

## STROUD v. HENDERSON.

Opinion delivered November 25, 1929.

CORPORATIONS—TRANSFER OF STOCK.—Where a husband transferred stock in a corporation to his wife, but failed to deposit a certificate of the transfer with the county clerk, as required by Crawford & Moses' Dig., § 1716, the transfer did not become effective as to his creditors.

Appeal from Benton Chancery Court; *Charles M. Rice*, Special Chancellor; affirmed.

## STATEMENT OF FACTS.

Appellee brought this suit in equity against appellants to set aside a transfer of stock in certain corporations from H. L. Stroud to Sallie R. Stroud, and to impound the dividends held by the corporation, for the purpose of paying an indebtedness of H. L. Stroud. The suit was defended on the ground that the certificates of stock which are sought to be set aside as fraudulent and void, and the dividends arising therefrom to be impounded for the purpose of paying a judgment against H. L. Stroud, belonged to Sallie R. Stroud, and that he had no interest whatever therein.

Appellee, J. M. Henderson, recovered judgment in the circuit court against H. L. Stroud in the sum of \$1,575.50. Stroud appealed to this court, and the judgment was affirmed on June 7, 1926. *Stroud v. Henderson*, 171 Ark. 538, 284 S. W. 45. The present suit was filed on May 13, 1927. The complaint alleges that H. L. Stroud, by transferring the stock in question to his wife, Sallie R. Stroud, has conveyed his property to such an extent that appellee is unable to collect said judgment.

The facts necessary to a determination of the issues raised by the appeal may be briefly stated as follows: H. L. Stroud Mercantile Company was established about forty-five years ago. For some years H. L. Stroud was the manager of the corporation. His wife, Sallie R. Stroud, owned nearly all of the stock in the corporation, and had paid for it by means of an inheritance of \$15,000 from her father. Finally all the shares in the corpora-

tion were transferred to her. Inasmuch as the chancellor found the issue on this branch of the case in favor of appellants, and appellee has not prosecuted an appeal, no further statement of the facts on this branch of the case need be made.

The Rogers Wholesale Grocery Company was organized on the 9th day of August, 1905. H. L. Stroud was the owner of 100 shares of stock of the value of \$25 each. The president of the corporation filed a list of stockholders, and a financial statement of the corporation in the office of the county clerk on February 12, 1909, which showed that H. L. Stroud owned 816 shares in the corporation. The same report filed and recorded in the county clerk's office on February 14, 1910, showed H. L. Stroud to own 1,000 shares. In the report filed March 2, 1911, Sallie R. Stroud was shown to own 800 shares and H. L. Stroud 200 shares. In the report filed February 12, 1912, Sallie R. Stroud was shown to own 800 shares and H. L. Stroud 202 shares. In the report filed on the 23d day of January, 1913, Sallie R. Stroud was reported to own 1,600 shares and H. L. Stroud two shares. On the 5th day of February, 1915, the report showed Sallie R. Stroud to own 3,200 shares and H. L. Stroud to own four shares. The same was in the report filed for the years 1916 to 1919, inclusive. The annual certificate made by the president on April 12, 1921, showed Sallie R. Stroud to own 3,200 shares and H. L. Stroud to own four shares. On the 14th day of April, 1921, the corporation was authorized to increase its capital stock, and to divide the stock into shares of the face value of \$100. On the 15th day of February, 1923, the president's annual certificate filed in the office of the county clerk showed H. L. Stroud to own two shares and Sallie R. Stroud to own 1,500 shares. The record continued to show the same fact from the year 1924 to the report filed on the 6th day of February, 1929.

Evidence was adduced by appellee tending to show that the shares of stock belonged to H. L. Stroud, and

were transferred by him to his wife in fraud of the rights of his creditors. On the other hand, evidence was adduced by appellants tending to show that H. L. Stroud was not indebted to appellee or to any one else at the time the shares of stock in the Rogers Wholesale Grocery Company were transferred to his wife. The record does not show any attempt to comply with the provisions of § 5716 of Crawford & Moses' Digest regulating the transfer of stock in so far as it affects the rights of creditors is concerned.

The chancellor found the issues in favor of appellee, and it was decreed that appellee have and recover from H. L. Stroud and the Rogers Wholesale Grocery Company, as garnishee, the sum of \$2,041.90. The garnishee was ordered and directed to pay said sum out of the dividends of the stock of said company held in the name of Sallie R. Stroud. H. L. Stroud gave a supersedeas bond, and the case was duly appealed to this court.

*Duty & Duty* and *McGill & McGill*, for appellant.

*Paul Anderson* and *John W. Nance*, for appellee.

HART, C. J., (after stating the facts). Under our view of the law, the issues raised by the appeal have been settled by the construction already placed by this court under § 1716 of Crawford & Moses' Digest, which reads as follows:

“Whenever any stockholder shall transfer his stock in any such corporation, a certificate of such transfer shall forthwith be deposited with the county clerk aforesaid, who shall note the time of said deposit, and record it at full length in a book to be by him kept for that purpose; and no transfer of stock shall be valid as against any creditor of such stockholder until such certificate shall have been deposited.”

This court has several times held that the transfer of stock referred to in this section is the absolute transfer of the legal and equitable title to the stock, and not pledges or liens by way of collateral security. *Batesville Telephone Co. v. Myer-Schmidt Grocer Co.*, 68 Ark.

115, 56 S. W. 784, and *Hudson v. Bank of Pine Bluff*, 75 Ark. 493, 87 S. W. 1177. In the latter case the court was asked to overrule its holding in the case first cited, and declined to do so. The court said that the prior case was well briefed on both sides, and all authorities bearing on the question had been cited and considered. Therefore the court adhered to the construction given the statute in the *Batesville Telephone Company* case.

Again, in the case of *Loeb v. German National Bank*, 88 Ark. 108, 113 S. W. 1017, the court said that the section of the statute providing for the recording of the transfers of corporate stock with the county clerk does not apply to transfers for collateral security, but only to absolute sales.

In the case at bar the record shows an absolute transfer of stock by H. L. Stroud to his wife, Sallie R. Stroud, and there was no attempt to comply with the provisions of § 1716 of the Digest.

In *Scott v. Houpt*, 73 Ark. 78, 83 S. W. 1057, this identical question came before the court for consideration and determination. It was held by a divided court that a transferee of corporate stock, the transfer of which had not been deposited with the county clerk, as required by the statute, could not hold the stock as against attaching creditors of his transferrer, although such creditors had notice of the transfer prior to the completion of their levies, and prior to a sale under judgment rendered in the attachment suit. Judge BATTLE wrote a dissenting opinion, in which he wanted to apply the same rule that had been applied with regard to pledges of stock as collateral security in the opinion prepared by him for the court in the *Batesville Telephone Company* case.

Before the opinion of the Supreme Court was delivered in *Scott v. Houpt*, 73 Ark. 78, 83 S. W. 1057, the question came before Judge ROGERS in a case arising in a circuit court of Arkansas. The learned Judge said that, after most careful consideration, he had

reached the conclusion that the language of the statute was so certain as to prohibit the court to place any interpretation upon it than to hold that a shareholder could not, by absolute sale, transfer any stock so as to affect the rights of his creditors without complying with the terms of the statute. Judge ROGERS pointed out that the statute was out of harmony with most of the statutory law on the subject in the various states, but said that, while this was true, it was the province of the court, not to amend the statute, but to interpret and enforce it. *Fahrney v. Kelly* (C. C.), 102 Fed. 403.

The opinion in the case of *Scott v. Houpt*, 73 Ark. 78, 83 S. W. 1057, which was delivered on November 19, 1904, has been generally recognized by the bench and bar as the existing law on the subject until the passage of the Uniform Stock Transfer Act by the Legislature of 1923. See Acts of 1923, p. 358, and Castle's Supplement to Crawford & Moses' Digest, 716a *et seq.* Therefore the decision of the chancery court was correct.

Under the authority of the cases above cited, the transfer of the stock of H. L. Stroud in the Rogers Wholesale Grocery Company to his wife, Sallie R. Stroud, did not become effective as to his creditors because the terms of § 1716 of the Digest had not been complied with. We are not concerned with the reason of the statute. It has been said that the section was passed in aid of the creditors of shareholders because only the stockholders and the corporation itself have access to the books of the corporation, and the creditors of stockholders could not know who owned the shares of stock unless all transfers should be deposited with the county clerk as required by statute.

It follows that the decree must be affirmed.