Case No. 4,573.

EVANSVILLE NAT. BANK v. METROPOLITAN NAT. BANK.

{2 Biss. 527; 10 Am. Law Reg. (N. S.) 774; 1 Thomp. Nat. Bank Cas. 189; 6 Am. Law Rev. 574.}[1]

Circuit Court, D. Indiana. May Term, 1871.

BANK'S LIEN ON STOCK.

1. A transfer of stock in a banking corporation organized under the act of June 3, 1864 [13 Stat. 90], to a bona fide holder is valid, though the seller, or pledgor, he at the time indebted to the hank, and a by law of the bank declared that no transfer of the stock by any share-holder indebted to the bank should be made, without the consent of the board of directors.

[See note at end of case.]

2. Such a by-law in effect attempts to create a lien upon stock for debts of the holder, and the result is the same as if a loan were made upon the security of the stock—a transaction forbidden by the 35th section of the act.

3. The principle announced in the case of First Nat. Bank of South Bend v. Lanier [11 Wall. (78 U. S.) 369] is decisive of this case.

Appeal from the district court [of the United States for the district of Indiana].

This was an action by the Evansville National Bank, of Evansville, Indiana, to recover two hundred shares of its capital stock, pledged to the Metropolitan National Bank of New York City. The Evansville National Bank was organized in January, 1865, under the act of congress of June 3, 1864 (13 Stat. 99). One of the articles of association provided that the directors might prohibit the transfer of stock without their consent Accordingly a by-law declared that no transfer of the stock should be made, without the consent of the board of directors, by any share-holder who was indebted to the bank—and certificates of stock were to contain this provision. After the adoption of this by-law, Watts, Crane & Co., became the owners of one hundred and fifty shares of stock, and Crane, one of the firm, of fifty shares. Certificates were issued for these shares, in conformity with the above by-law. Watts, Crane & Co., did business with the Evansville National Bank, and they were indebted to the bank from the time they became holders of the stock, for money loaned upon bills drawn, indorsed, or accepted by them in the usual course of dealing. On the 15th of September, 1866, they borrowed $30,000 of the Metropolitan National Bank, of New York, and they and Crane delivered their certificates of stock as a pledge to secure the money so borrowed, attaching to the certificates bills of sale with power of attorney for the transfer of the stock. On the 15th of April, 1867, Watts, Crane & Co., became indebted to the Evansville National Bank, on an acceptance for $25,000. At this time, the Evansville Bank had no notice of the pledge previously made to the Metropolitan Bank. The members of the firm of Watts, Crane & Co., were declared bankrupts by the district court of Indiana, March 3, 1868. The district court [ease unreported] held

that the pledge to the Metropolitan Bank was binding, notwithstanding the bylaws under which the Evansville Bank claimed a lien upon the stock.

Asa. Iglebart, for plaintiff.

Hendricks, Hord & Hendricks, for defendant.

DRUMMOND, Circuit Judge. The only question in the case is, whether this by-law was valid under the law of June 3d, 1864. The 8th section of that act authorizes the board of directors to make by-laws, but declares they must not be inconsistent with its provisions. The 35th section declares that no association shall make any loans, or discount on the security of the shares of its own capital stock, nor be the purchaser or holder of any such shares, unless to prevent loss on a debt previously contracted in good faith.

The counsel for the plaintiff, in the able argument he has presented, claims that the operation of the by-law upon the shares of stock, because of the indebtedness of Watts, Crane & Co., and their transfer to the Metropolitan Bank, without the consent of the board of directors, was not a loan or discount made on the security of the shares, that there must be a distinct assignment or hypothecation of the stock as security for a loan or discount made, and some authorities have been cited which seem to sustain that principle. But if a by-law declares in substance

and effect, that for all loans or discounts made to the share-holder, a lien shall exist against his stock, the result would be the same as if there were a separate transaction and security given in each case. The share-holder always has the credit on the security of his stock, and thus the very object is accomplished which the 35th section sought to prevent, the absorption of the shares into the assets of the bank. And it will be observed that the law only allows the stock to be taken by the bank as security, or purchased or held to avoid loss on a debt previously contracted in good faith, and even then the stock is to be retained by the bank only a limited time.

An extended examination of the authorities cited by counsel is unnecessary, because in the ease of the First Nat Bank of South Bend v. Lanier (recently decided by the supreme court of the United States) 11 Wall. {78 U. S.} 369, the question involved here is discussed by that court, and a principle established that is decisive of this case. In that case the bank had made a by-law, declaring that the stock of the bank should be transferable only on its books, subject to the provisions of the 36th section of the act of 1863 (12 Stat. 675), by which a shareholder was prevented from transferring his stock when he owed the bank. The bank sought to avail itself of this by-law, notwithstanding the repeal of the 36th section, by the act of 1864, and the court held that that could not be done. This was in effect deciding that no such by-law could be in force under the provisions of the act of 1864. The language of the court is: "Congress evidently intended, by leaving out of the law of 1864 the 36th section of the act of 1863, to relieve the holders of bank shares from the restrictions imposed by that section. The policy on the subject was changed, and the directors of banking associations were in effect notified, that thereafter they must deal with their share-holders as they dealt with other people. As the restrictions fell, so did that part of the by-law relating to the subject fall with them." The decree of the district court is affirmed.

This case was appealed to the supreme court, and affirmed by a divided court, and consequently no opinion was given.

NOTE. A corporation has no lien at common law upon stock for a claim against the stockholder. Steamship Dock Co. v. Heron, 52 Pa. St. 280; Massachusetts Iron Co. v. Hooper, 7 Cush. 183. Nor any implied lien; and is bound to enter on its books a transfer of the tock made by the holder. Heart v. State Bank, 2 Dev. Eq. 111. Contra, Mechanics' Bank v. New York & N. H. R. Co. 13 N. Y. 599; Arnold v. Suffolk Bank, 27 Barb. 424. Lien may be sustained by proper clause in certificate of stock. Vansands v. Middlesex County Bank, 26 Conn. 144; Fitzhugh v. Bank of Shepherdsville, 3 T. B. Mon. 126. Or by provision in charter. St. Louis Perpetual Ins. Co. v. Goodfellow, 9 Mo. 149; Cunningham v. Alabama Life Ins. & T. Co., 4 Ala. 652; Stebbins v. Phoenix Fire Ins. Co., 3 Paige, 350; Union Bank v. Laird, 2 Wheat. {15 U. S.} 390; Mechanics' Bank v. Merchants' Bank, 45 Mo. 513. See, also, McCready v. Ramsey, 6 Duer, 574; Merrill v.

Call, 15 Me. 428. Where a hank has notice of an equitable transfer, not completed on its books, it is bound to respect it. Conant v. Reed, 1 Ohio St. 298; Nesmith v. Washington County Bank, 6 Pick. 324. Lien given by charter cannot overreach a prior assignment so as to prevent its transfer. Neale v. Jannev {Case No. 10,069}. Bank may hold the whole of its debtor's stock. Sewall v. Lancaster Bank, 17 Serg. & R. 285. And dividends on such stock. Hague v. Dandeson, 2 Exch. 741. Assignee takes subject to the rights of the corporation under its charter, of which he is bound to take notice. Reese v. Bank of Commerce, 14 Md. 272; Brent v. Bank of Washington, 10 Pet. {35 U. S.} 610; Union Bank of Georgetown v. Laird, 2 Wheat. {15 U. S.} 390. Lien is good as against purchaser at sheriff's sale, with notice. Turtle v. Walton, 1 Ga. 43. The supreme court of New York hold that under these acts of congress a bank cannot by a by-law create a lien upon stock for the security of debts due from the stockholder to the bank. Rosenback v. Salt Springs Nat. Bank, 53 Barb. 495; followed at a subsequent term in Conklin v. Second Nat. Bank, Id. 512, note. Contra: In one of the earliest cases under the bankrupt law, Blatchford, J., ruled that a bank could maintain a lien on its shares of stock, as against the assignee in bankruptcy of the stockholder, to protect itself against loss. In re Bigelow {Case No. 1,395}. Though a certificate of stock contains a provision that the stock was not transferable until all the liabilities of the stockholders were paid, such a provision gives the bank no lien upon the stock for subsequent indebtedness, and is void under the act of congress of June 3, 1864. Conklin v. Second Nat Bank, 45 N. Y. 655.

[1] {Reported by Josiah H. Bissell, Esq., and here reprinted by permission. 6 Am. Law Rev. 574, contains only a partial report.}