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Banks and Banking - Stockholders' Double Liability - Recourse Against Decedent's Estate

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NOTE

BANKS AND BANKING—STOCKHOLDERS' DOUBLE LIABILITY—RECOURSE AGAINST DECEDENT'S ESTATE.—It would very much abridge the security of the creditors of a bank if the superadded (or double) liability of the stockholders were to cease by the death of the stockholders. Such liability being contractual in its nature therefore survives against their estate. The fact that the insolvency of the bank occurs after the death of the stockholder or even after the closing of his estate is immaterial. The liability cannot be evaded by administering the rest of the estate, distributing the assets, discharging the executor or administrator and neglecting to make any disposition of the stock. The personal representative is liable to the extent to which funds of the estate have come to his hands and if the estate has been distributed the distributees are liable to the same extent. The liability is a lien against the estate whether it is still in the hands of the executor or administrator or whether it has passed to the distributees.[1]

This plain principle of contract law was fully recognized by the Wisconsin Supreme Court in two recent cases, namely *Banking Commission* v. *Best*[2] and *Shafer* v. *Bellin Memorial Hospital*.[3] In both cases the distributees of the estate were held liable to the extent that assets had come to their hands. No fault can be found with these decisions.

The same cannot, however, be said of *Shafer* v. *Sell*.[4] In this recent case the Wisconsin Banking Commission elected to sue only the residuary legatee who had received $9,747.84 while the other legatees had received $2500 and $4500 respectively. The death of the testator had occurred two years before the insolvency of the bank and the superadded liability on the stock was for $1400. The executor had advised the residuary legatee not to accept the stock and the latter had followed this advice to the letter, had never voted the stock, had exercised no acts of ownership over it and of course had never received any dividends on it. The supreme court in affirming a judgment dismissing the complaint said: "It is plain to us that defendant never became a stockholder. The process of becoming a stockholder is contractual, and all the elements of a contractual relationship are absent here. * * * It is quite another thing to hold that a residuary legatee, who declines to accept assignment of stock certificates, or to complete the operation of becoming a stockholder, or to exercise any of the rights incident to ownership of the stock, has so far satisfied the contractual requisites as to become a stockholder." The court in closing its opinion suggests that if plaintiff has a remedy it is by action against the next of kin to whom has been assigned personal estate of the deceased stockholder.

The remedy suggested by the court, however, would under the facts of this case result in the same burden on the defendant that was sought to be imposed on her under the plaintiff's theory. The other legatees would indeed be made parties, and subjected to expense but

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[1] See ZOLLMANN, BANKS AND BANKING §§ 491, 1721.
[2] 219 Wis. 526, 264 N.W. 176 (1935).
[3] 219 Wis. 495, 264 N.W. 177 (1935).
[4] 220 Wis. 112, 264 N.W. 620 (1936).

in the end would retain the amount received by them and the residuary legatee would not be relieved in the slightest. The result would be effected only if costs consumed the corpus of the residuary legatee's portion or if such legatee was bankrupt. The banking commission seems to have been fully satisfied on this score and hence its resolve to bring the action only against the residuary legatee is perfectly intelligible. Just why the court should not be satisfied with this arrangement which would do complete justice between the parties and save expense and trouble is difficult to understand in view of the two other cases above mentioned in which the liability was enforced against distributees. In all three cases all that really happened was that property of the deceased stockholder came to the legatee subject to a lien for the superadded liability. In none of them was it material that the legatee be technically a stockholder. The vice of the court's reasoning seems to be a fundamental confusion between the lien resting on the estate coming to the residuary legatee and the contract liability assumed by an original subscriber or transferree of the stock. If the complaint was drafted on the wrong theory it would seem that an amendment was in order rather than forcing the plaintiff to start over with added parties and greater expense, not to speak of the possibility of a lapsed cause of action.

Of course the effect of the decision except on the original parties is very small. Cases of residuary legatees situated like the defendant in this case are few and far between. If such a case should arise again the commission of course would join all the legatees and would thus increase the expense of the lawsuit and would by the decision be protected against a demurrer which otherwise would seem to be appropriate. The question of course would always remain: Why should the supreme court require such a useless expense of time and money?

CARL ZOLLMANN

RECENT DECISIONS

ATTORNEY AND CLIENT—UNAUTHORIZED PRACTICE—PRACTICE OF LAW BY CORPORATIONS.—The defendant trust company, in pamphlets distributed to the public, explained the desirability and utility of wills and trust agreements, and solicited the selection of the defendant as executor or trustee. The defendant had drawn various instruments pertaining to real estate transactions, consisting of deeds, mortgages and extensions, satisfactions, assignments of rents, and had drawn chattel mortgages. An officer of the corporation, a licensed attorney, had drawn several wills for clients, for two of which he had charged a fee which he had personally retained. It is claimed that by these actions the corporation is engaging in the practice of law, and an injunction is sought restraining the defendant from giving legal advice or rendering legal services. The trial judge refused to grant the relief requested. On appeal, *held,* judgment affirmed. The evidence of actions on the part of the corporation was not sufficient to support an injunction restraining the corporation from similar actions on the ground of illegally practicing law. *Cain* v. *Merchants National Bank and Trust Co. of Fargo,* (N.D. 1936) 268 N.W. 719.