

CASES DETERMINED
IN THE
SUPREME COURT OF ARKANSAS

WHITE *v.* TAYLOR.

4-2820

Opinion delivered February 27, 1933.

1. STATUTES—ADOPTED STATUTES.—Where a federal statute relating to assessment of stockholders of banks was adopted by the State, the previous construction of the statute by the United States Supreme Court was likewise adopted.
2. TRIAL—TRANSFER OF ACTION.—Since a stockholder could not, in an action to collect an assessment against himself, question the necessity therefor or the right of the Bank Commissioner to levy same, it was not error to refuse to transfer the case to the chancery court to determine such questions.
3. BANKS AND BANKING—ASSIGNMENT OF STOCKHOLDER'S LIABILITY.—After an assessment of a bank stockholder's liability has been made, the Bank Commissioner can assign claims therefor.
4. BANKS AND BANKING—ASSIGNMENT OF CLAIM—PARTIES.—Where the Bank Commissioner assigned a claim for a stockholder's assessment, the assignee could sue in the Commissioner's name if necessary.

Appeal from Greene Circuit Court; *G. E. Keck*, Judge; affirmed.

STATEMENT BY THE COURT.

The Security Bank & Trust Company was placed in the hands of the State Bank Commissioner for liquidation in November, 1930, and just before it was taken over a considerable part of its assets, consisting of the old bank building where it had formerly done business together with some of its best notes, were sold, assigned and made over to some person or persons and the proceeds thereof were not accounted for in the schedule for the inventory of the assets of the bank.

The Bank Commissioner administered its affairs for only a short time, and it was reorganized by some of the stockholders of the old bank, and all of the assets of the old bank were by the Bank Commissioner made over and assigned to the new organization under a written contract, which mentions no other consideration. The reorganized bank proposed to put up \$50,000 capital stock and acquire all the assets of the old bank, including the assessments already levied against its stockholders, and all assets of every kind, character and description. The new bank was to have the use of the name of the Bank Commissioner in prosecuting the necessary suits. The contract was made by a proposal to the State Bank Commissioner by some stockholders of the old bank, which was merely accepted by him. The proposition was to liquidate the affairs of the old bank, which should be done within 1931-32-33.

The appellant, owner of 35 shares in the old bank, took no part in the reorganization, and soon after the organization of the new bank it joined with the State Bank Commissioner under its new name and brought suit against the appellant for \$3,500 for stockholder's liability as the owner of said stock under § 702, Crawford & Moses' Digest.

Appellant resisted the action and filed an answer and amendment thereto, setting up as defenses that since the assets were transferred by the Bank Commissioner the power of the Bank Commissioner ceased, and thereafter he was not and could not be considered in any litigation arising with reference to liquidation of the affairs of the old bank, it being claimed that the law did not authorize him to transfer his authority or lend his name to any person, firm or corporation in aid of such person, firm or corporation in seeking any kind of judgment, and the approval of the chancery court of the contract between the Bank Commissioner and the reorganizers of the new bank did not give it any legal effect and cannot authorize a suit against the appellant. It was also insisted that the assessment of the stockholder's liability was not an asset and could not be assigned.

It was agreed that the Bank Commissioner levied the stock assessment against appellant before the contract was made by the Bank Commissioner relative to the assets of the insolvent bank. Upon the trial of the cause, judgment was rendered against appellant, from which comes this appeal.

Jeff Bratton, for appellant.

Partlow & Rhine; for appellee.

KIRBY, J., (after stating the facts). It is insisted first that the court erred in refusing to transfer the cause to the chancery court that appellant might have an opportunity to show that the old bank was not really insolvent when it was declared to be so and taken over by the Bank Commissioner for liquidation. He insists that, if certain of the old bank's property wrongfully transferred to others could be recovered, it was sufficient to pay all its liability without any stock assessment. But, however this may be, this action is not the proper one to try the question of fraud or insolvency. Necessity for the levy and call of the stockholder's assessment by the Bank Commissioner was discussed at length in *Davis v. Moore*, 130 Ark. 128, 197 S. W. 295, where the court held that the action of the Bank Commissioner in making the assessment of liability of individual stockholders is conclusive in an action to enforce that liability. It was also said in *Poch v. Taylor*, 186 Ark. 618: "In any event it is definitely settled that the action of the Bank Commissioner in levying an assessment against the stockholders is conclusive as to the necessity for the call and the amount to be assessed against the stockholders. *Davis v. Moore*, 130 Ark. 128, 197 S. W. 295; *Aber v. Maxwell*, 140 Ark. 203, 215 S. W. 389." The language of the section of the statute relating to assessments was copied from the National Banking Act, which had been construed by the United States Supreme Court prior to the enactment of our statute, and such construction was necessarily adopted with it. The Supreme Court of the United States said in *Casey v. Galli*, 94 U. S. 673, 24 L. Ed. 307, that the Comptroller's order that each stockholder should pay to the receiver the par of his stock cannot be controverted in a suit against the stockholder, saying: "It is conclusive

upon him and makes it his duty to pay. What may be done or intended with respect to other stockholders is immaterial in his case." The appellant could not question in the suit for the collection of the assessment either the necessity therefor or the right of the Bank Commissioner to levy same, and the chancery court could have no jurisdiction of this cause therefore.

It is next insisted that the stockholder's liability was not an asset and could not be assigned in the disposition of the assets for organization of the new bank. It was said in *Collman v. State*, 161 Ark. 362, 256 S. W. 357: "This stockholder's liability was not an asset available in the usual and ordinary course of business." See also 7 C. J. 507. Under our statute providing for liquidation of insolvent banks by the Bank Commissioner, he is authorized to maintain all necessary suits, make collections, conserve the assets and business, and, on the order of the chancery court, may sell or compound all bad or doubtful debts, and enforce, if necessary in the State or elsewhere the liability of the failed bank's stockholders. We see no reason why the Bank Commissioner, after the assessment of the stockholder's liability had been made, could not transfer and assign the claims therefor the same as he could any of the other assets of the bank in final settlement of its affairs, and certainly the purchaser of such assets of the bank, including the stockholders' assessments already made, would have the right to use the name of the Bank Commissioner in enforcing the liability, if necessary. *Waldron v. Alling*, 76 N. Y. Supp. 251.

We find no error in the record, and the judgment is affirmed.
