Corporations—Transfer of Assets to Subsidiary—Relative Priority of Creditors—[Federal].—A corporation had more assets than liabilities but not enough current assets to meet obligations presently falling due. In order to obtain delay from the claimant banks, it organized a subsidiary corporation, and transferred to it assets more than sufficient to pay the debts owed to the claimants. The claimants surrendered notes given by the parent, accepted those of the subsidiary and received substantial payments on account. Further difficulties overcame the parent, and its creditors had a receiver appointed. The creditors then sought an instruction to the receiver to take the property of the subsidiary as assets of the parent. Both corporations had identical officers, the parent owned all the stock in the subsidiary, and its president had, by agreement, power to remove officers of the subsidiary without cause. It exercised complete control of the activities of the subsidiary. The claimant banks objected to the instruction on the ground that the subsidiary was an entity distinct from the parent. The lower court held that the parent and subsidiary were one, awarded the assets of the subsidiary to the receiver of the parent and ordered the claimants to repay money paid by the subsidiary on the assumed debts. On appeal, *held*, affirmed and modified. The subsidiary was not a separate entity from the parent, but since there was no fraud, and the parent was solvent at the time of the transfer to the subsidiary, the claimants were entitled to keep money already paid to them and to priority in the assets of the subsidiary. *Commerce Trust Co. v. Woodbury*, 77 F. (2d) 478 (C.C.A. 8th 1935).

Courts face the problem of deciding whether to recognize the separate entities of parent and subsidiary corporations in three main groups of situations where rights of creditors are affected: (1) Where it is sought to hold either corporation on torts, contracts, or other debts of the other. *Berkey v. Third Ave. Ry.*, 244 N.Y. 84, 155 N.E. 58 (1926) (subsidiary held not liable for the torts of the parent); *D. & P. Pub. Corp. v. Conway*, 252 Ill. App. 41 (1929) (subsidiary could not sue employee of parent upon his contractual obligations to parent); *Day v. Postal Telegraph Co.*, 66 Md. 354, 7 Atl. 608 (1887) (property of subsidiary devoted to pay the debts of the insolvent parent corporation). (2) Where one corporation seeks to prove a claim, as a creditor, in the bankruptcy of the other. *In re Watertown Paper Co.*, 169 Fed. 252 (C.C.A. 2d 1909) (claim of subsidiary against bankrupt parent corporation allowed). (3) Where the assets of one are sought in receivership proceedings against the other. *In re Muncie Pulp Co.*, 139 Fed. 546 (C.C.A. 2d 1905) (receiver of parent corporation allowed to take the property of the subsidiary). No single principle, it seems, can explain the results of the decided cases. Many circumstances, such as the amount of stock in the subsidiary owned by the parent, the adequacy of the financing of the subsidiary, the control exerted by the parent, and the identity of officers, bear more or less heavily upon the determination, but no one factor is controlling. See *Corsicana Bank v. Johnson*, 251 U.S. 68 (1919); *American Cyanamid Co. v. Wilson and Toomer Fertilizer Co.*, 51 F. (2d) 665 (C.C.A. 5th 1931); *Owl Fumigating Corp. v. Cyanide Co.*, 24 F. (2d) 718 (D.C. Del. 1928); *Gledhill v. Fisher and Co.*, 262 N.W. 371 (Mich. 1935). See also Douglas and Shanks, Insulation from Liability through Subsidiary Corporations, 39 Yale L.J. 193 (1929). Some legal writers suggest that certainty should be sacrificed in favor of a flexible rule capable of meeting the exigencies of each case as it arises. Powell, Parent and Subsidiary Corporations § 7 (1931); Ballantine, Separate Entity of Parent and Subsidiary Corporations, 14 Calif. L. Rev. 12 (1925). The courts evidently have been employing a rule of this sort.

The decision in the principal case to disregard the separate entities would seem to lead to the conclusion that creditors of the subsidiary were merely creditors of the single corporation, and so were entitled to no priority. The transfer to the subsidiary, however, was treated by the court as a transaction analogous to a mortgage or other transfer to the claimants, a placing of assets where they would be free from the claims of general creditors but available to satisfy the debts of the claimants. Since no fraudulent intent was found, the transaction could not ordinarily be attacked apart from bankruptcy, even if the transferor had been insolvent. *Bamberger v. Schoolfield*, 160 U.S. 149 (1895); *Grandison v. Robertson*, 231 Fed. 785 (C.C.A. 2d 1916); *Davis v. Hincke*, 264 Ill. 46, 105 N.E. 708 (1914). But an effective transfer requires that some property interest be established in the creditor. Often a promise to transfer or an incomplete pledge will give rise to an equitable lien which satisfies the rule. See Glenn, Creditors' Rights and Remedies § 441 (1915). The creditor's property in specific assets has been held sufficient even though the debtor had control of them and power to substitute others for those originally set aside. *Sexton v. Kessler*, 225 U.S. 90 (1912). *Cf. Casey v. Cavaroc*, 96 U.S. 467 (1877). It seems clear then that the claimants had a right to payments actually made to them by the subsidiary. But a transfer which leaves the debtor with complete power to dispose of the property so that it remains part of his general assets, will not be sustained against general creditors. *National City Bank v. Hotchkiss*, 231 U.S. 50 (1913); *Mechanics' and Metals Bank v. Ernst*, 231 U.S. 60 (1913). Promises to pay out of a particular fund are unenforceable and therefore come within this principle. *Pollock v. Jones*, 124 Fed. 163 (C.C.A. 4th 1903); *Torrance v. Winfield National Bank*, 66 Kan. 177, 71 Pac. 235 (1903). In the instant case, disregarding the separate entities meant that the assets in dispute were the assets of a single corporate debtor. Then the want of fraud was immaterial, for the transfer to the subsidiary purported to create no property interest in the claimant banks, and there was no reason for preferring them over general creditors of the parent. Permitting the creditors to retain payments actually made was justified however, as executed preferences are valid in the absence of bankruptcy.

Corporations—Watered Stock—Right of Trustee in Bankruptcy to Collect Assessment on Shares—[Federal].—An Arizona corporation issued shares for a consideration admittedly worth far less than the par value of the shares. The state constitution provided: "No corporation shall issue stock, except to bona fide subscribers therefore. . . . . All fictitious increase of stock . . . . shall be void." Ariz. Const. Art. 14, § 6. The corporation later incurred indebtedness and was adjudicated bankrupt. On application of the trustee, the bankruptcy court ordered an assessment on the shares. On appeal by the shareholder, *held*, decree reversed on the grounds (1) that the shares were wholly void under the constitutional provision and could not be made the basis of liability, and (2) that the decree could not be defended on a fraud theory since there was proof that at least some of the creditors had not relied upon any representation that the shares were fully paid. *Hirshfeld v. McKinley*, 78 F. (2d) 124 (C.C.A. 9th 1935).

It is usually recognized that constitutional or statutory provisions like that quoted above were designed at least partly for the protection of creditors and that to achieve this purpose they should be construed not to make the transaction entirely void. The weight of authority permits recovery by creditors or a trustee in bankruptcy against