

shows that, at the time of the overdraft by Dare & Collins on the savings bank, Collins was behind in his account with the national bank, and that the money paid by the savings bank in honoring it went to make good that account. But the stockholders and creditors of the national bank cannot be held liable for the misplaced confidence of the savings bank in the reliability and responsibility of Dare & Collins. That bank saw proper to allow that firm to overdraw its account, and must suffer the consequences. The circumstance that one of the members of that firm was vice president of the savings bank and president of the national bank, and that the other member of it was one of the directors of the latter bank, is unimportant. The fact remains that the savings bank honored and paid their check on it, and must look to them for reimbursement of that sum.

Nor can the \$25,000 paid by the savings bank for the Gay and Stone notes be legally or justly treated as a deposit by that bank of its money in the national bank. That money was paid on the strength of those notes, (Gay's having attached to it a certificate in his name for 100 shares of the stock of the national bank,) supplemented, it is true, by Collins' assurance that he only wanted the savings bank to carry the notes for a short time, and that the national bank would take care of them. But that promise of Collins did not convert the purchase of the notes by the savings bank into a deposit by that bank of its money in the national bank, for which a certificate of deposit of the latter could be legally issued.

There must be judgment for the defendants, and it is so ordered.

YARDLEY v. WILGUS.

(Circuit Court, E. D. Pennsylvania. July 6, 1893.)

No. 188.

BANKS AND BANKING — NATIONAL BANKS — STOCKHOLDER'S LIABILITY — STOCK HELD IN NAME OF TRUSTEE.

A person who is entered on the books of a national bank as the owner of stock, but who is admitted to hold the stock in trust for the true owner, is not liable as a stockholder for the debts of the bank, when the true owner has been adjudged so liable, although nothing is realized upon the execution of such judgment.

At Law. Action by Robert M. Yardley, receiver of the Keystone National Bank, against George S. Wilgus, to enforce defendant's liability as a stockholder. Verdict was given for plaintiff, subject to the opinion of the court on a question reserved. Judgment for defendant.

Read & Pettit, for plaintiff.

Jos. H. Taulane and R. P. White, for defendant.

DALLAS, Circuit Judge. This action was brought to enforce the alleged individual liability of the defendant upon four shares of the stock of the Keystone National Bank standing in his name.

Upon the trial the following statement of the facts, to be accepted in lieu of evidence, was agreed upon and filed:

(1) That the books of the Keystone National Bank show defendant to be the owner of four shares of its capital stock.

(2) That assessment of \$50 per share has been duly made upon said stock, payable on August 16, 1891, and defendant notified thereof, and payment demanded.

(3) That C. N. Shellenberger acknowledged himself to be the owner of said four shares, and the assessment due thereon was included in a judgment against him for \$1,550.23 in this court.

(4) That said C. N. Shellenberger was and is in fact the true owner of said shares, and said George S. Wilgus was and is the holder thereof only in trust for said C. N. Shellenberger.

(5) That execution has been issued against said C. N. Shellenberger upon said judgment above mentioned, and duly returned, and nothing has been realized therefrom.

I directed the jury, upon this agreed state of facts, to find for the plaintiff for the amount claimed, subject to the point which was reserved,—whether the plaintiff was entitled to recover against the defendant Wilgus, in whose name the four shares in question stood upon the books of the bank, notwithstanding the facts admitted, viz. that C. N. Shellenberger was and is the true owner of said shares, and said George S. Wilgus was and is the holder thereof only in trust for said C. N. Shellenberger; and also that the assessment for which this action was brought against Wilgus had already been included in a judgment by the same plaintiff against C. N. Shellenberger, upon which judgment execution had been issued, and returned without anything being realized. A verdict was accordingly rendered for the plaintiff for \$219.76, and the reserved point has now been argued upon defendant's motion for judgment in his favor notwithstanding the verdict.

Either Wilgus or Shellenberger could be held for this assessment, but not both of them. They cannot both be owners of the same stock. The statute (Rev. St. § 5151) attaches the liability only to "shareholders." Upon proof that Wilgus voluntarily appeared upon the books of the bank as a shareholder, he would be precluded (if that were the whole case) from asserting that he was not in fact a shareholder. On the other hand, in a suit against Shellenberger, upon proof that he was the actual owner, it would not avail him to show that the stock stood in the name of another. But here it is admitted that Wilgus is not a shareholder, and also that it has been judicially determined, at the suit of the plaintiff in this action, that Shellenberger is the real owner. Both by this admission and adjudication we have, therefore, the fact conclusively established that Wilgus is not a shareholder with respect to the shares in question; and it follows that he is not, under the statute, liable for the assessment now sought to be enforced against him.

Judgment will be entered for the defendant notwithstanding the verdict.

FIRST NAT. BANK OF EVANSVILLE v. FOURTH NAT. BANK OF LOUISVILLE.

(Circuit Court of Appeals, Sixth Circuit. June 8, 1893.)

No. 21.

1. BANKS AND BANKING—COLLECTIONS—MAILING PAPER DIRECT TO DEBTOR.
A bank receiving a certificate of deposit for collection, and mailing it to the bank which first issued it, with a request for a remittance, is guilty of negligence.
2. SAME—PRINCIPAL AND AGENT—NEGLECT OF OFFICER—MAIL CLERK.
A bank is charged with notice of letters duly mailed to it and received by the general bookkeeper, whose duty it is to open and distribute mail matter, although he conceals such letters to hide certain irregularities in his office, and thereby prevents their coming into the hands of the other bank officers.
3. SAME—COLLECTIONS—NEGLIGENCE—PROXIMATE CAUSE OF LOSS.
The E. bank, on May 8, 1888, mailed to the L. bank for collection a certificate of deposit issued by P. & Co. On May 9th the L. bank received the certificate, and negligently mailed it directly to P. & Co., with a request to remit. On June 1st the L. bank credited the E. bank with the item in the account current for May, and wrote that nothing had been heard from P. & Co. after repeated inquiries, and requested that the matter be investigated, and a duplicate or a remittance obtained from P. & Co. On June 22d, having received no answer to this letter, the L. bank wrote the E. bank that repeated letters about the item had remained unanswered, that the L. bank had written the E. bank for a duplicate, and that the L. bank now charged the E. bank with the item, which was accordingly done in the account current for June. No further correspondence was had on the subject, and thereafter the item was omitted from the monthly accounts current. P. & Co. continued in good credit until after January 1, 1889, when they failed. *Held*, that the L. bank was not responsible to the E. bank for more than nominal damages.

In Error to the Circuit Court of the United States for the District of Kentucky.

At Law. Action by the First National Bank of Evansville, Ind., against the Fourth National Bank of Louisville, Ky., for negligence in failing to make a certain collection for plaintiff. Verdict and judgment for nominal damages were given for plaintiff, who now brings error. Affirmed.

Statement by SAGE, District Judge:

On the 8th of May, 1888, the plaintiff in error sent by mail to the defendant in error, for collection, a certificate of deposit, of which the following is a copy:

"Banking House of M. M. Pool & Co., Shawneetown, Ill., February 8, 1888.

"Dr. Wm. N. Warford has deposited in this bank twenty-six hundred and sixty-six and 66-100 dollars for three months, payable to the order of himself on return of this certificate, properly indorsed. Interest at five per cent. per annum from date until maturity.

"No. 1158.

M. M. Pool & Co."

The certificate was received by the Louisville bank on May 9, 1888, credited by it to the Evansville bank as \$2,700, and so entered on the account current mailed to that bank June 1, 1888.

M. M. Pool & Co., who issued the certificate, were then bankers in good credit at Shawneetown, Ill., near to plaintiff and remote from defendant.