

1969

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Repository Citation

Jolls, Thomas H., "Fictitious Registration of Stock Ownership - Hartford v. Walston Examined" (1969). *Faculty Publications*. 918.
<https://scholarship.law.wm.edu/facpubs/918>

**FICTITIOUS REGISTRATION OF STOCK OWNERSHIP
—HARTFORD v. WALSTON EXAMINED**

By

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The "fictitious payee" question, arising in connection with what we now call Commercial Paper, has been a fruitful source of litigation and commentary going back almost two centuries. In contrast, few controversies have reached the courts where the insertion of a fictitious name as that of the stockholder in a stock certificate has created a problem. This is surprising. With approximately 25,000,000 stockholders in this country, at least some of the recorded names are bound to be "fictitious," the efforts of the Internal Revenue Service to the contrary notwithstanding. "Fictitious" is used here in the sense that the name is an alias or *alter ego* of its creator, or may be chosen to provide a conduit for a transaction without any clear idea that the name represents anything beyond that. A misspelled name is in a sense fictitious, but the identification with the real person can always be established. We cannot, of course, call "fictitious" the common practice of institutional holders of registering securities in the names of nominees. Such names are, or should be, valid legal entities—generally the partnership device is used.

The case which prompts this discussion, *Hartford Accident & Indemnity Co. v. Walston & Co.*,¹ does not cite a single precedent directly in point, and apparently there is none. That the New York Courts did not find an easy answer is evidenced by the fact that the trial judge, and the Appellate Division by unanimous vote, found for the defendant; the Court of Appeals held for the plaintiff in a 4 to 3 decision.

THE FACTS

The facts arose before the effective date of the Uniform Commercial Code in New York; insofar as the case was governed by statute, the New York Personal Property Law (substantially the Uniform Stock Transfer Act) applied. The purpose here is to analyze and comment upon the majority and minority opinions, and to indicate what changes might result from the application of the Code in any future such case.

The two stock brokerage firms involved (in actuality the contest is

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1. 21 N. Y. 2d 219, 287 N. Y. S. 2d 58, 234 N. E. 2d 230 (1967); *aff'd on rehearing*, 22 N. Y. 2d 672, 291 N. Y. S. 2d 366, 238 N. E. 2d 754 (1968). The case was commented on briefly in the Annual Survey of Code Developments, 23 Bus. Law 1057 (1969) and was thought worthy of expanded discussion because of its novelty.

probably one between insurers) will be referred to as Firm A and Firm B. Firm A was the holder and owner of stock certificates of three companies, duly indorsed in blank by prior owners, which it desired to have transferred to its own name, either for its own account or for the account of customers. One Mais, a clerk for Firm A, had the duty of preparing instructions and forwarding certificates to transfer agents. He inserted in the instructions the name "Jack Arbetell" as the transferee of these particular certificates, instead of the name of Firm A as he was supposed to do. Apparently this transmittal went forward in the routine of the hundreds or thousands of such transactions which a large brokerage firm would be handling daily; the shares were transferred per instructions; when the new certificates came back to Firm A from the transfer agents, Mais took possession of them. An accomplice of his then presented himself to Firm B, seeking to sell the securities which Mais had placed in his hands; Firm B's employee or employees accepted a seemingly scanty identification of "Jack Arbetell," opened an account, took his indorsement, guaranteed the signature, and paid over the proceeds of sale (\$76,000). "Arbetell" was a non-existent person, at least if one is as willing as the majority of the court was to accept the somewhat inconclusive testimony of the thief, Mais, as to this vital fact. The fraud having been discovered, Firm A's assignee, its insurer, now sues Firm B for conversion.

THE DECISION

The majority opinion, favoring Firm B, is difficult to summarize because it concludes after reargument with a ground for decision which is remote from the question with which the opinion opens, viz:

"The decision upon this appeal depends upon what is the duty of a broker member of the New York Stock Exchange to the owner of stolen shares of stock when delivered for sale and transfer by the thief or one of its confederates."

A totally different question is posed by the opening words of the dissenting opinion:

"The issue is which of two regular stock-brokers should bear the loss resulting from the larcenous misappropriation from one of the brokers of corporate shares of stock."

The conclusion of the original majority opinion (December 28, 1967) seems to be that a new trial should be had to determine whether a real "Jack Arbetell" indorsed the certificates, and whether "good faith" on the part of Firm B was present. On the reargument, however, with the same minority of three dissenting, (July 2, 1968) it was concluded in summary fashion that good faith of Firm B was not in issue between the parties; that the certificates in Arbetell's name had not been transferred in compliance with Section 162 of the Personal Prop-

erty Law² so as to effectively protect Firm B. Accordingly, Firm B was held liable in damages of \$87,000.00 for conversion, without the necessity of the new trial called for by the original opinion. Thus the whole case turns on the validity of this indorsement.

WHY THE DEFENDANT SHOULD HAVE PREVAILED

There could be four alternative bases on which the indorsements could be upheld:

1. The Jack Arbetell who indorsed the certificates in Firm B's office is the person named therein, and is real; or
2. "Jack Arbetell," fictional or real, is the nominee of the thieves, who were in a position to put anyone they chose in title as representing them; the indorsement running to a bona fide purchaser is not subject to challenge by a third party who never had title to these certificates, any more than it would be if the thieves had taken title in their own names and conveyed it by indorsement; or
3. By analogy to the Negotiable Instruments Law, or to Section 3-405 of the Uniform Commercial Code, or to the common law rules which preceded them, these certificates can either be treated as transferable by the bearer, or as subject to being validly indorsed by anyone, because "Jack Arbetell" was a fictitious person or one not intended to have any interest in the certificates; or
4. Firm A because of its identification, through its employee, with the fraud committed on issuers, and potential purchasers and signature guarantors, is estopped to raise any question as to the validity of the indorsements. Such estoppel cuts across Section 162 of the Personal Property Law.³

ALTERNATIVES 1 AND 2

These should be considered together because the evidence as to "Jack Arbetell" is so hazy that it cannot be segmented as favoring one theory or the other. All we have is the following, gleaned from the majority and minority opinions:

Mais, the dishonest employee of Firm A, testified to the effect that the firm had no customer by the name of Jack Arbetell; that he knew of no person bearing that name; that he had never been given the right

2. The relevant portion of Section 162 is:

"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."

3. Section 179 of the Personal Property Law provided as follows:

"In any case not provided for by this article, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent, executors, administrators and trustees, and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy or other invalidating cause, shall govern."

to use the name and had no reason to believe that there was such a person in existence. After removing the Arbetell certificates from Firm A's mail, he testified that he turned them over to a confederate named Yudelowitz. (This is the first and last mention of Yudelowitz.) Mais also testified that he had directed the certificates to be issued in the name of Arbetell on the instructions of his accomplices (not otherwise identified). A person calling himself Arbetell phoned Firm B, appeared at its office with the securities, opened an account there giving a bank reference and an address. He then indorsed the certificates, and in short order received and cashed checks for \$76,000. At another point it is indicated he showed "one or two cards" with his name on them.

This is the evidence, and it is strangely incomplete. Perhaps everyone but Mais had skipped out. The plaintiff is suing to upset an indorsement not its own, on a certificate it claims to own but to which it never had title of record. It would seem apparent that on the evidence it cannot be plausibly asserted, much less proven, that Arbetell was or was not real, or that the signature was or was not genuine. This is quite a different situation from that existing in the cases cited as supporting conversion.⁴ Plaintiff's claim arises only through tracing from certificates it formerly owned, and the burden should be on it to prove that the Arbetell certificates (of which it hopes to establish ownership) were not properly indorsed. Hence the conclusion of the original majority opinion that there should be a new trial.

If Firm A were in a position to contend that "Jack Arbetell" was its nominee, or alias, or *alter ego*, its situation would be different. The transfer of the preceding certificates, standing in the names of others and indorsed in blank, was engineered by the thieves through Mais, and was a hostile and diversionary act so far as Firm A was concerned. This is where Mais' intention to shift title to the stock (at this time in X, Y and Z, the former owners) in favor of his group, and his insertion of a name to represent the group, prevails over any proprietary thoughts that Firm A's partners might at the time be thinking in favor of retaining their one-time dominion over the shares. When the firm turned over the job of giving instructions to transfer agents for effecting transfers of securities indorsed in blank, it necessarily assumed whatever risks were involved, against third parties, in Mais' choice of assignees. His choice was obviously limitless, unhampered by audit, as evidenced by his getting away with what he did. Suppose he had been instructed, for example, to transfer the stock to George Johnson, a firm customer with a New York address. There are thousands of George Johnsons in this country, and one of them happens to be a

4. *Casey v. Kastel*, 237 N. Y. 305, 142 N. E. 671, 31 A. L. R. 995 (1924) (suit by a registered owner of a certificate, who had indorsed during infancy and now disaffirms); *Pierpont v. Hoyt*, 260 N. Y. 26, 182 N. E. 235, 83 A. L. R. 1195 (1932) (suit by a registered owner of a certificate, whose indorsement had been forged). These cases were cited both in the original majority opinion, and in the opinion on the reargument.

friend of Mais', living in Philadelphia. He inserts the name "George Johnson" as assignee, intending his Philadelphia friend, and giving the Philadelphia address to the transfer agent. If he can get the certificate into the hands of the Philadelphia Johnson, the latter can indorse and transfer it with impunity and his signature is good because he is, out of the thousands of George Johnsons, "the person appearing by the certificate to be the owner." The intent of the nominal assignors, X, Y and Z does not count—they have forgotten about the matter and could not care less; as to the issuer of the new certificate, its intent is only to follow the instructions shown in the assignment.

ALTERNATIVE 3

If "Jack Arbetell" was indeed a fictitious person, it can certainly be argued that the certificates required no indorsement, as being "bearer" like a Negotiable Instrument, or indorseable by anyone, as provided in the Code (Section 3-405) in either of which cases Firm B would have acquired a good title. The innumerable discussions of the "fictitious payee" question which have taken place for almost two hundred years will not be reviewed here; divergent views are set forth in the opinions in the principal case. Authority for extension, or denial of extension, of the doctrine to the area of corporate stock has not been found.⁵ If a court looks at the subject as a strictly statutory one, it has no difficulty in accepting the view of the majority opinion that there was no intent on the part of the "maker" (the court's candidate for this role being Firm A) to create or recognize "Jack Arbetell." Importation of the fictitious payee doctrine into stock transfers requires what Judge Breitel in the minority opinion calls an "uninhibited approach"; any different attitude would reject the whole theory: First, on the basis that the Negotiable Instruments Law applies only to instruments payable in money; Second, on the basis suggested by the majority; Third, on the ground that the real maker is the issuer of the new certificate, or, alternatively, the assignor of the old certificate, neither of whom has any intent whatever in the matter, or any means of forming an intent. However on the last point there is an analogy in a California case cited⁶ by the minority, holding that where a bank issues a cashier's check at the request of a corporation's faithless officer, the intent of such officer that the payee should have no interest would control, making the checks bearer instruments.

A truly uninhibited approach would be one which would borrow the ancient principles of the Law Merchant, based on the notion that one who launches "upon a sea of strangers" an instrument bearing a fake

5. The point is touched on in *Stebbins v. The Phenix Fire Insurance Company*, 3 Paige (N. Y.) 350 (1832), but inconclusively and by way of dictum.

6. *Union Bank & Trust Co. of Los Angeles v. Security-First Nat. Bank*, 8 Cal. 2d 303, 65 P 2d 355 (1937). *See* *Seible, Louisville Credit Men's Assn. v. Motors Investment Co.*, (Ky. Ct. of App. 1965) 394 S. W. 2d 760 (1965).

name denoting ownership, cannot turn his back on the victims.⁷ The degree of involvement of Firm A in the "launching" here is discussed *infra* under Alternative 4. There has been considerable evolution in the original "fictitious payee" doctrine. After its origin in England growing out of a particular series of frauds which reached the courts in 1789, it was recognized as law in this country.⁸ The English Bills of Exchange Act was adopted in 1882, providing simply that "When the payee is fictitious or a non-existent person the bill may be treated as payable to bearer." Some of the American states proceeded to adopt statutes; then came the Negotiable Instruments Law; and finally the Code.⁹ Each of these involved some change but the basic premise remained that the taker was not to be held guilty of negligence or bad faith because he failed to raise the question "Is the named owner of this commercial instrument a fake?"

Seemingly there should be no problem in judicially adopting this principle in the securities field in order to prevent injustice, and there is no reason why it should have to come cluttered up with such concepts as "intent of the maker" and "fictitious payee" which have no relevance to corporate stock. If the principle is adopted, it would be desirable to turn to the Code (Section 3-405) for the category "person intended to have no interest in the instrument," rather than a "fictitious or non-existent person," once the Code has become part of the applicable body of law of the jurisdiction; also to adopt the Code solution of making the instrument indorseable by any person, instead of payable to "bearer" as under the N.I.L. In the principal case, the Court could have used whichever concept it chose under authority of Section 179 of the Personal Property Law¹⁰ to moderate the literal requirements of Section 162.¹¹

ALTERNATIVE 4

If the Court found the other alternatives not proved, or otherwise unacceptable, it could consider the broad ground of estoppel against Firm A on the basis of the firm's position in the creation of the situation which gave rise to the loss. The majority opinion says that Firm A had no knowledge of what happened, and indicates that it has no re-

7. "Though the name of the payee was not known to the holder, yet since he took it on the credit of those whose names upon it to either of whom he might resort for payment, he could recover from the acceptor on the count for money paid and money had and received. In subsequent cases recovery was allowed on the count that the instrument was payable to bearer." See *Minot v. Gibson*, 3 T. R. 481 (1789); affirmed 1 H. Bl. 569, 126 Eng. Rep. 326 (H. L. 1791).

8. STORY, *BILLS OF EXCHANGE*, (4th ed. 1860).

9. For a brief summary of developments from 1789 on, see FARNSWORTH, *CASES AND MATERIALS ON COMMERCIAL PAPER*, 294, 295 (1968).

A more detailed account appears in Kulp, *The Fictitious Payee*, 18 MICH. L. R. 296 (1920).

10. See note 3, *supra*.

11. See note 2, *supra*.

sponsibility because Mais was engaged in stealing from his employer. What is overlooked is that here we have a much more broad and complex scheme than one where an employee is simply helping himself from the till and only the employer can be hurt. Third parties are involved, the first one being the issuer of the new securities. Where, within the scope of employment an agent or employee commits a fraud on a third party, then, just as in any other tort, the principal must bear the responsibility. Notice or knowledge is not an element of the principal's liability, and is likely to be imputed to him in any event.¹²

Let us look at what happened. Mais would daily have been handed groups of stock certificates, many being indorsed in blank, accompanied by tickets and memoranda as to desired disposition. Thereupon he would complete assignments and give covering instructions to various transfer agents for the issuers as to the new stockholder names and respective numbers of shares to be inserted in new certificates. This procedure, though a proper and necessary one, does involve risk to the employer, for the employee, like one who is handed signed checks with the payee space left blank, has the power to fill in whatever name he chooses, and bind the employer. Each of the clerks doing this type of work is not, however, conducting a wholly one-man operation in secret—his work and the product of it flows through the channels of Firm A's organization, involving many hands—the messenger department, the mailing department, the vault, the accounting department, and so on. Mais and his accomplices might have considered by-passing all these channels because of the risk of exposure; however had they done so and Mais had simply gone to Firm B or some other broker to sell the old certificates presently in his hands, technically negotiable because indorsed in blank, the risk of exposure would probably have been greater because of guarantees and other stamps on the old certificates which would indicate that they were some other broker's "work in process"; inquiries might be initiated which would lead to Firm A, and Mais (and perhaps even some of his highly elusive accomplices) would have been caught. However, if under the auspices of Firm A these items could be presented for transfer into the name of an accomplice or nominee of the gang, right along with Firm A's legitimate transfers, they would have created a "clean certificate" which would import no wrong, and as to which they could, as was demonstrated, provide a passable indorsement. Thus these fraudulent transactions, necessarily transmitted on Firm A's letterhead, went out through its messenger or mailing departments to three separate transfer agents, were transferred, and the new certificates were mailed to, or picked up by messengers from, Firm A. The rights of the plaintiff can rise no higher than those of its assignor, Firm A, and it is difficult to see how

12. *MECHEM, AGENCY* (1889) §739; *Gleason v. Seaboard Airline R. R.*, 278 U. S. 349, 49 S. Ct. 161, 73 L. Ed. 415 (1929); *RESTATEMENT (SECOND) OF AGENCY* §§261, 262, 282(2) (a).

Firm A could be allowed to come into court and maintain that it had no knowledge, no notice, and no responsibility as to diversion of the shares, and that as against recipients in the stream of commerce, the name "Jack Arbetell" is a secret representation of its ownership.

FRAUD ON THE ISSUER AS SUPPORTING ESTOPPEL

The presentation for transfer under the auspices of Firm A was a warranty by Firm A that the transfer was rightful.¹³ Had the transfer agents been placed on notice that the transferee was fictitious or non-existent, almost certainly the transfer would have been refused.¹⁴ While the issuer cannot pick and choose its stockholders it has three interests which the law should protect: (1) disassociation from the consequences of any fraud that may result from fictitious ownership; (2) responsibility growing out of its statement in the new certificate "This certifies that Jack Arbetell is the owner of 100 shares of common stock of X Corporation"; and (3) the right to decline issuance in a fictitious name which is neutralized for purposes of voting and otherwise participating in corporate affairs, and which could conceivably involve enough shares to make it impossible for a merger, for example, to be voted. The corporation has a right and duty to defend the integrity of its stockholder records. It is completely impracticable, and the law should not require, that the issuer conduct an investigation into the existence, identity, and capacity of assignees of stock; of necessity, the burden must fall on the presentor for transfer. This might be a good context for the extension and amplification of Rule 405 "Know your customer."

THE PREFERABLE GROUND FOR DECISION

It is submitted that the Court erred in, without at least requiring more convincing proof of the facts concerning Arbetell, deciding that the indorsement was insufficient under Section 162 of the Personal Property Law; also in taking a strictly legalistic view of that Section as permitting transfer *only* upon the actual indorsement of the person

13. CHRISTY, THE TRANSFER OF STOCK §248 (4th ed. 1967):

"When the purchaser presents his transfer and certificate, the transfer officer naturally understands that he claims the transfer to be valid, and to have a right to a certificate; he has the right to act as if this had been said in terms. And if relying upon such tacit and implied representations, the corporation suffers a loss, the purchaser who misled it is liable." (citing cases).

14. CHRISTY, *supra*, note 13, §70:

"If the transfer is made and a new certificate issued in the name of the non-existent or fictitious person, the corporation may be liable on a representation that such person is capable of transferring the stock."

See Code Section 3-413 applying to Commercial Paper, whereby the maker admits the existence of the payee and his then capacity to indorse. See also (as to corporate stock) *Amer. Exchange Natl. Bank v. Woodlawn Cemetery Co.*, 120 App. Div. 119, 105 N. Y. S. 305 (1907); *Holbrook v. New Jersey Zinc Co.*, 57 N. Y. 616 (1874).

named in the certificate. During the many years that Section 162 was in effect, transfer agents have not hesitated to apply supplemental principles of law, as sanctioned by Section 179, in disregard of the literal language of Section 162. The present case seems one calling for estoppel against the plaintiff, and there seems ample authority in New York for the application of the estoppel principle. "As between two innocent victims of the fraud the one who made possible the fraud on the other should suffer."¹⁵

The foregoing is not an attempt to divine a precise assessment of fault as between two highly reputable firms, caught in the problem of acute shortage of clerical help and unable to assure themselves that all of their people are honest and competent.¹⁶

A HYPOTHETICAL CASE—COULD MAIS HAVE SOLD THE STOCK TWICE?

There appears no convincing evidence of Arbetell's non-existence, and the Court does not find his non-existence. Suppose, after Firm B pays the \$87,000 conversion judgment against it, Arbetell shows up looking for his stock. It seems that early in 1960 and immediately prior to the transactions in suit, Arbetell, who was an old Army friend of Mais from Alaska, came in to see him and told of his \$100,000 cash inheritance and his desire to use Mais' advice and expertise in making stock investments. Mais is able to put his hands on \$76,000 worth of stock (his story about Yudelowitz et al. is a fabrication); this stock he puts in Arbetell's name (per the Court's opinion) only he receives \$76,000 from Arbetell for it, and hands him the certificates. Arbetell is ignorant in financial matters, but is acting in good faith. He says he is going on a round-the-world cruise on a freighter; Mais points out the problems of stock ownership *in absentia* and persuades him to turn back the certificates to him (Mais) for safekeeping. Arbetell leaves; Mais forges his indorsement on the certificates and (now picking up the thread of the original story) sells them through a confederate to Firm B for \$76,000, making his total takings \$152,000. He also decides to go on a trip. Firm A now discovers its loss and sues Firm B for conversion. The court (as happened) enters a judgment for \$87,000 against Firm B. Arbetell comes back; proves from the issuer's records his ownership of the stock, and sues the issuer for wrongful transfer on the forged assignment; the issuer sues Firm B on the signature guarantee. Neither has any defense; the former proceeding certainly is not binding on Arbetell; it now is evident that A had

15. *Hall v. Bank of Blasdell*, 306 N. Y. 336, 118 N. E. 2d 464 (1954); *Zendman v. Harry Winston, Inc.* 305 N. Y. 180, 111 N. E. 2d 871 (1953); *Island Trading Co. v. Berg Bros.*, 239 N. Y. 229, 146 N. E. 345 (1924).

16. *Exchanges Ask Access to Fingerprint Data to Check Employees as Stock Thefts Rise*, *Wall St. J.* (Eastern Ed.) Mar. 5, 1969, at 3, col. 2-3: "Securities with a total value of about \$37 million have been reported stolen or lost in each of the last two years."

neither title nor the right to possession, as claimed. Arbetell was the registered owner, and a bona fide purchaser as well. If the Statute of Limitations has not run, Firm B has the ultimate liability on its guarantee and must now pay a second judgment, with no apparent recourse against anyone. If the statute has run, the innocent issuer will have to pay. The only variance from the original story is that Mais is shown not to have been telling the truth.

A fundamental weakness in the "fictitious payee" doctrine is the necessity that puts the evidence in the mouth of the wrongdoer. To prove that someone (excluding one known to have lived and whose death can be legally established) is a non-person takes quite a bit of doing. For an interesting case where a Court could have found itself in the position indicated by the above hypothetical in a negotiable instruments lawsuit, it having previously declared the non-existence of a person to have been conclusively proved, see *Louisville Credit Mens Assn. v. The Louisville Trust Co.*¹⁷

WHAT RESULT IF THE UNIFORM COMMERCIAL CODE HAD BEEN APPLICABLE?

Firm A's action for conversion against Firm B would be governed by Section 8-318 of the Code, which provides:

No Conversion by good faith delivery

An agent or bailee who in good faith (including observance of reasonable commercial standards if he is in the business of buying, selling or otherwise dealing with securities) has received securities and sold, pledged or delivered them according to the instructions of his principal is not liable for conversion or for participation in breach of fiduciary duty although the principal had no right to dispose of them."

In the original majority opinion the Court stated that the obligation to observe reasonable commercial standards is an element of "good faith" under Section 168 of the Personal Property Law. However in the later opinion of July 2, 1968, having already decided that the transfer to Firm B was invalid under Section 162, the Court determined that Firm B's "good faith is not an issue in this case and we do not reach it." The original majority opinion made some observations on the subject of good faith, but no findings, leaving the subject for retrial. The possibility of retrial was cut off by the opinion of July 2, 1968.

Assuming that Firm B could prevail on the "good faith" issue, clearly Firm A would have no recovery against Firm B in conversion under the Code. Almost surely the certificates standing in Arbetell's name, after their receipt by Firm B, would have been transferred to bona fide purchasers. Issuance of new certificates to such purchasers

17. (Ky. Ct. of App. 1967) 422 S. W. 2d 421.

would cut off any right to reclaim or other remedy on the part of Firm A (Sections 8-311 and 8-315). Firm A having made the presentment for transfer of the certificates antecedent to the issuance of the Arbetell certificates, and having thereby warranted its entitlement to the transfer (Section 8-306) would certainly be in no position to hold the issuer liable for following its instructions to issue them in Arbetell's name. This leaves Firm A without a remedy against anyone, and inasmuch as it started the trouble in the first place, this seems about the way it should be.

If Firm B is held not to have observed reasonable commercial standards, Firm A should be required to surmount the issues of its own title and right to possession in order to recover the value of the stock. A defense by Firm B on the "fictitious ownership" principle based on Code Section 3-405 relating to Commercial Paper is probably weaker than that already argued on pre-Code law, because it can now be argued that in promulgating the Code as a body of commercial law dealing comprehensively with Commercial Paper in Article 3, and Investment Securities in Article 8, the draftsmen while compartmenting these subjects would have put something relating to fictitious ownership in Article 8 if they had felt that similar treatment was indicated.

On the other hand, the argument *infra* in favor of holding that Firm A is estopped by its conduct from questioning the title to anomalous certificates which Firm A had a hand in creating, is probably even stronger under the Code than the one under the Personal Property Law to the effect that its general Section 179 overrides a literal reading of Section 162.¹⁸ Under the Code one could cite Section 1-103, which specifically refers to estoppel, to "supplement" Section 8-308 defining the "appropriate person" to indorse.¹⁹ Both Code provisions are better drafted than the statutes which preceded them, and their purpose is clear. A Court should have no difficulty in finding, under appropriate facts, that one in the position of Firm A is estopped to deny the effectiveness of the "Jack Arbetell" endorsement, with the result that no conversion has occurred.

18. See notes 2 and 3, *supra*.

19. Section 1-103 provides:

"Unless displaced by the particular provisions of this Act, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions."

It has been stated in a case citing this section and holding a principal estopped to deny his agent's representations that "these provisions superimpose a general requirement of fundamental integrity in commercial transactions regulated by the Code." *Skeels v. Universal C. I. T. Credit Corp.* 335 F. 2d 846 (1964).

Section 8-308 establishes the requirement of indorsement by an "appropriate person" and goes on to define this term at length, including the catch-all "(f) a person having power to sign under applicable law or controlling instrument."

