STOKES *v.* FARMERS' BANK OF HARDY.

4-3040

Opinion delivered June 26, 1933.

BILLS AND NOTES—CONSIDERATION.—An unconditional note given by directors to a bank to take up bad paper in the bank upon promise of the president, later fulfilled, to put in a like amount in cash, *held* supported by a sufficient consideration.

Appeal from Independence Circuit Court; *S. M. Bone,* Judge; affirmed.

STATEMENT BY THE COURT.

This suit was brought by appellee for the collection of a promissory note for $1,000, dated June 1, 1928, due 7 months after date.

The answer admitted the execution of the note, denied receiving any consideration whatever therefor, and alleged it was executed solely for the accommodation of the bank, which fact was known and understood by the cashier and other officials in the bank, it being expressly understood at the time that the bank would never expect or demand payment thereof.

The testimony tended to show that Arthur Metcalf was president of the bank on June 1, 1928, having been active in the service since the preceding February, going back into the bank immediately after the death of Mr. Turner, the cashier. He made an examination of the bank's affairs and found some bad paper, not collectable, to the value of $2,000 or $2,500. He went to Batesville and to Messrs. Stokes, appellants, also directors of the bank, and told them of the discovery of the bad paper, and that the banking department insisted that something must be done about it, and, to keep from impairing the capital of the bank, he proposed a voluntary assessment on the three of them. They said that they were short of cash, and he then suggested that they put up a note, agreeing that, if they would do so, he would match it with an equal amount of cash, "and we would ask the stockholders to reimburse us, but it was necessary to do this or impair the capital of the bank." He later received the note sued on, credited it to the undivided profits account, charged off $600 or $700 worth of bad paper, and put in $1,000 himself on the date of the maturity of the Stokes' note, using it for the same purpose. Notice was mailed to the makers of this note by the bank in due time, as to other debtors, but the depression came on and they never responded to the notices and they were never able to recover or pay the stockholders. In 1929, the president of the bank "took up $1,428 worth of other bad paper,"

still carrying out, he said, his agreement with the Stokes. W. S. Stokes asked him frequently in meetings if he had not charged off the note, and was told that he had no authority to charge it off as it was a matter for the stockholders to determine.

The testimony is well nigh undisputed that the note was executed by appellants for the purpose as stated, that the amount of it was matched and the same amount of cash put into the bank by the president on the date the note became due to carry out the agreement made with Metcalf, the president of the bank, to keep from impairing the capital of the bank by the proposed voluntary assessment on our part, the three of them, when the agreement was made and later performed. Metcalf later purchased $1,428.14 worth of bad paper of the bank on his own account; paying cash therefor.

The case was tried without a jury, and judgment rendered in the bank's favor for the amount of the note.

Coleman & Reeder, for appellant.

Sidney Kelley and *Gus Causbie,* for appellee.

KIRBY, J., (after stating the facts). Appellants insist that the court erred in not holding the note invalid as executed for accommodation of the bank, with the understanding it was not to be paid and without consideration.

The testimony showed that the president of the bank, Metcalf, who had just taken charge of the bank's affairs to save it if it could be done, was not responsible for its condition any more than appellants, that he stated the bank's condition to them and the necessity for the contribution or assessment in order to prevent and avoid the necessity for assessments against the stockholders that it might continue business without such assessment and with capital unimpaired. That they gave their note for the purpose of taking up the bad paper upon the agreement of the bank president to match the amount thereof in cash, which was done. This furnished, of course, sufficient consideration for the note. *Jones* v. *Green,* 173 Ark. 846, 293 S. W. 749; *Ellis* v. *Jonesboro Trust Co.,* 179 Ark. 615, 17 S. W. (2d) 324.

It makes no difference, so far as such consideration was concerned, that Metcalf later bought and took up $1,428 worth of the notes in the bank, whether they were bad paper or not, since he paid in cash the value thereof.

The note sued on was not conditional, and Metcalf, with whom the agreement was made for its execution, paid the amount as he agreed to do and used same in taking out the bad paper of the bank and prevented an assessment of stockholders or impairment of the capital.

The note was a valid obligation made for a valuable consideration, of which the court correctly found there was no failure, upon testimony amply sufficient to sustain the finding, and returned judgment thereon accordingly. *Ellis* v. *Jonesboro Trust Co., supra.*

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