ment may be sufficient to prevent the displacement of the trustee by a minority against the wishes of the majority, where there is no bad faith or collusion, and to prevent interference with the trustee's discretion as to the conduct of the case, when his action meets with the approval of a majority of the bondholders, merely because some small minority of them may entertain a different opinion. But such provisions should not be availed of to leave the whole body of bondholders under some one mortgage unrepresented before the court, except by a party who is bound in conscience to be the loyal and vigorous champion of another and conflicting mortgage. A different view commended itself to the court in the Fourth circuit (Clyde v. Railroad Co., 55 Fed. 445), but it would seem that public policy should require that, where controversies are brought into court, each party shall be represented by some one whose single object it is to secure all to which such party is entitled, and who is unhampered by personal obligations to an adversary party. The practice, quite common in railroad financiering, of making the same person trustee under a succession of mortgages, each covering the whole or some part of the property, is no doubt a convenient one, and, when disaster overtakes the road, it may facilitate the effort to reorganize by making it easier to constrain the various conflicting interests to make concessions to each other; but, from the point of view of a court which is called upon to adjudicate between such conflicting interests, such practice is unsatisfactory, and, unless corrected by substitution or otherwise after suit brought, may tend to induce judicial error, and may lead to great injustice. The petitions are granted.

RICAUD v. WILMINGTON SAVINGS & TRUST CO. et al.

(Circuit Court of Appeals, Fourth Circuit. November 7, 1895.)

No. 127.

CORPORATIONS—TRANSFER OF STOCK BY EXECUTOR—ESTOPPEL.

One D., a stockholder in the W. bank, died in 1882, leaving a will by which he gave all his property to his wife for life, "to be hers absolutely," and at her death to go to his son and daughter, to be divided between them as his wife might think proper. D.'s wife qualified as executrix, and took possession of the estate, but did not transfer the bank stock. She died in 1888, leaving a will disposing of the property, upon the assumption that she had entire power of disposition of it, and her disposition of it was acquiesced in by her son and daughter. One F., who was appointed executor of Mrs. D.'s will, qualified as such, and thereby became executor of D. He caused the bank stock to be transferred into his name "as executor," and testified that he meant thereby executor of Mrs. D. The bank officer who made the transfer testified that he understood the stock was transferred to F. as executor of Mrs. D. At the time of the transfer, in 1888, the bank was solvent and prosperous. The stock was held by F. as part of a trust fund created by Mrs. D.'s will for her daughter, as a means of paying a debt from D. to the daughter, in such a way as to keep the money beyond the control of the daughter's husband. The W. bank failed in 1891, and the receiver sought to hold the estate of D. responsible for an assessment on the stockholders. *Held* that, as the stock could only have been transferred by the act of D.'s executor, and as F. declared, and the bank understood, when the transfer was

made, that it was made to him as executor of Mrs. D., and he had power to receive it in that capacity, without regard to the terms of the wills, the bank, and consequently the receiver, were estopped to claim that D. and his estate had not ceased to hold stock at the time of the transfer, there being no ground to impute bad faith to any of the parties.

Appeal from the Circuit Court of the United States for the Eastern District of North Carolina.

This was a suit by A. G. Ricaud, receiver of the First National Bank of Wilmington, N. C., against the Wilmington Savings & Trust Company, Fannie G. Pollock, and R. F. Tysen, to establish a claim against the estate of James Dawson, deceased. The circuit court dismissed the bill. Complainant appeals. Affirmed.

This case comes up on appeal from the circuit court of the United States for the Eastern district of North Carolina.

James Dawson, a man of comfortable fortune, was a stockholder in the First National Bank of Wilmington, N. C. He controlled in all 210 shares, of the par value of $100 each. Of these, 185 shares stood in his own name, and 25 shares stood on the books of the bank in the name of Jacob Loeb, but were transferred on their back to, and were owned by, James Dawson. Besides these shares, there were two other shares standing in the name of M. S. Dawson, the wife, and two more shares standing in the name of James M. Dawson, the son, of James Dawson. James Dawson was a resident of Wilmington, but he spent a portion of the latter part of his life at the Windsor Hotel, New York. He died some time in 1882, leaving a will dated in 1876. By this will he gave to his wife, Missouri S. Dawson, all his "real estate and personal property of every kind and description during her natural life, to be hers absolutely, at her death to go to my children, Frances Grey and James, to be divided between them in any way she may think proper, and giving to each whatever her judgment may think best." He then gives her full power of sale over any and all the property, and of reinvestment, the purchaser not to be bound to see as to the application of the purchase money. She could make any improvements on the real estate that she thought proper, without let or hindrance from any one, nor was she to account for the income, but could use it as she preferred. He named his wife sole executrix. Upon his death, the wife, Missouri S. Dawson, qualified on his will as executrix, and took charge of all of the property. She made no change in the stock as it stood on the books of the bank at the death of James Dawson. She departed this life some time in 1888, leaving in force a last will and testament, bearing date 22d December, 1887. The will is carefully and elaborately prepared, and has evident proof of the conviction on her mind that she could dispose by will, or, at the least, exercise a power of appointment over, all the property she held under her husband's will. After one or two unimportant bequests, she gives to her executors the sum of $30,000, to be held in trust to pay the income annually to her daughter, Frances Grey, now Fannie Pollock, during her natural life, and at her death to pay over the principal between and among her children, with one exception, a son by the first marriage of her daughter. If her personalty was insufficient to pay this legacy, she charged her realty with it. She then devises her realty to her executors, as to one part thereof, in trust for her son, James M. Dawson, for life, with remainder to his children in fee. In the event of his death without issue, then to his sister, Frances, for life, with remainder to her children, with the same exception of a child by her first marriage. As to the other part of the realty, the executors are to hold the same in trust for her daughter, Fannie, for life, remainder to her children in fee, saving the same son by her first marriage, with cross remainder to James M. Dawson for life, remainder to his children in fee if Fannie die without issue. In the event of both children dying without issue, the realty is divided equally between the surviving heirs of her husband and herself. She named as her executors her son, James, her daughter, Fannie, and William Hildreth Field, giving them full power of sale. Field alone qualified

as executor. As has been seen, Mrs. Dawson treated all the property which came to her under the will of her husband as disposable under her will, and in this she seemed to be sustained by her son and daughter, both of whom were of full age. The executor, with their knowledge, and, if not with their express assent, certainly without objection on their part, proceeded to create the trust fund of $30,000, to be held in trust for Mrs. Pollock. In this fund he placed some Nevassa stock, notes, and all this national bank stock. To this end he caused to be transferred on the books of the bank the 185 shares standing in the name of James Dawson into his name, as executor: the 25 shares standing in Loeb's name also into his name, as executor. Each of the certificates of two shares standing in the name of James M. Dawson and of Missouri S. Dawson, respectively, were transferred into his name, as executor. These were all a part of the trust fund. He says that the transfer into his name, as executor, was as executor of Missouri S. Dawson. The bank officer in charge of stock transfers also knew that he was transferring the stock to himself as executor of Missouri S. Dawson.

As this may be the turning point of the case, it is best to state the evidence in full. On his direct examination, Field had sworn that finally he had all the certificates in the bank transferred to himself, as executor. Having been then asked "Executor of whom?" he answered "Executor of Missouri S. Dawson"; and that as such executor he had appropriated the securities to the création of the trust fund. On the cross-examination he was asked: "Question. I understand you to say that in making the transfer on the books in the bank you acted as executor of Missouri S. Dawson. Is this correct? Answer. I don't know what the transfers were. Mr. Larkins had the custody of them, and he took them to the bank, and said, 'I will have them transferred to your name.' I was desirous of having the custody and control of the personal assets of the estate. What was transferred on the books of the bank, I do not know. The certificates of stock in the bank will speak for themselves, but I certainly took them as executor of Missouri S. Dawson's estate, as I understood it." A. K. Walker, who kept the stock accounts in the bank, testifying as to the same transaction, says (having been shown the certificate in question): "Question. Please look at this paper, and see if you recognize your handwriting on them. What are these papers? Answer. They are certificates of the First National Bank of Wilmington. Q. Examine the indorsements on these certificates. Is there anything in your handwriting there? A. The filling up of the certificates is in my handwriting. Q. The assignment seems to be to William Hildreth Field, executor. Of whom was he executor? A. I understood him to be executor of Mrs. Missouri S. Dawson. Q. And in that capacity the stock was assigned to him? A. I understood so. The old certificates bearing the name of James Dawson were then all canceled."

On the —— day of November, 1891, the First National Bank of Wilmington failed and was closed. The comptroller of the currency took charge of the bank and its assets by a receiver appointed by him, and, after investigating its affairs, made an assessment of $100 per share on each shareholder. The bill in this case is filed to obtain this assessment from the estate of James Dawson. It claims and avers that the stock standing in the name of James Dawson has never ceased to be a part of his estate, and that it now belongs to it; that the transfer made by Field to himself, as executor, was as executor of James Dawson, and, if it was intended to be to himself as executor of Missouri S. Dawson, was void. The bill also charges that Mrs. Fannie Pollock, the daughter of James Dawson, and by the death of her brother intestate, in 1888, his only surviving heir at law, has attempted to dispose of the real estate left by the said James Dawson, in order to avoid the payment of the said assessment; and that, inasmuch as the personalty in the estate of James Dawson is not sufficient to pay his debts, and the real estate is needed for this purpose, such attempted disposition of the realty by the heir at law is in fraud of creditors, and null and void.

To this bill Fannie G. Pollock, R. F. Tysen, her alienee of the property, and the Wilmington Savings & Trust Company, administrator de bonis non cum testamento annexo of James Dawson, substituted in lieu of Field, the executor who was removed, are parties defendant.