Marquette Law Review

Volume 22
Issue 2 *February 1938*

Article 6

1938

Banks and Banking: Stockholders' Added Liability: Liability of Successive Holders of the Same Shares

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from the sale. Here, however, the bailee, did buy in through its employee. Whether a bailee is a "fiduciary" may be an academic inquiry [see *Exton & Co.* v. *Home Ins. Co.,* 249 N.Y. 258, 164 N.E. 43 (1928), *Doyle* v. *Murphy,* 22 Ill. 502, 74 Am. Dec. 165 (1895) and *Sindlinger* v. *Dept. of Financial Inst.,* (Ind. 1936) 199 N.E. 715] but a bailee is not a stranger to the bailor. If he does protect the bailor's goods by saving them from the sale, or by buying in after the sale, he should be reimbursed for what he is out of pocket, and he should have a lien in the chattel to secure his claim, but that should be the extent of his interest. With the instant case compare *Enos* v. *Cole,* 53 Wis. 235, 10 N.W. 377 (1881). In that case the defendant sheriff had seized the bailor's chattel and had sold it to enforce a tax warrant issued against the bailee. The bailee had bought in at the sale to protect the chattel. Thereafter the bailor sued the sheriff for a conversion of the chattel and the action was dismissed. The court pointed out that the bailee was not in default on his contract with the bailor. The bailor was not hurt by the defendant's conduct. Nor could the bailee in that case charge the bailor with the expense of the saving.

HOWARD W. ESLIEN.

BANKS AND BANKING—STOCKHOLDERS' ADDED LIABILITY—LIABILITY OF SUCCESSIVE HOLDERS OF THE SAME SHARES.—Rose Hunt Taylor, one of the appellants, owned six shares of the capital stock of the Peoples State Bank of Ramsey. In January of 1930 her husband was elected a director of the bank. He owned only four shares of stock, and in order to enable him to qualify as a director, she assigned to him the six shares owned by her. It was agreed between them that the stock would be returned to her as soon as the husband could secure other shares. Two months later the husband did secure six shares of stock and had the newly acquired shares regularly transferred on the bank's stock records to his wife. In February, 1931, the bank was closed and a receiver was appointed. The receiver began an action to enforce the superadded liability of the stockholders. The par value of the stock was $100 per share. Mrs. Taylor had paid $600, the amount assessed on the six shares she owned at the time the bank closed, but she contested an assessment of an equal sum on the stocks which she assigned to her husband. The only issue was whether the successive holding of six shares, by a stockholder, imposes a greater liability than a continuous holding of the same number of shares. The appellate court reversed the decree of the trial court which had found for the defendant. On appeal, *held,* judgment of the appellate court affirmed. The assessment for double liability of stockholders of a bank can be made against all stock held by the stockholder. Identity in the number of shares owned is not equivalent to identity of the stock ownership. Each separate holding subjects the holder to an assessment for liability of the bank incurred during the holding of such stock. *Bombal* v. *Peoples State Bank of Ramsey,* (Ill. 1937) 10 N.E. (2d) 651.

The Illinois constitution provides that every state bank shareholder shall be liable, to an amount equal to the par value of his share of stock, for all liabilities accruing to the bank while he remains a stockholder. And since the statute of limitations does not begin to run until the cause of action arises, the holder of stock in an Illinois state bank may be held liable several years after he has sold his stock. Successive owners of the same share of stock may each be held liable to the amount of the par value of the stock for losses accruing during their respective ownership of the same stock. *Sanders* v. *Merchant's State Bank,* 349 Ill. 547, 182 N.E. 897 (1932). Under the Illinois rule enforcement of the

liability is extremely difficult. It is suggested that for purposes of administrative convenience responsibility should be imposed upon the person holding the stock at the time of the bank's insolvency. "Statutes and constitutional provisions which seem to point toward a different solution should be construed so as to make them harmonize with this result." ZOLLMANN, 3 BANKS AND BANKING § 1614 . In Wisconsin, it is not the shareholders at the time the debt accrued, but the shareholders at the time an action is commenced thereon who are individually responsible for such debt to the amount of their respective shares. *Cleveland* v. *Burnham,* 55 Wis. 598, 13 N.W. 677 (1882). The liability of a stockholder becomes fixed at the date of the judgment by which it is ascertained that the assets of the bank have been exhausted and that the deficiency exceeds the amount of his stock, and from that date he is liable. *Cleveland* v. *Burnham,* 64 Wis. 347, 25 N.W. 407 (1885).

Section 221.42 of the Wisconsin Statutes (1937) limits the liability of a state bank stockholder's liability to one year after written notice is given to the banking commissioner of any transfer of stock, and liability attaches only to the affairs of the bank at the time and prior to the date of the transfer. This statutory liability terminates at the end of one year after written notice of the stock transfer is given to the banking commissioner, even in cases where the transferor knew of the insolvency of the bank and of the transferee's financial irresponsibility and where the transferor intended to avoid statutory liability. *Cleary* v. *Bertrand,* 217 Wis. 622, 258 N.W. 799 (1935). To terminate such liability there must be compliance with the statute. The legal owner remains liable as long as his name remains on the books of the bank, and fraudulent transfer of stock to an agent or one who is financially irresponsible will not terminate the legal stock owner's liability. *Lochner* v. *State,* 214 Wis. 109, 252 N.W. 695 (1934). Voluntary assessments paid by shareholders of a bank under Sections 220.07 (20) and 221.42 (1933) are independent from statutory liability and do not give immunity to statutory liability, nor can such voluntary assessments be applied to the statutory liability. In re *Security Savings Bank,* 217 Wis. 507, 259 N.W. 426 (1935). This is because the voluntary assessments are for the benefit of the bank and the statutory liability is for the benefit of creditors. In re *Plain Bank,* 217 Wis. 257, 258 N.W. 783 (1935). Stockholders can not claim as a set off against their statutory liability the deposits in an insolvent bank. *Banking Commission, Receiver* v. *Bitker,* 216 Wis. 497, 257 N.W. 616 (1934). Whether satisfaction can be obtained against two stockholders, on the same share of stock, has never been decided in Wisconsin. But the majority of states having statutes like our own seem to hold that although two persons may be liable, it "does not mean that the receiver can enforce full payment of the liability against both." ZOLLMANN, 1 BANKS AND BANKING § 494.

ROY C. PACKLER.

CORPORATIONS—PARTICIPATING OPERATION CERTIFICATES—WHO ARE CREDITORS AND WHO ARE CO-ADVENTURERS?—The Sterling Oil Company, a Wisconsin corporation, proposed to erect a filling station. For the purpose of financing the cost of erecting the station, the corporation, by authority of its stockholders and its board of directors, issued "participation operation certificates." To secure the repayment of the indebtedness, the corporation executed and delivered to the plaintiff, as trustee, a deed of trust on all buildings, land, and equipment, such conveyance being made "for the equal pro rata benefit and security of every holder of any of the certificates." The purchasers paid $150 for each "partici-