

of this suit, had made an assignment of all his property, for the benefit of all his creditors, agreeably to Gen. Laws, c. 140; that he had in all respects complied with the requirements of the statute; that the plaintiffs' debt was due from the defendant at the time of the assignment; that the plaintiffs assented to such assignment, and had proved their debt against the debtor according to law, and that, by virtue of such assignment and the proceedings thereunder, the defendant was discharged from all liability for the note in suit. The plaintiffs moved to reject the brief statement, the motion was granted, and the defendant excepted. The question intended to be raised is, whether an assignment by a debtor under Gen. Laws, c. 140, and a compliance with its provisions on his part, and the assent of the creditors and proof of their claims, operate to discharge the debtor from his debts, unless paid in full.

*B. K. Webber and Briggs & Huse*, for the defendant.

*C. H. Burns*, for the plaintiffs.

CLARK, J. Chapter 140, Gen. Laws, is not a bankrupt law. It was designed to secure an equal distribution of the debtor's estate among the creditors assenting to the assignment, but it contains no provision for the discharge of the debtor except upon payment of his debts in full. It operates only upon the estate of the debtor within the state, and does not secure a discharge from his debts beyond the payments made. In *Hurd v. Silsby*, 10 N. H. 108, it was held, under the statute of July 5, 1834, which was similar to the present statute, that a condition in the assignment, that the creditors should accept their several proportions in full discharge of their claims, rendered the assignment invalid.

*Exceptions overruled.*

STANLEY, J., did not sit: the others concurred.

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WHEELER & WILSON M'F'G Co. v. WHITCOMB.

62	411
67	194
62	411
72	188

If an action is dismissed by the court for want of jurisdiction, it has no power to determine the title to the property in controversy, or to assess damages for its value.

When an action is brought in one county which ought to have been brought in another, the court may order its transfer to the latter.

REPLEVIN, for a sewing-machine. The defendant is a resident of Concord, and the machine in question was taken from her on

this writ in that county. The defendant moved to dismiss for want of jurisdiction, and the motion was granted. The court then, against the plaintiffs' objection, assessed the defendant's damages at thirty-five dollars.

The plaintiffs objected that the action having been dismissed for want of jurisdiction, the court had no power to assess the damages; but the court overruled the objection, and ordered judgment for the defendant for thirty-five dollars and costs, to which the plaintiffs objected, and filed a bill of exceptions, which was allowed.

*Osgood & Prescott*, for the plaintiffs. The action having been dismissed for want of jurisdiction, the court had no power to assess the damages or to order a judgment. Any act of a tribunal beyond its jurisdiction is null and void, and of no effect whatever. 7 Wait Act. & Def. 181, and cases cited. If a court act without authority, its judgments and orders are necessarily and incurably void. *Eaton v. Badger*, 33 N. H. 238; 4 Wait Act. & Def. 195, and cases cited. If the defendant claims that it is necessary, to protect her rights, that damages should be assessed and judgment ordered, we say No, for she has a full and adequate remedy in a suit on the replevin bond (and this is one of the objects and purposes for which it is given), and then both parties can be fully heard as to the title to the property and no wrong be done to either, as there will be if it is held that the court has power to order this judgment; for the plaintiffs will be deprived of their property without having been heard, for this judgment will be final between these parties; and when the defendant brings suit on the bond to recover this judgment, the plaintiffs will not then be permitted to show that this court had no jurisdiction. *McDermott v. Isbell*, 4 Cal. 113. Nor will the plaintiffs be permitted to show as against this judgment that the machine belonged to them. *Sherry v. Foresman*, 6 Blackf. 56; *Davis v. Crow*, 7 Blackf. 130; *Williams v. Vail*, 9 Mich. 162; *Cushenden v. Harman*, 2 Tyl. 431. Nor is there any remedy by which the plaintiffs can recover their property after having satisfied this judgment.

*J. H. Albin*, for the defendant.

BLODGETT, J. When the action was dismissed for want of jurisdiction, the power of the court to determine either the title or the value of the property in controversy terminated, and the subsequent acts of assessing the damages and ordering judgment therefor were consequently unauthorized and void. The plaintiffs' exceptions must therefore be sustained, but in order to prevent unnecessary litigation, and in furtherance of the more speedy administration of justice, the case is ordered to be sent to Merri-

mack county for trial. See *Bartlett v. Lee*, 60 N. H. 168. The defendant will take costs to the time of transfer.

. *Ordered accordingly.*

STANLEY J., did not sit: the others concurred.

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BUTTRICK v. NASHUA & LOWELL RAILROAD.

62	413
67	469
68	293
68	417
62	418
69	408

A transfer of stock in a dividend paying corporation not recorded in the record book of transfers is invalid against attaching creditors without notice.

A corporation attaching the stock is not chargeable with the knowledge of such transfer possessed by one of its directors who takes no part in causing and is not informed of the attachment.

BILL IN EQUITY, to compel the defendants to issue to the plaintiff a certificate for fifty shares of its capital stock. October 19, 1876, one Wood, owning ninety-three shares of the defendants' capital stock, assigned fifty of them to the Appleton National Bank, of Lowell, as collateral security for his note to the bank for \$4,200, and the defendants issued to the bank a certificate (Wood's certificate being surrendered) for that number of shares, stating therein that they were held by the bank as collateral. The remaining forty-three shares were at the same time pledged to the Maverick Bank, of Boston. At the defendants' annual meeting in May, 1877, Dr. Graves (who was at that time chosen a director) and the plaintiff negotiated with Wood for the purchase of his shares. Wood finally agreed to sell the fifty shares to the plaintiff and the forty-three shares to Graves at a certain price per share in addition to the sum for which each lot of shares was held by the banks, and they severally agreed to take them at that price and to pay the sums for which the respective lots were held as collateral. The agreement was verbal, and nothing was then paid to Wood. June 19, 1877, Wood, in pursuance of the agreement, executed and delivered to the plaintiff an irrevocable power of attorney, authorizing the Appleton Bank to transfer the fifty shares to the plaintiff, who then paid Wood a part, and shortly afterwards the remainder, of the agreed price. In March, 1878, the plaintiff paid Wood's \$4,200 note to the bank, received from it a transfer of the shares, and soon after called upon the defendants for a new certificate, which was refused.

July 11, 1877, the defendants brought suit against Wood, caused the fifty shares to be attached, subsequently obtained judgment and execution, and were proceeding to levy on the shares