

# Pledges: Pledge Agreements: Jury Questions

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Now then, to return to *Ernest v. Schmidt*<sup>1</sup> and the application of 206.17 (Sec. 2609, Laws of 1915). Cannot we substitute it in the above opinion for Sec. 2603? If there can be a joinder of parties where the recovery against one is inconsistent with recovery as against the other, why cannot there be a joinder of the defendants? Cannot Sec. 260.17 be classed with Sec. 260.11. The decision on the rehearing of *Ernest v. Schmidt* seems to answer these questions in the affirmative; and when looking at in in conjunction with the opinion in *De Groot v. Peoples Bank* the rule as apparently laid by the Supreme Court, is that Sec. 263.04 is a general statute applying to all cases where relief is sought and the obligations of the charged parties are not as defined by Sec. 260.11 and Sec. 260.17.

FRANCIS ACKERMAN

### Pledges: Pledge Agreements: Jury Questions.

In the action of *Rezash v. Bank of Two Rivers*<sup>1</sup> the appellant desired to recover of the respondent bank \$7,000 and interest alleged to have been lost by the negligence of the bank in its handling of a security of appellant pledged to the bank.

Appellant on August 15, 1925, delivered to the bank, as collateral security for a line of credit extended by the bank to him, an interim receipt from an investment house in Chicago, by which the investment company undertook to deliver to the appellant \$7,000 worth of specified building bonds. The bank at the same time prepared a pledge agreement describing the collateral, and, as the interim receipt expressly provided that it was to be surrendered on delivery of the bonds, incorporated in the pledge agreement an authorization to the bank to surrender the interim receipt for the *permanent* bonds,—which appellant signed. The bank requested no other or further authority than what it incorporated in the pledge agreement.

The whole transaction was for the benefit of the appellant. The bank received no consideration because of it.

By the terms of the interim receipt, the said investment company undertook to deliver \$7,000 worth of the specified building bonds, "when as and if received in definite form". The bank concededly never made an inquiry to ascertain when the bonds became available in a deliverable state. The uncontroverted fact was that the bonds had been put into a deliverable state August 1, 1925, by the common modern device of trustee's interim certificates and that practically all of the seven million dollar issue was in the first instance sold and delivered in that form;

<sup>1</sup> 227 N.W. Vol. 1, p. 26 (advance sheets).

<sup>1</sup> 227 N.W. 4; — Wis. —.

and the investment company, during the two months following the pledge, was actively engaged in business and actually received and delivered \$37,000 principal amount of the specified kind of bonds in the form of trustee's interim certificates.

The said investment company thereafter went into the hands of a receiver November 2, 1925, without having delivered anything under the interim receipt—the bank concededly having done nothing whatever meanwhile to secure delivery by the investment company, except that on the day of the pledge it wrote a letter to the investment company giving notice that the interim receipt had been pledged to it and that the bonds, when ready, should be accordingly delivered to it.

The defense was (a) that the bank owed appellant no duty except to safely keep the interim receipt until the investment company sent the permanent bonds; and that it handled this interim receipt for appellant in the same way as it had always handled its own, and this was reasonable care and absolved it from liability; (b) but that if it had nevertheless owed appellant any duty to do anything toward procuring delivery when delivery was due, that the definite or permanent bonds were not, as it turned out, available for delivery until after the receivership of the investment company and that all it could have required of the investment company under the language of the interim receipt, was the delivery of definitive bonds—that it could not demand of the investment company that it deliver trustee's interim certificates which were available in August, September, and October, 1925—so that the exercise of care by the bank in this regard would have been futile; and besides, (c) the pledge agreement which it drafted and appellant signed, and by which appellant granted all the authority the bank asked, and which authorized the bank to surrender the interim receipt for "permanent" bonds, was tantamount to an instruction by appellant to the bank forbidding it to take anything but permanent bonds in exchange for the interim receipt—so its hands were tied by appellants and they cannot complain of the bank's failure to procure trustee's interim certificates.

The trial court adopted the construction both of the interim receipt and of the pledge agreement contended for by the bank, and granted judgment in its favor.

The supreme court in affirming his decision and considering whether the bank was negligent in complying with its contractual obligation to the appellant held, that:

1. "Pledgee, in absence of express agreement to the contrary, must exercise for the protection of the pledged property that degree of care which an ordinary careful and prudent man bestows on his own prop-

erty, or affairs of a like nature and under like circumstances, and failure to do so in negligence, for which pledgee is responsible."<sup>2</sup>

2. "A pledge agreement is to be interpreted and enforced like other contracts, in order to carry out the intent of the parties.

3. "Whether pledgee of interim receipt for bonds was negligent in not procuring delivery of bonds or trustee's certificates where seller of bonds failed before permanent bonds were delivery held for the jury."

EARL J. O'BRIEN

### Rate Making: Public Utilities.

*McCardle v. Indianapolis Water Company* (272 U. S. 400) (47 Sup. Ct. 144).

The decision of the United States Supreme Court in the now famous O'Fallon Railroad Case<sup>1</sup> has directed the attention of lawyers and the public in general, as investors and consumers, to the state of the law in the field of rate-making for public service companies, and the crux of this interest is an attempt to discover a valid, workable method which may be used to evaluate such companies.

A typical case on this phase of the law is *McCardle v. Indianapolis Water Company*, supra, in which the Water Company sought an injunction restraining McCardle as a member of the Public Service Commission of Indiana, from enforcing water-rates established by that body, for the reason that such rates did not yield an adequate return on the capital invested. The suit was brought in the Federal District Court of Indiana, resort to the federal court being had on the ground that the rates in question were so inadequate that they resulted in a confiscation of property, "without due process of law," in opposition to the Fourteenth Amendment. The public Service Commission (*McCardle et al*) in company with the City of Indianapolis, which had intervened, appealed from a decree in favor of the Water Company. The sole question presented for the consideration of the court was the proper method of determining the value of the Water Company's property. The Commission submitted valuations made by its own engineers and the company submitted like reports made by two different firms of valuation engineers, each of these estimates differing by at least \$1,000,000 from the others.

The Supreme Court sustained the decree of the District Court but decided the findings below were not as "specific as good practice re-

<sup>2</sup> 21 R. C. L., 664 et seq.; *Charter Oak Life Ins. Co. v. Smith, McLemore v. Bank*, 91 U. S. 27, 23 L. Ed. 43 Wis. 329: 196.

<sup>1</sup> 279 U. S. 461.