relief. *Chambers v. Rowe*, 36 Ill. 171 (1864); *Witt v. Boothe*, 98 Kan. 554, 158 Pac. 851 (1916); *Tatum v. Brooker*, 51 Mo. 148 (1872); *Fay's Estate*, 213 Pa. St. 428, 62 Atl. 991 (1906).

Many courts afford the vendor relief on a distinctly different theory, that of affirmative mutuality. These courts assert that if the purchaser's acts entitled him to specific performance, the vendor is entitled to the same remedy. *Dollar v. Knight*, 145 Ark. 522, 224 S.W. 983 (1920); *Sweeney v. O'Hora*, 43 Iowa 34 (1876); *Pearson v. Gardner*, 202 Mich. 360, 168 N.W. 485 (1918); *Cooper v. Thomason*, 30 Ore. 161, 45 Pac. 296 (1896). But the doctrine of affirmative mutuality is properly applied only where the defendant has a right to specific performance and the only reason for denying it to the plaintiff is the adequacy of his legal remedy; it is not designed to afford relief in equity to a plaintiff who could obtain none at law. See 1 Univ. Chi. L. Rev. 631 (1934). To apply the doctrine in favor of one who has not changed his position and cannot point to acts indubitably indicative of the existence of the transaction is an unjustified relaxation of the Statute of Frauds and reduces the effectiveness of the statute as a safeguard against fraud. It is an egregious misapplication of the doctrine to allow specific performance to the vendor in cases where he has no remedy at law merely because the purchaser would have been entitled to specific relief. Furthermore, it seems likely that in some of the cases resorting to the doctrine of affirmative mutuality, reliance thereon was in fact unnecessary because specific performance might have been granted to the vendor on the theory that the purchaser's acts of part performance changed the vendor's position quite as much as if the acts were the vendor's own. See *Pearson v. Gardner*, 202 Mich. 360, 168 N.W. 485 (1918); *Cooper v. Thomason*, 30 Ore. 161, 45 Pac. 296 (1896).

Abandonment of affirmative mutuality in favor of the change of position theory as the basis for granting the vendor specific performance would have at least two advantages: first, it would lead to a clearer conception of the affirmative mutuality doctrine; and, second, it would lead to the application of a test for relief that has some reasonable relation to the equities of the situation. In refusing to apply the doctrine of affirmative mutuality, the New York court properly recognized that the doctrine has no application in this class of cases; in holding that the vendor, in the instant case, was entitled to specific performance, the court properly recognized that the purchaser's improvements may so change the condition of the land that it would be unjust to force the vendor to take back the land.

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**Garnishment—Liability of Bank under Attachment of Stock Certificates in Its Possession—[Illinois].**—The plaintiff garnisheed the defendant bank for the purpose of reaching certificates evidencing shares of stock in an Illinois corporation. The shares were owned by the plaintiff's judgment debtor and the certificates were in the possession of the bank under an escrow agreement. On the termination of this agreement, and after service of garnishee summons, the bank returned the certificates to the owner. The plaintiff sued the bank for the amount of the judgment against his debtor, which was less than the market value of the stock. The trial court gave judgment for the defendant. *Held*, reversed. Stock certificates are a proper subject of garnishment under the Illinois statute providing that garnishee summons may be issued to attach "any effects or estate" of a judgment debtor in the possession of a third person. Ill. Rev. Stat. 1935, c. 62, § 1. Redelivery of such effects to the debtor after garnishee summons imposes liability on the garnishee to the extent of the value of the property so returned. Ill. Rev. Stat. 1935, c. 62, § 25. *Alexander v. Livestock National Bank*, 282 Ill. App. 315 (1935).

A garnishee who returns property to the debtor after summons is uniformly held liable for its value to the garnishor. Waples, Attachments and Garnishment § 547 (2d ed. 1895). Whether or not stock certificates fall within the garnishment acts has not been uniformly decided. The statutes use such words as "effects," "estate," and "credits" as descriptive of the rights attachable by garnishment. See Ala. Code 1928 § 8051 (money or effects); Mass. Ann. L. 1933 c. 246 § 20 (goods, effects, or credits); Purdons' Pa. Stat. Ann. 1935 § 2941 (goods or effects). Assuming that shares in a corporation can be included in such broad categories as "effects" or "estate" (see *Union Nat. Bank v. Byram*, 131 Ill. 92, 22 N.E. 842 (1889) and *Granada Bank v. Glass*, 150 Miss. 164, 116 So. 740 (1928), but *cf. Southwestern Gas and Electric Co. v. W. O. Perkins & Son*, 185 Ark. 830, 49 S.W. (2d) 606 (1932)), the conflict has arisen over the proper person to garnishee in seeking to attach the shares. In Ohio the corporation may be made garnishee on the theory that "the corporation holds its property in trust for the stockholder." *Nat. Bank v. Lake Shore & M. S. R. Co.*, 21 Ohio St. 221 (1871); *Norton v. Norton*, 43 Ohio St. 509, 3 N.E. 348 (1885). If the stockholder's property is held by the corporation it would seem to follow that it does not rest in the certificates. Thus some cases hold that the shares are not attachable by garnishment of a third party possessor of the certificates. *Tweedy v. Bogart*, 56 Conn. 419, 15 Atl. 374 (1888); *Smith v. Downey*, 8 Ind. App. 179, 34 N.E. 923 (1893); *Armour Bros. Banking Co. v. St. Louis Nat. Bank*, 113 Mo. 12, 20 S.W. 690 (1892).

Other states have decided that garnishment of the corporation will not reach the shares of the stockholders because the corporation is not a debtor of the stockholder and holds no deliverable property for him. *Ross v. Ross*, 25 Ga. 297 (1858); *Fowler v. Dickson*, 24 Del. 113, 74 Atl. 601 (1909). Illinois is in this group. *Pease v. Chicago Crayon Co.*, 235 Ill. 391, 85 N.E. 619 (1908). If a creditor can not reach the corporate shares of his debtor by making the corporation garnishee it seems that he should be able to reach them by garnishment of a third party holder of the certificate on the theory that the property rights rest with the certificates. This view has been taken by a substantial number of cases besides the principal case. *Industrail Co. v. Winter*, 256 Mich. 474, 239 N.W. 891 (1932); *Puget Sound National Bank v. Mather*, 60 Minn. 362, 62 N.W. 396 (1895); *Simpson v. Jersey City Construction Co.*, 165 N.Y. 193, 58 N.E. 896 (1900). The valuable rights incident to the ownership of corporate stock should be available to creditors by some procedure.

Under the Uniform Stock Transfer Act, now in force in half of the states, 6 U.L.A. §§ 1, 13 (1922), the certificates must be delivered to pass title to the shares, and either seizure of the certificates or an injunction against their transfer is required for any valid attachment of, or levy on, the shares. This provision illustrates the modern tendency to consider the rights in the shares as accompanying the certificates. See 45 Yale L. J. 379 (1935). In a state like Illinois, where the Uniform Stock Transfer Act is in force (Ill. Rev. Stat. 1935 c. 32, §§ 229–253) one should expect to see the garnishment statutes construed as in the principal case, permitting the attachment of the certificates in the hands of a third party. The additional problems arising when a foreign corporation is involved are not insurmountable. See Wood, Reaching Shares of Stock, 38 W.Va. L. Q. 219 (1932).