Banks abd Banking: Liabilities of stockholders in a National Bank.

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Hon. O. H. Moberly,
Commissioner of Finance,
Jefferson City, Missouri.

Dear Sir:

This department acknowledges receipt of your letter of August 4th, wherein you request a supplemental opinion to our opinion of July 25th. We herewith quote that portion of your letter:

> "We have two such institutions in St. Louis, the Lafayette-South Side Bank & Trust Company which owns the capital stock of the South Side National Bank and the Wellston Trust Company which owns the capital stock of the Grand National Bank. All of these institutions are presumably insolvent and have been closed for several months. The question of double liability on the ownership of the National Bank stock is of vital importance in the liquidation of these institutions and I, therefore, will appreciate a final opinion from your Department on this matter. The general concensus of opinion is that the double liability constitutes a general claim and not a preferred claim against the assets of the trust company owning the stock."

Section 5151, R.S. of U.S. reads as follows:

> "The shareholders of every national banking association shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, engagements of such association to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares; except that shareholders of any banking

> association now existing under state laws, having not less than five millions of dollars of capital actually paid in, and the surplus of twenty percentum on hand, both to be determined by the Comptroller of the Currency, shall be liable only to the amount invested in their shares; and such surplus of twenty percentum shall be kept undiminished, and be in addition to the surplus provided for in this Title; and if at any time there is a deficiency in such surplus of twenty percentum, such association shall not pay any dividends to its shareholders until the deficiency is made good; and in case of such deficiency, the Comptrolled of the Currency may compel the association to close its business, and wind up its affairs under the provisions of Chapter 4 of this Title."

This was the statute for the guide in the liability of shockholders, until 1913. The section amended now reads as follows:

> "The stockholders of every national banking association shall be held individually responsible for all contracts, debts, and engagement ** of such association, each to the amount of his stock therein, at the par value thereof in addition to the amount invested in such stock. The stockholders in any national banking association who shall have transferred their shares or registered the transfer thereof within sixty days next before the date of the failure of such association to meet its obligations, or with knowledge of such impending failure, shall be liable to the same extent as if they had made no such transfer, to the extent that the subsequent transfer fails to meet such liability; but this provision shall not be construed to affect in any way any recourse which such shareholders might otherwise have against those in whose names such shares are registered at the time of such failure."

Upon reading this statute, we find that it is plain, definite and unequivocal in its language. It exempts no individual, person, bank or corporation, nor do we find in any other statute any class of stockholders are exempt from double liability.

In the case of The Ohio Valley National Bank vs. Hulitt, 204 U. S. 186, Justice Day, mentioning the above statute, utters the following:

> "Assuming then the established doctrine to be that the mere pledgee of national bank stock cannot be held liable as a shareholder so long as the shares are not registered in his name, although an irresponsible person has been selected as the registered shareholder, we deem it equally settled, both from the terms of the statute attaching the liability and the decisions which have construed the act, that the real owner of the shares may be held responsible, although in fact the shares are not registered in his name. As th such owner the law books through subterfuges and apparent ownerships and fastens the liability upon the shareholder to whom the shares really belong.
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> Applying these principles to the case at bar, we think there can be no doubt of the liability of the Ohio Valley National Bank in this case. Conceding that it was exempt so long as the relation which it held to the stock was that of a pledgee, and that Otjen was the registered stockholder holding for the benefit of the bank as pledgee and not as owner, what was the attitude of the parties after the death of Price and the credit of the supposed value of the stock upon the note and its presentation for allowance and acceptance by the representatives of Price's estate? As the foregoing statement shows, the stock was originally delivered to the bank, with a power of public or private sale for the liquidation of the pledge. After the death of Price the bank caused the stock to be registered in the name of Otjen. After proof of the claim the dividends paid out of the Price estate were credited upon the note. If the bank had followed literally the authority of the power of attorney attached to the note and sold the stock at public or private sale, and itself become the purchaser, we take it there could be no question that it would thus have become the real owner of the stock, and, within the principles of the cases, heretofore cited, the shareholder liable under the terms of the statute. We think what was in fact done necessarily had the same effect; the bank applied the value of the stock with the consent of the pledgor, and thus vested the title in the bank."

In the above opinion we find that no shareholders are exempt and it is merely a question as to who owns the stock, and if such party owns the stock he is then liable in double the amount.

In the case of National Bank v. Case, 99 U.S., 629, this being a case wherein one national bank acquired some shares in another national bank, Mr. Justice Strong utters the following:

> "From this testimony, as well as from other in the record, it is evident that Waldo held the stock as a cover for the Germania Bank; that notwithstanding the transfer to him, it remained subject to the bank's control, and that the transfer to him was made to evade the liability of the true owners. It was not a sale. The bank continued after it was made a pledgee with the legal title in itself or in its representative, and Phelps, McCullough & Co. were no longer the owners.
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> Such being the facts of the case, there can be no serious controversy respecting the principles of law applicable to them. It is thoroughly established that one to whom stock has been transferred in pledge or as collateral security for money loaned, and who appears on the books of the corporation as the owner of the stock, is liable as a stockholder for the benefit of creditors."

In the case of Hytower et al. v. American National Bank of Macon, Georgia, 263 U. S. 351, wherein the court said:

> "A contract between two national banks under which the assets of the one were transferred to the other and the latter assumed the liabilities of the former and advanced money in excess of the assets paid the liability, it was construed as intending not to be a sale, but a pledge of the assets as security for payment of the money advanced."

From this case we have the right to assume that had one national bank purchased the stock of another, and the same had been a sale instead of a pledge, that the national bank so purchasing would have been liable in double the amount.

From the foregoing statute and the cases herein cited, it is the opinion of this department that, in view of the fact of the statute which is quoted in your letter, namely, Sec. 5429 R. S. Mo. 1929, sub-section 9, wherein the authority for the Lafayette-South Side Bank and Trust Company was given to purchase capital stock of the South Side National Bank Co. and the Wellston Trust Company to purchase the stock of the Grand National Bank, it is the opinion of this department that both the Lafayette-South Side Bank and Trust Company and the Wellston Trust Company are liable in double the amount of the stock.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

Attorney General.