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 holders of shares issued in violation of such requirements apart from any tort theory. *Vermont Marble Co. v. Declez Granite Co.*, 135 Cal. 579, 67 Pac. 1057 (1902) (constitutional provision (Cal. Const., Art. 12, § 11) repealed Nov. 4, 1930); Bonbright, Shareholders' Defenses against Liability to Creditors on Watered Stock, 25 Col. L. Rev. 408 (1925); see *Fayette National Bank v. Meyers*, 211 Ky. 185, 277 S.W. 292 (1925). Under these cases only the agreement that the shares should be regarded as fully paid is held void, and an implied statutory obligation to make full payment is enforced. See 39 Harv. L. Rev. 757 (1926). In the instant case the court felt bound to reach a contrary result because of Arizona decisions in which shares issued in violation of the constitution had been characterized as void. None of these cases, however, involved the question of shareholders' liability for the benefit of creditors. In *Frame v. Mahoney*, 21 Ariz. 282, 187 Pac. 584 (1920), the stock improperly issued was cancelled in a minority stockholders' suit; in *Ettlinger v. Collins*, 25 Ariz. 115, 213 Pac. 1002 (1923), it was held that a purchaser of such stock might recover damages from his vendor if he could show bad faith; and in *Overlock v. Jerome-Portland Copper Mining Co.*, 29 Ariz. 560, 243 Pac. 400 (1926), a bona fide purchaser of such shares was denied the status and rights of a shareholder. The opinion in the case last cited expressly recognized that the provision was intended for the protection of corporate creditors. In view of this statement and of the absence of any controlling state decision, the federal court was hardly required to adopt a construction of the constitution frustrating this intention. There is some authority, however, supporting the instant case. *Kellerman v. Maier*, 116 Cal. 416, 48 Pac. 377 (1897); *Lavell v. Bullock*, 43 N.D. 135, 174 N.W. 764 (1919) (concurring opinion). *Kellerman v. Maier, supra*, the case most relied on by the court in the instant case, has been discredited by being limited to its particular facts in a later California decision. *Vermont Marble Co. v. Declez Granite Co.*, 135 Cal. 579, 67 Pac. 1057 (1902).

The court's refusal to grant relief to the trustee in bankruptcy upon a tort theory was in accordance with authority. Assuming the acceptance of the shares to involve a representation of full payment and assuming reliance thereon, any cause of action in deceit would be in the individual creditors and not in the corporation or its trustee in bankruptcy. *Courtney v. Georger*, 228 Fed. 859 (C.C.A. 2d 1915). Some courts have been liberal in inferring or presuming knowledge and reliance by creditors. *Hospes v. Northwestern Mfg. & Car Co.*, 48 Minn. 174, 50 N.W. 1117 (1892). But where, as in the principal case, one of the creditors knew all the facts and others were shown not to have relied upon the issuance of the shares, no recovery for their benefit could properly be based upon any fraud theory.

Courts—Retroactivity of Decisions—Right to Collect Taxes from Party Who Relied on Former Decision—[Wisconsin].—The defendant paid income tax on patent royalties in 1926 and 1927. In 1928, the United States Supreme Court in *Long v. Rockwood*, 277 U.S. 142 (1928), held this tax unconstitutional and the plaintiff tax commission refunded these amounts. From 1928 until 1931 when the defendant sold the patents, he listed income from this source under non-taxable income as directed. In 1932, *Long v. Rockwood* was overruled by *Fox Film Co. v. Doyal*, 286 U.S. 123 (1932), which required the defendant therein to pay taxes for the proceding years. Plaintiff now sues for taxes for 1928, 1929, and 1930. *Held*, the *Fox* case is retroactive and therefore plaintiff may recover back taxes for the years after the previous decision until the