

# LEGISLATION

## THE UNIFORM STOCK TRANSFER ACT IN MISSOURI

### INTRODUCTION

When Missouri enacted its GENERAL AND BUSINESS CORPORATION ACT in 1943 it also adopted the UNIFORM STOCK TRANSFER ACT.<sup>1</sup> Although the legislature enacted most of the Uniform Act substantially as promulgated by the Commissioners on Uniform State Laws,<sup>2</sup> its version of section 13, which relates to attachment and levy upon shares of stock, differs considerably from that set forth in the Model Act, which provides:

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.<sup>3</sup>

Section 13 invokes a thorough-going change in the rules pertaining to attachment and levy of shares of stock.<sup>4</sup> Prior to the Uniform Act practically all jurisdictions provided that attachment might be effected by serving notice upon the appropriate corporate officer in the corporation's domicile,<sup>5</sup> most of them in addition holding that this was the only manner in which the attachment might be made.<sup>6</sup> Although the Model Act expressly puts an end to the old rule, the Missouri legislature chose to retain the rule that attachment might be made by notice to the corporation, making the seizure of the certificate an additional preferred, but not essential, method. Missouri's equivalent of the Uniform Act's section 13 is as follows:

In addition to the remedies provided by Sections 513.115 and 513.120 and related sections of the Revised Statutes

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1. MO. REV. STAT. §§ 403.010-403.240 (1949).

2. 6 UNIFORM LAWS ANNOTATED (1922).

3. *Id.* at 17.

4. In this note attachment and levy will be considered as one inasmuch as the rules governing either are the same under both the Model Act and the Missouri Act.

5. 11 FLETCHER, CYCLOPEDIA CORPORATIONS 94 (1931).

6. *Contra*: Simpson v. Jersey City Contracting Co., 165 N.Y. 193, 58 N.E. 896 (1900).

of Missouri (1949) providing for attachment or execution upon shares of stock, attachment or execution against shares of stock for which a certificate is outstanding shall be valid when such certificate is actually seized by the officer levying the attachment or execution against other personal property: *Provided*, that a levy of attachment or execution resulting in actual seizure of such certificate shall take precedence over all other remedies provided by law when made at substantially the same time as such other levy, and prompt notice thereof given to the corporation issuing such shares. In case of levy under said sections 513.115 and 513.120 of the Revised Statutes of Missouri 1949, the innocent holder for value and without notice of any certificate of shares of stock subject to such levy may, in addition to the assertion of claim as now provided for under Section 513.130 of said statutes, notify the corporation issuing such shares that he has acquired rights to the certificate therefor, and in the event that such notice shall be given prior to actual sale of said shares under execution, it shall be the duty of the corporation to forthwith notify the officer making the levy or attachment, of the assertion of such adverse claim and such notice shall act as a stay of further proceedings in connection with such attachment or levy, and it shall be the duty of the party asserting such claim to promptly obtain an adjudication of the rights of the parties. Until such rights are adjudicated the corporation shall not be compelled to issue a new certificate for such shares of stock until the old certificate is surrendered to it. [Sic]

Sections 513.115 and 513.120 expressly continued in force by the above section are typical of the provisions to be found in most jurisdictions prior to the Uniform Act. They provide for levy and attachment by notice to the corporation by the levying officer.<sup>5</sup>

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7. MO. REV. STAT. § 403.170 (1949). The conjunctive "and" or "or" appears to be missing from the last sentence of this section.

8. "When an execution shall be issued against any person, being the owner of any shares or stock in any bank, insurance company or other corporation, it shall be the duty of the cashier, secretary, or chief clerk of such bank, insurance company or other corporation upon the request of the officer making such execution, to furnish him with a certificate under his hand, stating the number of rights or shares the defendant holds in the stock of such bank, company or corporation, with the encumbrances thereon." MO. REV. STAT. § 513.115 (1949). "The officer upon obtaining such information or in any other manner may make a levy of such execution on such rights or shares by leaving a true copy of such writ with the cashier, secretary or chief clerk, and if there be no such officer, then with some officer of such bank, association, joint stock company or corporation, with an attested certificate by the officer making the levy that he levies upon and takes such rights and shares

### THE OPERATION AND EFFECT OF MISSOURI'S SECTION 13

1. *The case of the purchaser before levy who gives notice to the corporation before execution sale is held.*

As is pointed out in the Commissioner's Note to section 13 in 6 UNIFORM LAWS ANNOTATED,<sup>9</sup> prior to the adoption of the UNIFORM STOCK TRANSFER ACT the innocent purchaser for value frequently was not protected against a levy made by notice to the corporation, even though the transfer of the certificate had been made to the purchaser before levy was made at the corporation. This hardship arose from the fact that the purchaser was not deemed to acquire title to the share until the transfer had been made on the books of the corporation. Although no case has passed upon the point as yet, this harsh rule appears to have been changed in Missouri so long as the purchaser communicates the notice of his purchase to the corporation before the execution sale is held. Sections 1 and 5 of the Uniform Act as adopted in Missouri<sup>10</sup> operate to pass title to the innocent purchaser for value even though the transferor had no right of possession nor right to transfer the certificate. In addition, the effect of these sections is to effect a transfer of title as soon as the properly indorsed certificate is delivered to the transferee, without the necessity of transfer on the books of the corporation.<sup>11</sup> Missouri's version of section 13, as set forth above, states that when the innocent holder for value gives notice to the corporation that he has acquired rights to the certificate this operates

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to satisfy such execution." Mo. REV. STAT. § 513.120 (1949). "Shares of stock in any bank, association, joint stock company or corporation, belonging to any defendant in any writ of attachment, may be attached in the same manner as the same may be levied upon under execution." Mo. REV. STAT. § 521.250 (1949). These provisions apply only to the stock of domestic corporations. *Richardson v. Busch*, 198 Mo. 174, 95 S.W. 894 (1906); *Armour Bros. Banking Co. v. St. Louis Nat. Bank*, 113 Mo. 12, 20 S.W. 690 (1892). Although the Missouri Supreme Court has not passed upon this point, the term "domestic corporation" has been held to comprehend those corporations which, although incorporated elsewhere, conduct their "internal business" in Missouri. *Dean Rapid Tel. Co. v. Howell*, 162 Mo. App. 100, 144 S.W. 135 (1912); *Smith v. Pilot Min. Co.*, 47 Mo. App. 409 (1891). § 513.130 referred to in § 403.170 is a provision, applicable to seizures of personal property generally, that anyone other than the judgment debtor who claims ownership of the property levied upon may do so by affidavit in which case the levying officer may require the creditor to post a bond to indemnify the officer against a possible liability for conversion.

9. p. 18 (1922).

10. Mo. REV. STAT. §§ 403.050, 403.090 (1949).

11. See Commissioners' Note, 6 UNIFORM LAWS ANNOTATED 2 (1922).

as a stay of proceedings and prevents an execution sale. Thus although this section does not expressly so provide the inference certainly is that if the transferee before levy gives notice of his acquisition before the execution sale is held, the transferee before levy will prevail over the attaching or levying creditor. This result seems the only one possible because, although sections 1 and 5 do not specifically say that a transferee before levy takes free of the levy which precedes transfer upon the books of the corporation, since sections 1 and 5 generally do pass title immediately, it would appear that at the time the levy is made the debtor-transferor no longer has any attachable interest in the shares; *i.e.* the transferee has already become the owner of all his interest. Thus a purchaser in this situation clearly seems to be one who could not only assert his rights under the provision of section 13, but could assert them successfully.

*2. The case of the purchaser before levy who fails to notify the corporation before the execution sale is held.*

In the case of the buyer who acquires the certificate before levy is made by the old method of notice to the corporation, but who fails to notify the corporation of his acquisition before the execution sale is held, the purchaser at the execution sale appears to take in preference to the non-notifying transferee. Again the result in such a situation is not expressly indicated in the Act, and at first blush it might appear anomalous that a transferee who had apparently acquired a good title to the share by indorsement and delivery of the then unencumbered certificate should subsequently be divested of it, but the last sentence of Missouri's section 13 seems to indicate that result. It says: "Until such rights are adjudicated the corporation shall not be compelled to issue a new certificate for such shares of stock until the old certificate is surrendered to it." This rather ambiguous sentence is obviously inserted for the protection of the corporation. Apparently, it means that if rights are asserted by a transferee prior to the execution sale it shall not be compelled to issue a new certificate to the purchaser thereat unless the rights of the transferee first be judicially pronounced non-existent or the old certificate be surrendered to it. The purpose of this requirement is to prevent double liability of the corporation—to the transferee and to the buyer on execution. However,

by implication if no rights are asserted prior to the execution sale it shall be compellable to issue a new certificate to the buyer on execution even though the old certificate remains outstanding. If the corporation is compellable in such a case it must be because the possibility of double liability could not exist, that once the execution sale has occurred a transferee of the old certificate who has given no notice loses his rights. The above seems the inescapable result in this situation under Missouri's statute. The last sentence could not be taken to mean that the corporation shall not be compelled to issue a new certificate unless prior to the execution sale either rights of a transferee are asserted and adjudicated or if no rights whatsoever are asserted the old certificate is surrendered to it because this construction would conflict with the prior portion of the section making it clear that the seizure of the old certificate is not necessary for an effective levy, which can only be of value to the creditor if an execution sale is held.

Assuming the former construction of Missouri's section 13 is the correct one in the above factual situation, no hardship will be worked upon the purchaser before levy in the bulk of cases. There will always be a considerable time interval between the levy and subsequent execution sale, and in the case of an attachment the interval will be even longer. Within this period the average investor will have made his application for transfer upon the books of the corporation. However, in the more infrequent case where the investor neglects to promptly apply for a transfer, the legislature inflicts a harsh penalty for his delay. It seems unjust to say that the delay of a few weeks in applying for a transfer amounts to "laches" on the part of the transferee. Moreover, the Missouri Act inflicts a hardship upon the short term investor who expects to hold the stock for only a short period during which no dividends will be forthcoming, for in order to protect himself he is required to make a formal application for transfer just as the long term investor is required to do.

3. *The innocent holder for value who acquires after levy, but notifies the corporation before an execution sale is held.*

The transferee who acquires the certificate after levy has been made by means of notice to the corporation, but who fulfills the

requirements of an innocent holder for value and notifies the corporation of his acquisition before an execution sale is had, appears to take precedence over the attaching creditor. Again this result is not expressly spelled out in the statute nor has the Missouri court so held as yet, but this seems to be the reasonable implication of section 13. In speaking of who may assert rights prior to the execution sale, the statute speaks of "the innocent holder for value and without notice." Such language would be unnecessary if section 13 provided solely for assertion of rights by a transferee prior to levy, for any transferee before levy would perforce be without notice of the levy which has not yet occurred. Thus the statute seems to mean that any bona fide purchaser who happens to enter his claim before the execution sale is held is protected against the levy. Although the above appears the most probable result under section 13 that result is not absolutely certain, however. The Missouri court might possibly find that the legislature in speaking of the innocent holder for value meant only the innocent holder for value before levy as distinguished from a donee or purchaser before levy who did not act bona fide, *i.e.* one who shared with the debtor the anticipation of an impending levy and acted in concert with the debtor to frustrate the expected action of the creditor. To bolster this interpretation the court might point out that at the time of the levy the debtor who subsequently transfers to a bona fide purchaser did have an attachable interest which before the adoption of the Uniform Act was conclusively acquired by the creditor simply by notice to the corporation. The above interpretation of "innocent holder for value" is rather weak, however. Such an interpretation would necessarily prejudice the rights of a bona fide donee before levy, and there seems to be no reason why the legislature should desire such a result. Moreover, since the transferee for value or otherwise before levy could at most have a suspicion that levy was imminent (*i.e.* he could not have *knowledge* of an event that had not yet happened), he would still be an innocent holder for value within the meaning of that term in negotiable instrument cases, and hence the only person barred from asserting his rights if he acquired before levy would be the donee, and if he is bona fide, as pointed out, there appears no reason why the legislature would want to prejudice him. Hence, it

seems probable that the court would prefer the innocent purchaser despite his acquisition after levy so long as he notifies the corporation before the execution sale takes place.

*4. The purchaser after levy who fails to notify the corporation before the execution sale.*

It is in the situation where the bona fide purchaser acquires the certificate after levy has been made and fails to notify the corporation of his acquisition before the execution sale is held that Missouri's version of the UNIFORM STOCK TRANSFER ACT most definitely differs from the Model Act. More properly it should be said that the Model Act is designed to prevent such a situation. The Commissioners' version of section 13 quite effectively insures that no attachment or levy will take place until the certificate has been taken out of circulation. Seizure of the certificate<sup>12</sup> or its surrender to the corporation of course achieves that result, and the third alternative method, the enjoining of the transfer of the certificate by the holder, fairly insures that there will be no subsequent transfer, for few debtors would choose to risk the imposition of contempt proceedings against them.<sup>13</sup> In contrast, no seizure of the certificate or other measure calculated to prevent its further transfer is required as a condition precedent to levy in Missouri. Thus some unsuspecting vendee may purchase the debtor's certificate only to discover that the shares it represents were sold on execution two years before! The conclusion that no impounding of the certificate is necessary for an effective execution sale is inescapable in view of the express retention of sections 513.115 and 513.120 as methods of attachment and levy. Moreover, however inconsistent the result may be with the purpose of the Uniform Act, which endeavors to give the stock certificate the characteristics of a negotiable instrument, the purchaser at the execution sale must prevail over the innocent holder for

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12. That seizure under the Uniform Act means continued possession by the levying officer and not a mere momentary manucaption with subsequent relinquishment of possession to the holder see *Mulock v. Ulizio*, 102 N.J.L. 251, 131 Atl. 622 (Sup. Ct. 1926).

13. As a practical matter, whenever the court has the in personam jurisdiction necessary for the injunction it will also direct the surrender of the certificate as authorized by section 14.

value. Otherwise it would be impossible to realize on the attached property since there would always be a possibility of a subsequent transfer of the original certificate.

#### THE "SITUS" OF THE SHARE

Although there has as yet been no appellate interpretation of section 13 by the Missouri courts in a situation involving the rival claims of an innocent holder for value and an attaching creditor, section 13 was challenged by the debtor-owner of attached shares in *State ex rel. North American Co. v. Koerner*.<sup>14</sup> The plaintiff brought an in rem libel action against the defendant company which owned stock in the Union Electric Co. of Missouri. The share certificates were held in New York by the non-resident defendant, so the plaintiff employed the remedies of sections 513.115 and 513.120. The defendant argued that the Missouri courts were without jurisdiction to hear the case. Its principal contention was that section 13 of the Missouri Act was so utterly inconsistent with and repugnant to the rest of the act that it could not stand with it, and that the effect of the other portions of the act was to embody the share in the certificate which was not within the jurisdiction, and that hence there was nothing upon which to base an in rem jurisdiction. The Supreme Court of Missouri, while acknowledging that Missouri's version of section 13 was out of harmony with the remainder of the act, nevertheless sustained it. The Court said:

. . . the intent of Section 13 is so clear that it must be held that attachment proceedings under the prior statutes were intended to constitute an additional method to those set out in Section 1 whereby shares of stock might be transferred. . . . There are some cases where stock certificates under the Uniform Stock Transfer Act have been held negotiable instruments. . . . However, a stock certificate has for many years been recognized as a different type of instrument. It is the tangible evidence of title to a unique type of intangible property having a situs at the domicile of the corporation. The legislature by passing the Transfer Act has made a stock certificate more freely transferable without changing the nature of the property right of the stockholder and without changing the situs of the property. This it

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14. 357 Mo. 908, 211 S.W.2d 698 (1948), *appeal dismissed* 335 U.S. 803 (1948), *rehearing denied* 335 U.S. 864 (1948).



had the right to do. The stock certificate remains a title document, not the property itself.<sup>15</sup>

The Court then concluded: "Section 13 although clearly out of harmony with the evident intent of the framers of the model act is not so contradictory as to destroy the remainder of the Transfer Act as adopted by our legislature."<sup>16</sup>

Prior to the UNIFORM STOCK TRANSFER ACT it was generally agreed that the "situs" of corporate shares was with the corporation in its domiciliary state.<sup>17</sup> The consensus in cases where the Uniform Act has been adopted intact is that, at least for the purposes of attachment and levy, the "situs" of the corporate share is now with the certificate wherever it may be found.<sup>18</sup> These cases now generally use the broad terminology that "the share has been embodied in the certificate." Certainly this was the intent of the framers of the Model Act.<sup>19</sup> A few cases involving the Uniform Act as originally recommended have held that the "situs" of the share remains unchanged despite section 13 of the Uniform Act and other sections which indicate a new location of the share.<sup>20</sup> Those cases which

15. *Id.* at 919, 211 S.W.2d at 702.

16. *Id.* at 921, 211 S.W.2d at 704.

17. *Jellenick v. Huron Copper Mining Co.*, 177 U.S. 1 (1900); *Thompson v. Terminal Shares, Inc.*, 89 F.2d 652 (8th Cir. 1937); *Richardson v. Busch*, 198 Mo. 174, 95 S.W. 894 (1906); 11 FLETCHER, CYCLOPEDIA CORPORATIONS 94 (1931).

18. *Montfort v. Korte*, 100 F.2d 615 (7th Cir. 1938); *Blake v. Foreman Bros. & Co.*, 218 Fed. 264 (N.D. Ill. 1914); *Newell v. Tremont Lumber Co.*, 161 La. 649, 189 So. 344 (1920); *Haughey v. Haughey*, 305 Mich. 356, 9 N.W.2d 575 (1943); *Elgart v. Mintz*, 123 N.J. Eq. 404, 197 Atl. 747 (Ch. 1938); *Johnson v. Wood*, 15 N.J. Misc. 150, 189 Atl. 613 (Cir. Ct. 1936); *Lockwood v. U.S. Steel Corp.*, 209 N.Y. 315, 103 N.E. 697 (1915); *Iron City Sav. Bank v. Isaacson*, 158 Va. 609, 164 S.E. 520 (1932); *Snyder Motor Co. v. Universal Credit Co.*, 199 S.W.2d 722 (Tex. Civ. App. 1947). This difference between the shares in a corporation from a jurisdiction in which the Uniform Act has been adopted and one in which it has not is strikingly illustrated in *Mill v. Jacobs*, 333 Pa. 231, 4 A.2d 152 (1939). In that case the plaintiff sought to levy upon shares of his judgment debtor which had been pledged to a bank in Pennsylvania. Three of the shares were those of a Virginia corporation, a jurisdiction which had adopted the Uniform Act, and one was of a Delaware corporation, a jurisdiction which had not. It was held that the seizure of the shares in Pennsylvania was an effective levy upon the shares in the Virginia corporation, but not upon those of the Delaware corporation.

19. See Commissioners' Notes, 6 UNIFORM LAWS ANNOTATED 2, 10 (1922).

20. *McQuillen v. Nat. Cash Register Co.*, 13 F. Supp. 53 (D. Md. 1935); *Harvey v. Harvey*, 290 Fed. 653 (7th Cir. 1923); *Warren v. New Jersey Zinc Co.*, 116 N.J. Eq. 315, 173 Atl. 128 (Ch. 1934). *Cf. Harris v. Chicago Title and Trust Co.*, 338 Ill. 245, 170 N.E. 285 (1930).

hold that the "situs" remains in the corporation even for purposes of attachment and levy would appear to be erroneous in view of the language of section 13 of the Uniform Act, and they have been adversely criticized.<sup>21</sup>

Nevertheless, in view of the content of Missouri's section 13 the decision in the *North American* case can hardly be said to be erroneous. Although some of the comprehensive dicta of the case might be questioned, the result itself was inevitable unless the court chose to run the risk of being accused of "judicial legislation." The court had no choice but to hold that the "situs" of the share remained in Missouri under the facts of the case. As was pointed out, the act as adopted in Missouri purports to be nothing more than a provision regulating the transfer of shares.<sup>22</sup> At first blush it might appear that the other portions of the Uniform Act, as was argued by the defendant in the *North American* case, so effectively identify the share with the certificate that it could not be considered to have a "situs" apart from the certificate. However, it has been pointed out that the term "situs" is rather misleading and in reality there can be no true "situs" of a corporate share in the same sense as when that term is applied to a piece of tangible property.<sup>23</sup> Perhaps the best justification of the court's decision is the thought "embodied" in the following quotation by a learned writer on the subject:

That the stock certificate has been endowed with the same degree of negotiability as commercial paper does not mean that the share has been made identical with the certificate. Power to transfer title to the obligation by doing specific acts has been given to the holder of the paper—a power not given to the casual possessor of tangible chattels, except coin. By endorsing and delivering the certificate, he transfers the intangible rights which it evidences. . . . The other characteristics of stock, the rights and obligations which it

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21. Hine, *Situs of Shares of Stock under the Uniform Stock Transfer Act*, 87 U. OF PA. L. REV. 700, 706 (1939).

22. *State ex rel. North American Co. v. Koerner*, 357 Mo. 908, 909, 211 S.W.2d 698, 702 (1948).

23. "There can be no actual 'situs' of a share of stock. If 'situs' is to be used in the sense of physical location it might better be abandoned entirely. What Professor Powell has said of the debt is equally applicable to the corporate share. 'It isn't that kind of an animal. Any talk about its location is necessarily a medley of metaphor and analogy.' . . . 'Situs' would seem to be pretty much what the courts make it." Pomerance, *The Situs of Stock*, 17 CORNELL L. Q. 43, 47 (1931).

involves, still constitute, however, the intangible relationship of which the certificate is only a representation. Even the Uniform Stock Transfer Act does not make the certificate the obligation. Stock still is intangible, hence it remains impossible, even under the Act, to give the share a physical location.<sup>24</sup>

Thus it is clear that although under the Uniform Act, the share is for convenience and correctly so, spoken of as embodied in the share, this is but a metaphor for the intangible right may be located wherever it is convenient to do so. That the "situs" of shares may be varied by courts and legislatures as the dictates of policy demand is illustrated by the fact that although the share may be considered as located elsewhere for the purpose of levy and attachment, the Supreme Court has held that the proper place for the imposition of an inheritance tax is the domicile of the owner.<sup>25</sup> Thus the Supreme Court of Missouri was justified in holding that the legislature might confer certain elements of negotiability upon the certificate while retaining jurisdiction in the courts of Missouri for purpose of attachment and levy.

Although attachment by means of seizure of the certificate is sanctioned in Missouri, it is questionable whether in rem jurisdiction could be obtained by that means outside of Missouri. The general rules governing the power of a jurisdiction other than the corporate domicile to permit levy and attachment of the corporate share were laid down by Mr. Justice Holmes in *Direktion der Disconto-Gesellschaft v. United States Steel Corporation*.<sup>26</sup> The holding of that opinion is summarized in the *Restatement, Conflict of Laws*:

- (1) Shares in a corporation are subject to the jurisdiction of the state in which the corporation was incorporated.
- (2) The share certificate is subject to the jurisdiction of the state in whose territory it is.
- (3) To the extent to which the law of the state in which the corporation was incorporated embodies the share in the certificate the share is subject to the jurisdiction of the state which has jurisdiction of the certificate.<sup>27</sup>

Thus because the UNIFORM STOCK TRANSFER ACT when adopted in its entirety is regarded as embodying the share in the certi-

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24. *Id.* at 49.

25. *First Nat. Bank of Boston v. Maine*, 284 U.S. 312 (1931).

26. 267 U.S. 22 (1924).

27. *RESTATEMENT, CONFLICT OF LAWS* § 53 (1934).

ficite, it is held that the shares may then be attached by seizure outside the state of incorporation.<sup>28</sup> However, in view of the fact that this power is one which may be withheld by the state of incorporation,<sup>29</sup> the opposite result might be reached in the case of shares of a Missouri corporation. The *North American* case makes clear that, in the opinion of the Supreme Court of Missouri, the legislature has chosen to retain the corporation as the "situs" of the share for attachment purposes and that the share is not embodied in the certificate. These sweeping statements by the Supreme Court were necessarily dicta it is true, and as they were not necessary to the decision in the case might better have been omitted, but nevertheless, they serve notice that in the opinion of the Missouri court the share is under no circumstances embodied in the certificate. Thus since we must look to the law of the state of incorporation to determine whether the share can be attached outside of that state, foreign jurisdictions faced with the problem might feel that such attachment is not possible, that the share is not embodied in the certificate under any circumstances. If the dictum of the Missouri court be taken as the law on the subject, under the *Restatement* rule only Missouri has jurisdiction in rem of the shares.

Despite the language of the Missouri court the above result is not a certainty, however; for although the court says the certificate is not an embodiment of the share, the fact remains that the legislature has seen fit to treat the seizure of the certificate of a Missouri corporation (in Missouri at least) a sufficient act on which to predicate an attachment proceeding and thus it might be interpreted as saying that in the event the method of seizure is chosen the "situs" of the share will be considered as within the certificate. As pointed out, the "situs" of a given share need not always be the same place— "Situs" is a term applied to a number of juristic results."<sup>30</sup> Thus if the dictum of the *North American* case is ignored, the actual holding of the case would not be inconsistent with finding the share sufficiently identified with the certificate to permit an in rem jurisdiction

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28. *Mills v. Jacobs*, 333 Pa. 231, 4 A.2d 152 (1939). Cf. *Haughey v. Haughey*, 305 Mich. 356, 9 N.W.2d 575 (1943).

29. Wood, *Reaching Shares of Stock*, 38 W. VA. L.Q. 218, 225 (1932); Note, 30 HARV. L. REV. 485, 487 (1926).

30. Pomerance, *supra* note 22 at 70.

outside of Missouri based upon a seizure of the certificate. Nevertheless, so far as those courts devoted to a lump concept "situs" are concerned, this latter result seems unlikely.

#### THE WISDOM OF THE MISSOURI RULE OF ATTACHMENT AND LEVY

It is worthy of note that section 13 of the Model Act has more frequently been the subject of alteration by legislatures adopting the Uniform Act than any other provision contained therein,<sup>31</sup> a fact which indicates a deep-seated concern on the part of the legislators for the attaching creditor. Although the debates of the Missouri legislature are not available,<sup>32</sup> apparently the members felt that the Model Act insufficiently protected the interests of the creditor. Admittedly, there is a balancing of the

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31. California omitted Section 13 altogether. The only means of levy or attachment provided is by notice to the corporation. DEERING'S CODE OF CIVIL PROCEDURE § 541 (1949). "California failed to enact that provision of the uniform act. In this state the location of the certificate is of no consequence. . . . it is not necessary for the sheriff to take physical possession of the certificates in order to hold a valid sale on execution of the shares. The sheriff simply gives the purchaser at such sale a certificate of sale which conveys all the right the debtor had." Partch v. Adams, 55 Cal. App.2d 1, 5, 130 P.2d 244, 247 (1st Dist. Ct. App. 1942). See Comment, 28 CAL. L. REV. 470 (1940). Colorado likewise omitted Section 13. Here, however, pre-existing attachment statutes were repealed so that the only method by which a creditor can reach shares in Colorado appears to be by the means provided in Section 14 of the Uniform Act. See editor's note to COLO. STAT. ANN. c. 41 § 99 (1935). Florida's Section 13, like Missouri's expressly leaves in force the previously existing method of attachment by notice to the corporation. FLA. STAT. ANN. §§ 688.15, 55.26, 55.30 (1941). The same result is provided for in Kansas. LAWS, KANSAS c. 17, Art. 3218 (1949). Section 13 is wholly omitted in Massachusetts. Central Mortgage Co. v. Buff, 278 Mass. 233, 179 N.E. 628 (1932). Section 13 of the Montana Act permits attachment and levy by notice to the corporation in addition to the methods sanctioned by the Uniform Act. MONT. REV. CODE tit. 15-640 (1947). Vermont permits an attachment by notice to the corporation, but provides that the attachment shall have no effect upon the rights of an innocent holder for value of the certificate. VT. LAWS § 5818 (1947).

32. The Senate and House Journals do reveal the following legislative history of the Uniform Act. The Act was introduced into the Missouri House precisely as set forth in the Model Act. JOURNAL MO. HOUSE REP., 62nd Gen. Ass. 595 (1943). The only substantial change wrought in the House was the striking of the words "and To Make Uniform the Law with Relation Thereto" from the title of the Act. *Id.* at 881. Thus with Section 13 intact the Act passed the House 100-11. *Id.* at 1139. In the Senate, the Senate Committee on Private Corporations recommended the amendment of Section 13 to read as it does now. JOURNAL MO. SEN., 62nd Gen. Ass. 1394 (1943). The Committee's recommendation was adopted by an unspecified vote, but then the entire Act as amended was defeated 17-13. *Id.* at 1661. The next day the vote of rejection was reconsidered, and the amended bill passed the Senate 19-10. *Id.* at 1686. The Senate amendment and the amended Act subsequently passed in the House by a vote of 105-34. JOURNAL MO. HOUSE REP., 62nd Gen. Ass. 2034 (1943).

interests of the creditor and the innocent purchaser to be made, but the legislature appears to have unduly weighted the scales in favor of the former. In enacting section 13 in its present form, the legislature has largely defeated the aim and purpose of the rest of the Act. The other provisions of the Act are designed to make stock certificates approximate negotiable instruments as nearly as possible—to enhance their transferability and hence marketability by rendering unnecessary an investigation of the vendor's title and the like by the prospective purchaser. Section 5,<sup>33</sup> for example, provides that the delivery of a properly indorsed certificate shall pass good title to an innocent purchaser even though the transfer is made by one having no right to possession nor authority from the owner of the certificate to make the transfer. Section 15<sup>34</sup> provides that the corporation shall have no lien on the share nor may it impose a restriction upon its transfer unless the existence of these is noted upon the certificate. Thus the Act is designed to foster the same confidence in stock certificates that was long ago achieved by the negotiable instruments law in the field of commercial paper. But Missouri's section 13 largely sets at naught the beneficial effects of the other sections, for although the purchaser no longer need concern himself about the possibility of a corporate lien, unauthorized transfer and the like, he will still be hesitant about taking the certificate at face value because of the possibility of a previous execution having taken place. To be sure the field of investigation of the prospective purchaser is reduced to one place, the office of the corporation, but such an investigation would probably take several days thus imposing an intolerable handicap upon commercial intercourse. Thus it is clear that there are very strong considerations supporting the requirement of the Model Act that the certificate be taken out of circulation before attachment or levy is permitted.

It is true that on the other side of the ledger the interest of the stockholder's creditor are to be given considerable weight also. Concededly, the concealment of such small objects as stock certificates is easily achieved, and the conventional method of levying upon tangible property whereby the levying officer goes forth armed with the writ in search of the property is unsuited

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33. MO. REV. STAT. § 403.050 (1949).

34. MO. REV. STAT. § 403.190 (1949).

to the seizure of stock certificates. However, the drafters of the Uniform Act recognized this need for an effective method of enforcing the creditor's rights, and provided that enjoining the transfer of the certificate would be sufficient. In addition, to emphasize the right of the creditor to equitable remedies section 14 of the Uniform Act<sup>35</sup> provides:

A creditor whose debtor is the owner of a certificate shall be entitled to such aid from the 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.

Thus where the creditor can get service on his debtor, at least in a state which has adopted the UNIFORM STOCK TRANSFER ACT, the creditor will almost certainly be able to realize on the shares. The certificate need not be in the custody of the holder nor need it be in the same state as he. For example, a creditor who obtained service upon his debtor in Oregon was able to realize on the latter's shares through the aid of the equitable processes of the Oregon court, although the certificates lay in the holder's safe deposit box in the state of Washington.<sup>36</sup>

It is apparent then, that the creditor is not wholly without remedy under the Model Uniform Act. It is true that the remedies of the creditor under the Uniform Act are not so certain as those existing prior to it, for notice to the corporation could nearly always be effected with a minimum of difficulty, whereas the creditor's ability to get effective jurisdiction of the stockholder and/or the certificate will not always be so clear. However, the creditors of the holders of negotiable paper have been without any more effective remedies for quite some time, and yet this result has not been deemed too great a hardship

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35. MO. REV. STAT. § 403.180 (1949).

36. ". . . it was the intention of the National Conference of Commissioners on Uniform State Laws, in drafting the uniform stock transfer act, and the legislature in enacting it, to give to the word 'holder' as therein used substantially the same meaning that it has when applied to negotiable instruments." *Hodes v. Hodes*, 176 Ore. 102, 108, 155 P.2d 564, 567 (1945). Sections 13 and 14 do not sanction attachment by enjoining the corporation from transferring the shares in its books. *Amm v. Amm*, 117 N.J. Eq. 185, 175 Atl. 186 (Ch. 1939); *Block-Daneman Co. v. Mandelker*, 205 Wis. 641, 238 N.W. 831 (1931). The former case in effect repudiates the erroneous decision in *Warren v. New Jersey Zinc Co.*, 116 N.J. Eq. 315, 173 Atl. 128 (Ch. 1934).

upon creditors in view of the desirable results otherwise achieved. (It is true that commercial paper seldom represents a long term investment as the stock certificate does, but the case of negotiable bonds seems analogous to the latter.) In achieving the free transferability of stock certificates the sacrifice of the creditor is well worth it. As was pointed out in one case:

. . . it was the purpose of the act to prevent attachment of stock which might belong to a person not within the jurisdiction of the court in order to increase its negotiability as well as its marketability. If this results in some apparent discrimination against the citizens of this state, as owners of stock in corporations organized in other states having the Uniform Stock Transfer Act, they enjoy an equal benefit.<sup>37</sup>

The situation in Missouri is particularly to be deprecated, for the other provisions of the Act involve an element of sacrifice on the part of stockholders in order to achieve increased marketability; they risk loss of their shares by having indorsed certificates stolen or lost and subsequently transferred to an innocent holder. Yet despite such sacrifices which are admittedly well worth the price of free negotiability, that goal is not achieved because of the possibility that long ago execution may have been had upon the shares in the Missouri corporation represented by the certificate. It would be well worth while for the legislature to reconsider its alteration of section 13 as set forth in the Model Act, a provision evolved out of the prolonged study and consideration of experts in the field.

WARREN R. MAICHEL

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37. *Block-Daneman Co. v. Mandelker*, 205 Wis. 641, 648, 238 N.W. 831, 833 (1931).