not applicable in a case like this, where the recipient of the service did not live as part of the same family unit as the nephew. Since there is no presumption of a gift of the use of the house, the court presumed that there must have been a contract under which the

¹99 Ohio App. 187, 132 N.E.2d 122 (1955).

²Galvin v. Keen, 100 Ohio App. 100, 135 N.E.2d 769 (1954). This case is discussed in detail in the REAL PROPERTY section of this Survey, *infra*.

uncle promised to transfer the stock in return for the use of the house. The court also held that such a contract could be enforced in the probate court against the executor and awarded title to the shares to the nephew.

Only the nephew can tell us if there was such a contract, and his mouth is closed by the Dead Man Statute.³ To those who believe strongly in the policy of the Dead Man evidence rule the result of this case will appear unsound, and yet the case seems to accord with the intent of the draftsmen of the Uniform Act.

Brownwell v. Columbus Clay Mfg. Co.,⁴ raises the important question of the situs of corporate shares for purposes of *in rem* jurisdiction. The common law rule was that the share and the certificate were two separate things, and the share was subject to the jurisdiction of the state of incorporation, and not the state where the certificate was located. In this case, the plaintiff, an Ohio resident, claimed title in an Ohio court to shares in an Ohio corporation. The certificate was in the hands of a California executor. The corporation was before the court, and the executor was served by publication under a statute which authorizes constructive service where a defendant claims an interest in property within Ohio. The issue here is whether a share in an Ohio corporation is property in Ohio.

The court pointed out that the Uniform Stock Transfer Act does not expressly resolve the problem. However, the effect of the Act is to make the certificate negotiable.⁵ The policy of the Act is to make the certificate more than just evidence of the share. In a very real sense, the certificate is the share. The court concluded that by adopting the Uniform Act, Ohio had repudiated the common law rule, and the situs of the share was California, the location of the certificate. The action was therefore dismissed for lack of jurisdiction.

Problems of Voting Control

The Ohio statutes require cumulative voting and permit classified or staggered boards of directors. In *Humphreys v. Winous Co.*⁶ the Supreme Court, in a 4 to 2 decision, upheld the right of a corporation to completely nullify cumulative voting by setting up a board composed of three men, each elected for three years, with staggered terms. The back-

¹ 133 N.E.2d 919 (Ohio Prob. 1955)

² OHIO REV. CODE § 1705.13.

³ OHIO REV. CODE § 2317.03.

⁴ 131 N.E.2d 696 (Ohio C.P. 1955).

⁵ Thus the thief can transfer good title to an indorsed certificate. UNIFORM STOCK TRANSFER ACT § 7.

⁶ 165 Ohio St. 45, 133 N.E.2d 780 (1956).