



STATEMENT BY THE COURT.

This suit was brought by appellant, Henry Thane, against the Merchants' & Farmers' Bank of Dumas, to recover \$17,000, the proceeds of 680 shares of stock of the bank, which it was alleged Thane owned, and had turned over to the Bank Commissioner and had been sold by him and the proceeds deposited in the bank to plaintiff's credit, to raise its reserve to the legal requirement.

The answer denied that plaintiff had deposited \$17,000 or any other sum, or that any money deposited in the bank belonged to him, or that plaintiff was entitled to any credit on its books; denied that the shares of stock were turned over to be held and sold by the bank, as trustee, and the proceeds deposited to plaintiff's credit for increasing the reserve; alleged that plaintiff had been the principal stockholder in the bank for several years, owning 680 shares of stock, of a par value of \$17,000, and was president and general manager of the bank; that under his management the bank had made loans without proper security, and that the bank had outstanding approximately \$25,000 worth of worthless loans, which the Bank Commissioner required should be charged off the books, and the depositors had withdrawn their funds to such an extent that the bank's reserve was below the legal requirement. The Bank Commissioner notified the officers that the bank would be closed unless the reserve was raised; that, if it had been closed, plaintiff, as a stockholder and official, would have incurred large liabilities for its debts, and, in order to avoid it and induce others to purchase his stock and strengthen the bank, he had delivered his stock to the Bank Commissioner for the benefit of the bank, with instructions to sell the stock and deposit the proceeds in the bank for its benefit and credit it to its profit and loss account, which had been done, and the deposit so used.

It appears from the testimony that the bank was in an over-extended condition, having advanced too much money on loans on real estate and cotton, and, not being able to collect or realize on them, its legal reserve was

almost exhausted, and the Bank Commissioner notified the officers that the bank would be closed unless the reserve was raised to the legal requirement. The bank was unable to borrow any money, and the directors had refused to indorse or make notes with Thane for that purpose, notwithstanding plaintiff had agreed to execute such note with them and borrow the required money for the bank, if it could be done.

The other directors were unfriendly to Thane and not disposed to assist in keeping the bank open so long as he was connected with it. They insisted on his procuring the necessary money to tide the bank over, and he said he could not do it, having already borrowed \$180,000 from banks in Little Rock and St. Louis with which to enable six other banks established by him in Southeast Arkansas to continue business.

Two or three meetings were held by the bank directors and with the State Bank Commissioner, who told Thane that the other directors were not disposed to do anything to keep the bank going so long as he was connected with it. They insisted, in the meeting at Dumas, that he should surrender his stock and have it sold and the proceeds deposited in the bank for its benefit, and agreed, after this was done, to finance and continue the operation of the bank. Thane absolutely refused to give up his stock or surrender it as a donation to the bank. Upon the adjournment of the meeting one of the directors asked him if he would donate the stock for the purpose if he could realize fifty per cent. of its value, which offer he declined to consider. There were other meetings and negotiations between the officers and directors and the Bank Commissioner, who was insistent that the reserve must be raised or the bank closed. Some of the directors went to Mr. Cornish, the president of the American Bank of Commerce & Trust Company in Little Rock, one of the two banks which had furnished or loaned Thane \$180,000 with which to keep the other banks going, with a view through him or a suggestion from him to having Thane surrender or donate his stock, as had been

suggested, to keep the bank going, but Cornish declined to have anything to do with it, saying that his bank had all the interests in banks in that section of the State that it desired to carry.

Another effort was made by the other directors, at the Marion Hotel in Little Rock, to arrange to put up the reserve and continue the operation of the bank. The Bank Commissioner telephoned Thane to come up to the meeting that night, which he did. He and Thane had a conference about the matter in a private room, and finally he agreed to deliver the stock to the bank to be sold and the money deposited therein; stated he had no intention whatever of making a gift of the stock to the bank, which he had twice before refused to do.

After the agreement the Bank Commissioner invited the other officers in, and told them that Thane had turned the stock over to him. This was said in the presence of Thane, and Mr. Williford insisted, for the directors, that the matter be put in writing, whereupon the Bank Commissioner wrote the assignment or memorandum, which was signed by Thane, and reads as follows:

"I hereby turn over to Charles McKee, Bank Commissioner, 680 shares of stock of the Merchants' & Farmers' Bank of Dumas, to be delivered to new and old stockholders on the payment by them of the par value of said stock into the Merchants' & Farmers' Bank of Dumas."

Thane testified that no one was in the room with him and the Bank Commissioner when he agreed to turn over his stock; that the Bank Commissioner told him that he was satisfied that the directors wanted him out of the bank, and that they were going to close the bank unless he, Thane, put up some money or let them have his stock. He then made up his mind to let them have the stock and sever his connection with the bank, and told McKee, and turned the certificates, indorsed in blank, over to him. That he did this for his own benefit, and that nothing whatever was said or any agreement made by him to make a donation of the stock. McKee

prepared a written memorandum, which witness signed, and also gave him a receipt for the stock, which had been misplaced. He did not intend to make a gift of the stock to the bank, and there was no reason why he should have done so. The bank's reserve was below the legal limit, and the Commissioner was threatening to close the bank unless it was restored. "In handing the stock to McKee for the purpose of having it sold and the proceeds deposited in the bank, I provided that the stock was not to be sold at less than par, which was \$17,000. That amount of money would raise the reserve above the legal requirement, and that was what I expected. After the conference, McKee called the directors in and told them he had my stock, and was ready to turn it over to them whenever they advised him that it had been sold at par and the money placed in the bank." That is all he said, and witness left the meeting immediately, and went home. Said his efforts to save the seven banks were successful, and that they were all in business now, in a satisfactory condition. That, as soon as the financial storm was over, he made demand on the Merchants' & Farmers' Bank for his \$17,000, in the spring of 1923, shortly after the bank had sent out a statement showing that it was in a fine condition and had paid an 8 per cent. dividend. The bank refused his demand, and he brought the present suit.

McKee, the Bank Commissioner, testified that it was his understanding, at the time of the conference with Mr. Thane, what was to be done with the proceeds of the stock when sold, and that they were to be turned over to the bank for its benefit.

Williford stated he had attended the meeting at the hotel, after Thane had refused to turn over his stock to the bank at the meeting at Dumas. That he had talked with the president of the Little Rock bank, in the presence of Mr. McKee, and told him that they would finance the bank and operate it if Cornish would have Thane to turn over his stock to the bank, or that they would turn over \$10,000 worth of the bank stock to Cornish if he

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would finance it, and was told that he had interests in enough banks in Southeast Arkansas at that time. Said when Mr. Thane came to the hotel he went into a conference with McKee, the Bank Commissioner, who came out later, and invited them in, and announced that Thane had agreed to turn over his stock to the bank under the conditions. He asked that it be reduced to writing, and the Bank Commissioner or his deputy wrote a memorandum or assignment transferring the stock, which was signed by Thane.

Some of the other directors testified that, after the conference, the Bank Commissioner invited them into the room and said Thane had turned over his stock for the benefit of the bank. They all said they understood that it was turned over to the bank to be sold and the proceeds deposited to the profit and loss account for the benefit of the bank.

The stock was sold at par by the directors and the money put into the bank, raising the reserve above the legal requirement, and the bank continued a going concern thereafter.

Thane resigned as president of the bank after the first week in January, and ceased to be a director after the transfer of his stock to the Bank Commissioner at the Marion Hotel.

The chancellor found that Thane had not made or intended to make a gift of his stock to the bank, but that he had made such an agreement with the directors about the transfer and sale of it as that he was bound, upon their purchase of the stock and continued operation of the bank, not to claim any benefit from its sale, and was estopped from doing so, and from this decree the appeal is prosecuted.

*E. E. Hopson and Coleman & Riddick*, for appellant.  
*Palmer Danaher and Mike Danaher*, for appellee.

KIRBY, J., (after stating the facts). It being conceded, as well as shown by the undisputed testimony, that the stock of the appellee bank owned by appellant was turned over to the bank and sold and the proceeds thereof



Appellant states he never had any intention of making a gift or donation of his stock or its proceeds to either the bank or the other directors, and that, in surrendering it for sale that the proceeds might be used in restoring the reserve for the continued operation of the bank, he made no such gift or donation, and that the bank was liable for the repayment to him of the value of the proceeds of his stock deposited therein.

The directors contend, on the other hand, that but for their understanding that the stock was surrendered to be sold and the proceeds deposited in the profit and loss account for the bank's benefit, without any liability on its part for the repayment of the value thereof to appellant, the owner of the stock, all of which was known to appellant, they would not have sold or purchased it and continued the operation of the bank, and that appellant is estopped by his conduct about the transaction to claim any liability against the bank for payment of the proceeds realized from the sale of his stock.

There is sharp conflict in the testimony about the intention of the parties, but, as already said, the burden of proof was upon appellee, having received the proceeds of the sale of appellant's stock in its bank, to show that it was done under such conditions as relieved it from liability therefor, or to return the amount thereof to appellant. It cannot be said that it has discharged such burden. After the negotiations had proceeded to the point of delivery of the stock to the Bank Commissioner, upon agreement to be sold at not less than par and the proceeds deposited in the bank, increasing the reserve to the legal requirement, one of the directors insisted that the agreement be reduced to writing, which was done by the Bank Commissioner, and signed by the appellant.

The other directors claimed that the Bank Commissioner was their agent, or represented them as well as the bank, in his negotiations with the appellant for the delivery of the stock, and the transfer thereof was written by him at their request, and signed and executed by the appellant in their presence. This writing, under the





The appellant, Mr. Thane, was president of the Farmers' & Merchants' Bank of Dumas, and the Bank Commissioner, after an appraisal of the assets, determined that the bank had losses considerably in excess of their surplus and undivided profits account and a large number of slow and doubtful papers. And on the 6th day of March the directors of the bank stated to the Bank Commissioner that they were unable or unwilling to finance the bank. Mr. Thane, the appellant, owned a large amount of stock, \$17,000. A number of directors and other witnesses stated that, if Mr. Thane would turn over his stock to them, they would pay par for it and place the proceeds of the sale of the stock in the bank to the profit and loss account. Or, if Mr. Thane did not wish to do this, that they would turn over their stock to him if he would finance the bank. They were endeavoring to make some arrangements to finance the bank because, as they stated, they did not want another bank failure in Dumas. And if Mr. Thane would turn over his stock to them they would finance the bank, or, if he would finance it, they would turn over their stock to him.

It is true, as stated in the original opinion, that the appellant was not indebted to the bank, but, if the bank were insolvent and some arrangements were not made, according to the testimony of some of the witnesses, the condition of the bank was such that it would not pay more than 25 per cent. of its debts, and the stockholders would not only have nothing of value in their stock, but would be called upon to pay an assessment of 100 per cent. No one, of course, regarded the stock as having value.

Mr. Thane himself testified that he attended a meeting of the board of directors; and learned the condition of the bank from the statement submitted by Mr. Byrne, and stated that the directors could get whatever money they wanted on a joint note of all the directors, which he proposed to sign with them. This proposition was submitted to each of them individually and personally, and all of them declined to sign the note with him. They then said if appellant would give them his stock they



It is true, as stated in the original opinion, that appellant stated he never had any intention of making a gift or donation of his stock or its proceeds, either to the bank or to the directors, but the undisputed proof is, when they held their meeting at Dermott, that they demanded his stock, and Mr. McKee told him the directors meant what they said, and, unless he gave them his stock, the bank would close. Of course he knew that if it did his stock was not only worthless, but he would probably have to pay an assessment on his stock. The directors were demanding this, or that they would turn over their stock, give it to Mr. Thane, if he would finance it. There had never been any offer or suggestion that, whether Mr. Thane gave up his stock or the directors gave up theirs, there would be any amount paid. Mr. Thane says that one of the directors told him at one time that, if he would give his stock, they might be able some time thereafter to work it out and pay him 50 per cent. But, at the meeting of the board of directors and at all other times, it was understood by all that the directors were proposing to give their stock, not sell it, but give it to Mr. Thane if he would finance the bank, or, if he did not do that but would give his stock to them, not to the bank, they would finance it. This stock, after being turned over to Mr. McKee, was sold, most of it to persons who were not stockholders at the time, and they paid par for it, and this money was put into the bank to the profit and loss account.

The undisputed proof shows that, unless one or the other of these methods had been adopted, the bank would have failed, and the delivery of his stock with the understanding that he was to get par for it would have left the bank in as bad condition as it was. The stock would have been a liability. And certainly no one could believe from the testimony in this case that the stock was worth par at that time. In fact, according to the testimony, it was worthless unless the bank received assistance immediately, or, as Mr. McKee told Mr. Thane, unless he either took the directors' stock and financed the bank or turned



we think he is estopped, as held by the chancellor, and cannot now claim pay for his stock, the proceeds of which went into the bank. The decision of the chancellor should be upheld, unless it is against the preponderance of the evidence.

We think the decree is supported by the preponderance of the evidence, and the petition for rehearing is granted and the decree of the chancellor is affirmed.

HART, C.J., and KIRBY, J., dissent.

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