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CORPORATIONS — PLEDGE OF STOCK — STATUTORY LIABILITY OF PLEDGEE — The owner of shares of bank stock pledged them to defendant corporation to secure a loan. Defendant had the bank issue a new certificate to it in its own name. On the failure of the bank plaintiffs, creditors, sought to hold defendant for "double" liability under statute. *Held*, under the Montana statute providing that pledgees should not be personally liable as stockholders,[1] defendant was not liable despite the fact that the bank's records did not show it to be a

[1] "No person holding stock as executor, administrator, guardian, or trustee, and no person holding such stock as a pledge or collateral security, shall be personally subject to any liability as stockholder in such corporation; but the person pledging such stock shall be considered as holding the same, and shall be liable as a stockholder

pledgee. *Mitchell v. Banking Corp. of Montana,* (Mont. 1933) 24 Pac. (2d) 124.

If the statute herein involved [2] is accepted at its face value, the conclusion of non-liability seems inescapable, for defendant did hold the stock "as a pledge or collateral security." [3] But some courts have read into such statutes a requirement that to avoid liability it must appear on the corporation register that defendant holds "as pledgee" and not as owner.[4] This is the common law rule, based largely on the theory that by permitting himself to appear as owner the pledgee is estopped [5] to deny ownership as against creditors of the corporation.[6] Is this application of the estoppel doctrine sound? Estoppel involves a misrepresentation and detrimental reliance thereon. Technically, it may be questioned whether there is any actual misrepresentation when a pledgee has stock issued in his own name, for he normally has a right to have this done.[7] Having such a right, he only represents that he is either actual owner or holds the stock in some representative capacity, which is *true.* On the question of detrimental reliance, it is submitted that the average person dealing with a bank [8] in fact relies not upon the statutory liability of the bank's particular stockholders,[9] but rather upon

accordingly. . . . " Rev. Codes of Mont. (Choate 1921), sec. 6036, as amended by Mont. Laws (1923), c. 9.

[2] Statutes of similar nature have been enacted in several States. See 2 MICHIE, BANKS AND BANKING, Perm. ed., c. 5, sec. 149 (1932), and annotation in 82 A. L. R. 565 at 577 (1933).

[3] At least such was the parties' intent. Stock being incorporeal, the concept of "pledge," which connotes transfer of possession by way of security, can only inaccurately be applied to such transactions. The legal effect of the pledge of stock seems to combine some of the elements of assignment (with a power of defeasance), trust, and pledge. The terminology in the cases is very confused. See 6 THOMPSON, CORPORATIONS, 3d ed., sec. 4249 (1927), and 14 COL. L. REV. 432 (1914).

[4] Adams v. Clark, 36 Colo. 65 at 82, 85 Pac. 642 (1906); Hurlburt v. Arthur, 140 Cal. 103 at 107, 73 Pac. 734 (1903).

[5] Other grounds have been stated to be: (1) by taking "legal title" the pledgee has released the former owner; and (2) it would be inequitable to allow the pledgee the privileges of ownership and refuse its responsibilities. 13 FLETCHER, CYCLOPEDIA OF CORPORATIONS, Perm. ed., sec. 6355 (1932).

The first assumes that the pledgee does get legal title, on which the cases are not agreed, and also that liability must follow from the bare fact of apparent ownership, which is the very point in issue. As to the second, to whom would it be "inequitable"? Not to the pledgor, for that is his contract; not to the corporation or its creditors, unless they are harmed. Furthermore, the pledgee does not have all the privileges of ownership. He must account for dividends to the pledgor, cannot cut off the pledgor's interest except as specified by contract or by law—in short is holding for purposes of security alone. See 12 FLETCHER, CYCLOPEDIA OF CORPORATIONS, Perm. ed., secs. 5644-5 (1932).

[6] 1 COOK, CORPORATIONS, 8th ed., sec. 247 (1923); 2 MORSE, BANKS AND BANKING, 6th ed., sec. 680 (1928); 82 A. L. R. 565 at 569 (1933); Converse v. Paret, 228 Pa. 156, 77 Atl. 429, 30 L. R. A. (N. S.) 1092 (1910); Flynn v. American Banking & Trust Co., 104 Me. 141, 69 Atl. 771, 19 L. R. A. (N. S.) 428 (1908).

[7] GODDARD, BAILMENTS AND CARRIERS, 2d ed., sec. 87 (1928); 6 THOMPSON, CORPORATIONS, 3d ed., sec. 4248 (1927).

[8] This would consist largely in making deposits.

[9] Even assuming that the depositor can gain access to the bank's stockholder lists,

the bank's condition as revealed by its financial statements,[10] and upon its general reputation. And, despite many judicial statements to the contrary,[11] the primary purpose of statutes imposing double liability would seem to be to benefit the creditors by insuring careful management rather than by creating a "guaranty" fund out of which to satisfy their claims in the event of the bank's insolvency.[12] But if there is no reliance on the alleged misrepresentation in extending credit (making deposits, etc.), it is nevertheless arguable that the appearance of ownership in the pledgee may tend to impede remedies of the creditors against the pledgor by "lulling them into a feeling of security." But as to this, *quaere*, whether there is any sufficient injury or right to rely to justify assessment of the pledgee as if owner contrary to the intent of the parties and the nature of the security transaction. At least such a holding would seem to require a specific legislative declaration of policy, which, obviously, is not contained in the statute involved in the principal case. Therefore, in arguing somewhat mechanically that defendant was not liable because the statute was sweeping in its terms and provided for no exceptions, the court seems to have reached the correct result in view of the unsoundness of the common law rule.[13]

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scrutiny of such lists would be of small value, especially when the bank is large, with many stockholders.

[10] Thus, whereas under U. S. C., tit. 12, sec. 62 (1926) national banks must have a list of stockholders ready for inspection at all times, under sec. 161 the bank's financial statement must be *published* three times a year.

[11] See, for example, annotation in U. S. C. A., tit. 12, secs. 63-4, n. 21 (1926).

[12] If the purpose is to create such a fund, experience indicates that it is not very complete "insurance." The individual gain to creditors from the assessment is probably in general relatively less than the individual hardship inflicted upon the shareholder in suffering judgment.

[13] See in accord: Tierney v. Lidden, 143 Iowa 286, 121 N. W. 1050 (1909), under the Iowa statute; Austin v. Marsico, (Tex. App. Com. 1926) 281 S. W. 198, construing the Texas statute; and Johnstone v. Black, 59 Wash. 144, 109 Pac. 367 (1910), reaching a similar result in Washington.