WASSON v. CASTETTER.

4-2975

Opinion delivered May 1, 1933.

1. BANKS AND BANKING—COLLECTION OF ASSESSMENT.—In a suit by the Bank Commissioner to collect an assessment on the stock of an insolvent bank, the stockholder cannot question the necessity for the levy.
2. BANKS AND BANKING—INSOLVENCY—LIABILITY OF STOCKHOLDERS.—One who purchases bank stock by giving his note repeatedly renewed and applying the dividends to payment of interest and permitting his name to appear as stockholder on the county records for 11 years, *held* estopped to deny liability for assessment on such stock.

Appeal from Craighead Circuit Court, Jonesboro District; *Basil Baker,* Special Judge; reversed.

STATEMENT BY THE COURT.

This appeal is prosecuted from a judgment against the Bank Commissioner in his suit against certain stockholders of an insolvent bank, holding them not liable for the payment of the double assessment of stock levied by the Bank Commissioner.

It appears that appellees became stockholders in the Bank of Jonesboro in May, 1930, upon an increase of the capital stock of the bank, said parties giving notes in payment of their stock. The notes had been renewed every six months until the bank closed in December, 1931, and the dividends received from the stock were used to pay interest on the notes. The stock was issued to and indorsed by the stockholders and delivered to the bank as collateral security for the payment of the notes pinned thereto. The names of these stockholders were shown after their purchase of the stock as stockholders of the bank on the records of Craighead County.

In this suit to collect the stock assessment levied by the Bank Commissioner, judgment was rendered in favor of the defendants on the ground that stock issued for a note was void and could not create any legal liability against the holders of said stock to pay such assessment. Copies of the assessment and demand were attached as exhibits to the complaint against appellee, Castetter, and judgment prayed for $500 with 6 per cent. interest from December 30, 1931.

The assessment showed it had been levied for $200,000 against the stockholders of the bank for which demand was made of each stockholder of $25 per share. Exhibit B was a notice to Castetter calling on him to pay his assessment of $25 per share.

The answer denied that Castetter was the owner of any shares of stock in the bank, and that he became indebted because of any assessment thereon in any sum; admitted the alleged stockholders' meeting for the increase of the capital stock from $150,000 to $200,000, that the bank's officers attempted to sell such additional shares, and that he executed to the Bank of Jonesboro his

notes for the purchase price of 20 shares of said new stock but paid no cash therefor, and said stock was issued but never delivered to defendant, and was pinned to his note as collateral to secure the purchase price of the stock, which had been renewed from time to time. He further alleged that the issuance of such additional stock and attempted sale to him was void and in violation of § 8, art. 12, of the Constitution, and § 6821, Crawford & Moses' Digest, and that the stock was void and not subject to assessment against him.

The case against the other appellee contained like allegations of pleadings, and the same answer was set up.

An amendment to the answer was filed relative to the meeting for increasing the capital stock, that the defendant never received any dividends on the stock personally since the dividends were credited on the certificates of stock kept by the bank; admitted the execution of renewal note for $2,500, which was the twenty-second renewal of the original note, which had been renewed every six months after its execution, and all dividends paid were credited on the interest on said note.

A general demurrer was filed to the answer as amended, and the cases were consolidated for trial, and the demurrer was overruled, the parties agreeing to stand upon the pleadings, and, plaintiff refusing to plead further, the complaints were dismissed, and the appeal comes from that order.

Archer Wheatley, for appellant.

Horace Sloan, for appellee.

KIRBY, J., (after stating the facts). The only question for determination involved in this appeal is, whether one who has purchased bank stock by giving a note in payment therefor can defeat an assessment thereon eleven years later after having renewed the note twenty-two times and used the dividends thereon for the payment of interest on the note, and further having permitted his name to appear as a stockholder of the bank on the records of the county for eleven years.

The action of the Bank Commissioner under the statute is conclusive as to the necessity for the levy of the stock assessment and cannot be disputed or defended

against by the stockholder of the failed bank. *Davis* v. *Moore,* 130 Ark. 128, 197 S. W. 295; *Aber* v. *Maxwell,* 140 Ark. 203, 215 S. W. 389; *Fee* v. *Taylor, ante* p. 204.

Appellee insists that the sale of stock to him was void, it being made on a credit and not "for money or property actually received or labor done," as required by the Constitution, § 8, art. 12; and that this court has already determined the question in *Taylor* v. *Gordon,* 180 Ark. 753, 22 S. W. (2d) 561, wherein it held that the purchaser of such stock or owner thereof is not subject to liability to the payment of the double stock assessment levied against it by the bank commissioner.

Section 8, article 12, of the Constitution provides: "No private corporation shall issue stocks or bonds, except for money or property actually received or labor done, and all fictitious increase of stock or indebtedness shall be void; nor shall the stock or bonded indebtedness of any private corporation be increased, except in pursuance of general laws, nor until the consent of the persons holding the larger amount in value of stock shall be obtained at a meeting held after notice given for a period of not less than sixty days, in pursuance of law."

The statute, § 702, Crawford & Moses' Digest, authorizing the assessment against stock by the Bank Commissioner, reads:

"The stockholders of every bank doing business in this State shall be held individually responsible equally and ratably, and not one for another, for all contracts, debts and engagements of such bank to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such stock; provided that persons holding stock as executors, administrators, guardians or trustees shall not be personally subject to liability as stockholders, but the estates and funds in their hands shall be liable in like manner and to the same extent as the testator, intestate, ward or person interested in such trust fund would be, if living and competent to act and hold the estate in his own name."

Upon the regular increase of the bank's stock so many shares were sold to appellee for a certain amount, and the stock was issued to him, indorsed and given with

his note to the bank for the amount of the purchase money, the certificates of stock being pinned to the note and held as collateral for its payment. The dividends thereafter upon these certificates of stock were paid to the holders thereof, and the note given in payment of the purchase money was renewed twenty-two times; and appellees were shown as stockholders in the bank upon the records of the county as required by law to be kept. They made no effort to repudiate the validity of the transaction until this suit was brought to collect the stock assessment duly levied against stock of the insolvent bank, of which they were the legal owners as shown upon the books of the bank and the records of the county.

The statute fixes the responsibility of the stockholders in the bank "for all contracts, debts and engagements of such bank to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such stock;" and they appeared as stockholders, the stock standing on the books of the bank in their names, having been indorsed by them and delivered to the bank as collateral security for their notes executed for the purchase of said stock, and also on the county records as such stockholders; and, as between them and the creditors of the bank for whose protection and benefit the statute was made, they are estopped to deny under such circumstances that they were stockholders and are liable to the payment of the assessment as provided by statute. 3 R. C. L. "Banks," § 29, page 399; *Madison* v. *Dent*, 176 U. S. 521, 20 S. Ct. 419; *Aber* v. *Maxwell*, *supra*; *Commissioner of Banks* v. *Cosmopolitan Trust Co.*, 253 Mass. 205, 148 N. E. 609, 41 A. L. R. 658.

These cases differ from that of *Taylor* v. *Gordon*, *supra*, and are not controlled by the decision therein.

From the views herein expressed, it follows that the court erred in overruling the demurrer and dismissing the complaint, and the cause will be reversed and remanded with directions to sustain the demurrer to the answers, and render judgment for the amount of the assessments sued for. It is so ordered.