
BROOKS *v.* RANDOLPH STATE BANK.

4-3284

Opinion delivered January 15, 1934.

BANKS AND BANKING—INSOLVENCY—TAXES.—It is the duty of the State Bank Commissioners, having sufficient funds of an insolvent bank in his hands, to pay taxes assessed against the personal property of the bank.

Appeal from Randolph Chancery Court; *A. S. Irby*, Chancellor; reversed.

STATEMENT BY THE COURT.

This suit was brought by the collector of Randolph County, Arkansas, for the benefit of that county and the State against the Bank Commissioner, to collect taxes on personal property of the insolvent Randolph State Bank, duly and regularly assessed against the said bank for the year 1931.

A copy of the assessment made by Tom Bigger, Special Deputy Bank Commissioner, in charge of the insolvent bank, reads as follows: "Personal property of all kinds subject to taxation in Randolph County, Arkansas, \$20,000." The assessment is signed and sworn to as follows: "Walter E. Taylor, State Bank Commissioner, for Randolph State Bank, Pocahontas, Arkansas, insolvent, by Tom Bigger, Special Deputy Bank Commissioner."

It was alleged that the assessment was duly placed on the tax books; that demand had been made by the sheriff for the collection of the taxes, and had been refused; and judgment was asked against the Bank Commissioner in charge of said insolvent bank for the amount

claimed as delinquent taxes for the year 1931 with 25 per cent. penalty, and that a lien be declared on all the property and assets held by the Bank Commissioner for said insolvent bank for the payment of said delinquent taxes.

A writ of garnishment was issued and a bond filed. The Bank of Pocahontas, which was named as garnishee in the proceeding, was the depository of the Randolph State Bank, insolvent, and filed its answer, showing certain funds in its hands belonging to the Randolph State Bank, insolvent.

A demurrer was filed and sustained to the complaint. The chancellor made the following findings:

“The Randolph State Bank, insolvent, was taken charge of by the State Bank Commissioner on November 4, 1930. The assets of the bank passed out of the control and possession of the officers of the bank on that date under the banking laws of our State, and its assets since that date have been administered by the Bank Commissioner in this court.

“The complaint alleges that on April 28, 1931, Tom Bigger, Special Deputy Bank Commissioner, in charge of said bank, assessed the personal property of the Randolph State Bank at \$20,000. By reference to exhibit A to the complaint, we find a copy of this assessment, and there is no such bank now as the Randolph State Bank, and at that time it did not, and could not, hold any of its assets; they were ‘*in custodia legis*.’ Of course, it was attempted to assess the property of the Randolph State Bank, insolvent. The statute provides the method of assessing banks, which is upon the shares of stock.

“There is a method whereby claims against insolvent banks are to be filed and presented in written form, which are allowed or disallowed by the Bank Commissioner; if disallowed, such notation is made; then the aggrieved party can present his claim to the court, otherwise he has no standing in the court, unless he files a petition with the court asking permission to file a suit as in other suits brought against receivers; if the court thought there was merit in the petition he would allow the suit to be filed. The reason therefor is to keep down vexatious lawsuits. The plaintiffs failed to pursue either of the above courses.

“The plaintiff seeks an attachment and garnishment against the funds of the insolvent bank now in the Bank of Pocahontas, when the law says that the assets of an insolvent bank are to be free and unaffected by any levy, judgment, attachment or other lien. There is a reason for this; otherwise all bank liquidations would soon end. Thus we see this court, nor no other court, could grant the relief asked for by plaintiff, either in the form of a judgment, attachment declaring a lien, garnishment, or any other judgment prayed for.

“The general law applying to insolvent corporations does not apply to insolvent banks. The method of assessing banks is to assess the shares of stock, and the statute provides the method of arriving at the value to be placed thereon based on the assets of the bank.

“There is no allegation in the complaint that the Bank Commissioner has assets in his hands belonging to the shareholders with which to pay taxes, as was said by our Supreme Court on January 23, 1933, in the case of *Taylor v. Hale*. In that case it was stipulated that an assessment was made against the stockholders, and therefore the shares were a liability. The same could have been made in this case, but it is unnecessary, as this court will take judicial knowledge of its own orders and decrees, and this court did, prior to the filing of this suit, enter a judgment and decree, sustaining an assessment made against all of its shareholders, because it was shown to the court that the assets of the defunct bank were insufficient to pay the creditors and depositors in full. Therefore there can be nothing going to the shareholders if the assets are insufficient to pay the creditors and depositors; likewise there can be no lien for taxes.

“The demurrer will be sustained; to hold otherwise would be contrary to law, as the court views the case, and would result in a disruption of the liquidation, and would result in an advertisement and sale of the bank's assets at a sacrifice.

“The memoranda of this court's findings are to be made a part of the record in this case.”

Appellant excepted to the findings of the court and the order sustaining the demurrer and dismissing his complaint, and prayed an appeal therefrom.

Hal L. Norwood, Attorney General, *Geo. H. Steimel* and *E. Newton Ellis*, for appellant.

H. L. Ponder, for appellee.

KIRBY, J., (after stating the facts). The learned chancellor held that, under the ruling of this court in the case of *Taylor v. Hale*, 186 Ark. 873, 56 S. W. (2d) 428, this was an attempt to collect taxes on shares of stock as provided by § 9944, Crawford & Moses' Digest; but, in the absence of a showing that the Commissioner in charge of the insolvent bank had assets in his hands belonging to the stockholders with which to pay delinquent taxes assessed against such shares of stock, there was no liability on the part of the Commissioner to pay the delinquent taxes.

The chancellor obviously misconceived the purpose of this suit, as disclosed by his memorandum opinion holding it to be one to collect taxes assessed against the shares of capital stock of the insolvent bank, when the complaint and amendment thereto clearly shows that it is a suit to collect taxes assessed against the personal property of the insolvent bank subject to taxation in accordance with the statute. Section 9853, Crawford & Moses' Digest.

Under said statute, the property of the insolvent bank continued subject to taxation notwithstanding the bank's insolvency. Said property was regularly and duly assessed by the deputy bank commissioner in charge of said bank, and the complaint shows there were funds on hand belonging to the said bank sufficient to pay the taxes. The complaint alleged further that demand was duly made by the collector for payment, and same was refused by the Deputy Bank Commissioner in charge of said insolvent bank; that the property against which the taxes were levied had been sold and disposed of, converted into money and was beyond distraint by the officer, and he was entitled therefore to bring the action in equity to follow and impound the proceeds arising from the

disposition and sale of the property in the hands of the defendants or in possession of any one of them.

Having sold the property upon which the State's lien for taxes existed, and having on hand an amount sufficient to pay the taxes, it was the duty of the Bank Commissioner to pay same, and the chancellor should have required him to do so, and erred in holding otherwise and sustaining the demurrer to the complaint. See 34 Cyc., page 347, title "Receivers."

For the error designated, the decree will be reversed, and the cause remanded for further proceedings not inconsistent with this opinion. It is so ordered.
