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CORPORATIONS - DOUBLE LIABILITY OF EX-DIRECTOR REGISTERED AS STOCKHOLDER FOR QUALIFYING SHARES

RECENT DECISIONS

CORPORATIONS — DOUBLE LIABILITY OF EX-DIRECTOR REGISTERED AS STOCKHOLDER FOR QUALIFYING SHARES — Defendant received ten shares of stock in a national bank under a trust arrangement for the purpose of qualifying him as a director. The shares were transferred on the bank's stock books to the defendant as absolute owner. At the end of his term as director defendant terminated the trust arrangement but did not have a transfer made upon the stock books. Plaintiff, receiver upon failure of the bank, sued for an assessment under U. S. C. tit. 12, sec. 64.[1] *Held*, since it is conclusively presumed that creditors become such in reliance on the statutory liability of those whose names appear upon the stock books as absolute owners,[2] defendant is liable, having failed to do everything legally possible to effect a transfer upon the stock books. *Schram v. Plym*, (D. C. W. D. Mich. 1934) 7 F. Supp. 478.

This case presents one phase of the question who is a "stockholder" within the meaning of U. S. C. tit. 12, sec. 64.[3] Where the vendor has sold his stock

[1] "The stockholders of every national banking association shall be held individually responsible for all contracts, debts, and engagement[s] 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 transferee 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."

[2] Citing Scott v. Latimer, (C. C. A. 8th, 1898) 89 Fed. 843; Benedict v. Anderson, (C. C. A. 6th, 1934) 70 F. (2d) 227.

[3] The owner in fact is held liable. Early v. Richardson, 280 U. S. 496, 50 Sup. Ct. 176 (1930); Collins v. Caldwell, (C. C. A. 5th, 1928) 29 F. (2d) 329; Hubbell v. Houghton, (C. C. Mass. 1898) 86 Fed. 547, affirmed (C. C. A. 1st, 1899) 91 Fed. 453; Rankin v. Fidelity Ins. Co., 189 U. S. 242, 23 Sup. Ct. 553 (1903). Receipt of a stock certificate is not necessary. Pacific Nat. Bank v. Eaton, 141 U. S. 227, 11 Sup. Ct. 984 (1891). The appearance of one's name upon the stock books as owner raises a presumption that he is a stockholder. Anderson v. Phila. Warehouse Co., 111 U. S. 479, 4 Sup. Ct. 525 (1884); Williams v. Stone, (C. C. A. 4th, 1928) 25 F. (2d) 831. If the name appears without knowledge or consent, there is no liability. Keyser v. Hitz, 133 U. S. 138, 10 Sup. Ct. 290 (1890). But such an appearance may be ratified and liability attach. Keyser v. Hitz, supra. See also: Finn v. Brown, 142 U. S. 56, 12 Sup. Ct. 136 (1891) (where such a transferee was a director and needed the shares to qualify and was held deemed to know of the entry and to assent); Kenyon v. Fowler, (C. C. A. 2d, 1907) 155 Fed. 107, affirmed 215 U. S. 593, 30 Sup. Ct. 409 (1910) (where such a transferee who knew of the entry but took no steps to have a transfer made to the real owner was held liable). A vendee upon a fraudulent sale who appears on the stock books as owner is liable. Wehby v. Spurway, (Ariz. 1926) 246 Pac. 759, cert. denied 273 U. S. 722, 47 Sup. Ct. 112 (1926); Winsett v. Spurway, (Ariz. 1926) 246 Pac. 763, cert. denied 273 U. S. 722, 47 Sup. Ct. 112 (1926); Scott v. Deweese, 181 U. S. 202, 21 Sup. Ct. 585 (1901); Salter

but his name remains upon the stock books as absolute owner, the vendee is liable as the real owner.[4] No case has carried the reliance theory so far as to hold the vendor in all cases; some cases have declared exemption to exist where the vendor has done all that might be expected of him under the circumstances to effect a transfer,[5] others have laid down the rule of the principal case that the

v. Williams, (D. C. N. J. 1914) 219 Fed. 1017. But in such a case if it is shown that no creditors have become such during the appearance of the entry it has been held that there is no liability. Stufflebeam v. De Lashmutt, (C. C. Ore. 1897) 83 Fed. 449; Hood v. Wallace, (C. C. A. 8th, 1899) 97 Fed. 983, affirmed 182 U. S. 555, 21 Sup. Ct. 885 (1901); Wallace v. Bacon, (C. C. S. D. Cal. 1898) 86 Fed. 553. Another group of cases presents the problem when one who is in fact agent, pledgee or trustee allows his name to appear upon the stock books as absolute owner and is consequently liable.

Pledgee: Wheelock v. Kost, 77 Ill. 296 (1875); Nat. Bank v. Case, 99 U. S. 628, 25 L. ed. 448 (1878); McDonald v. Dewey, 202 U. S. 510, 26 Sup. Ct. 731 (1906). But see Tourtelot v. Stolteben, (C. C. N. D. Iowa 1900) 101 Fed. 362 (where pledgee appeared as absolute owner but his transferor appeared as pledgee and it was held that there was no liability). See also on this point Burt v. Richmond, (D. C. Vt. 1901) 107 Fed. 387. See also Williams v. American Nat. Bank, (C. C. A. 8th, 1898) 85 Fed. 376, where the name of the pledgee appeared as absolute owner but without his knowledge or consent and there was no liability. In these cases the pledgor is also liable as the real owner. Hulitt v. Ohio Valley Nat. Bank, (C. C. A. 6th, 1905) 137 Fed. 461, affirmed 204 U. S. 162, 27 Sup. Ct. 179 (1907). But where the pledgee holds as a pledgee upon the stock books he is not liable. Pauly v. State Loan & Trust Co., 165 U. S. 606, 17 Sup. Ct. 465 (1897). And if a pledgee takes the stock in the name of a third party he is not liable, but such third party is. Anderson v. Phila. Warehouse Co., 111 U. S. 479, 4 Sup. Ct. 525 (1884), affirming C. C. E. D. Pa. 1880) 4 Fed. 130. See also Beal v. Essex Sav. Bank, (C. C. A. 1st, 1895) 67 Fed. 816, writ of error dismissed (U. S. 1897) 18 Sup. Ct. 940; Pullman v. Upton, 96 U. S. 328 (1877); Pufahl v. Fidelity Nat. Bank, (C. C. A. 10th, 1930) 40 F. (2d) 25.

Agent: This group of cases includes what is sometimes termed a secret trust or colorable transfer, in which the person who holds the stock in name upon the stock books does so under the full control of the real owner. In such cases the person in whose name the stock appears upon the books as absolute owner is held liable. Hubbell v. Houghton, (C. C. Mass. 1898) 86 Fed. 547; Nat. Bank v. Case, 99 U. S. 628, 25 L. ed. 448 (1878); Bowden v. Johnson, 107 U. S. 251, 2 Sup. Ct. 246 (1882); Stuart v. Hayden, 169 U. S. 1 (1898). In such cases the real owner is also liable. However, where one is a bona fide executor, administrator, guardian, trustee or agent and appears upon the stock books clearly as such, he is not liable. Cases collected in U. S. C. A. tit. 12, sec. 66, together with statute. However, a business trust for the purpose of evading the statutory liability has been held to be no protection in this regard for the *cestuis* as the real owners. Keyes v. Amer. Life & Acc. Ins. Co., (D. C. W. D. Ky. 1932) 1 F. Supp. 512. Laurent v. Anderson, (C. C. A. 6th, 1934) 70 F. (2d) 819. It has likewise been argued that a holding company for the purpose of evading statutory liability should not serve as a protection. 33 MICH. L. REV. 273 (1934), commenting on Barbour v. Thomas, (D. C. E. D. Mich. 1933) 7 F. Supp. 271).

[4] Early v. Richardson, 280 U. S. 496, 50 Sup. Ct. 176 (1930). See also: Laing v. Burley, 101 Ill. 591 (1882); Collins v. Caldwell, (C. C. A. 5th, 1928) 29 F. (2d) 329.

[5] Whitney v. Butler, 118 U. S. 655, 7 Sup. Ct. 61 (1886); Young v. McKay,

vendor must do all legally possible to effect a transfer.[6] The latter rule, itself a compromise, presents all the difficulties of administrative tangle and statutory evasion without balancing them with an opportunity for fuller justice offered by the former rule. Under any rule liability would probably have been found in the principal case. S. M.

(C. C. N. D. Cal. 1892) 50 Fed. 394; Snyder v. Foster, (C. C. A. 5th, 1896) 73 Fed. 136; Hayes v. Shoemaker, (C. C. N. D. N. Y. 1889) 39 Fed. 319; Cox v. Elmendorf, 97 Tenn. 518, 37 S. W. 387 (1896); Johnston v. Laflin, 103 U. S. 800, 26 L. ed. 352 (1880); Earle v. Coyle, (C. C. E. D. Pa. 1899) 95 Fed. 99, affirmed (C. C. A. 3d, 1899) 97 Fed. 410; Keyes v. Myhre, 143 Minn. 193, 173 N. W. 422 (1919); Dellert v. Stallman, (C. C. A. 7th, 1928) 29 F. (2d) 236; Jack v. Forrest, (C. C. A. 10th, 1934) 71 F. (2d) 264, reversed in Forrest v. Jack, 294 U. S. 158, 55 Sup. Ct. 370 (1935), where stock remained in the name of the testator, although the bank was notified of transfer of ownership, after complete administration of the estate and it was held that the property finally distributed was not liable. Forrest v. Jack was also distinguished in Seabury v. Green, 294 U. S. 158, 55 Sup. Ct. 373 (1935), where there had not been final distribution of the estate.

[6] Richmond v. Irons, 121 U. S. 27, 7 Sup. Ct. 788 (1887); Price v. Whitney, (C. C. Mass. 1886) 28 Fed. 297.