

plaintiff demurs, on the ground that the facts set forth in the answer do not constitute a defense to the action.

The demurrer to the answer admits the fact to be that the defendant is not the actual owner of the shares of stock standing in his name, but that he holds the same as a trustee for the bank. Section 5152 of the Revised Statutes expressly enacts that "persons holding stock as executors, administrators, guardians or trustees, shall not be personally subject to any liabilities as stockholders." If, therefore, when the new certificates of stock were issued to the defendant, it had been made to appear upon the books of the bank that the defendant took the same, not in his own right, but as a trustee, he could not be held personally liable thereon. The averments of the answer show, however, that the character in which the defendant took the stock was not made to appear upon the bank records; but, on the contrary, the certificates were issued to him in his own name, and upon the books of the bank he was carried as the owner, in fact, of the stock. The general rule is well settled that, if a person knowingly permits his name to be entered upon the stock books of a national bank as the owner of stock therein, he cannot be permitted, as against creditors, to show that, in fact, he was not the owner. *Thomp. Corp.* §§ 3192-3194; *Welles v. Larrabee*, 36 Fed. 866; *Finn v. Brown*, 142 U. S. 56, 12 Sup. Ct. 136. The averments in the answer filed in this case show that the defendant consented to the transfer of the shares of stock to himself. He knew that the new certificates were issued in his own name, and he did not cause the books to show that he held the stock, not in his own right, but as a trustee only. Under these circumstances he is liable to creditors, represented by the receiver, for the assessment levied on the stock. Demurrer sustained.

FOSTER v. LINCOLN et al.

(Circuit Court, D. Vermont. May 19, 1896.)

NATIONAL BANKS—LIABILITY OF STOCKHOLDERS—TRANSFER OF STOCK.

One C. was the holder of stock in the D. National Bank, and was also an officer of the L. Bank, which held stock in the D. Bank. In the latter capacity, he was informed of an urgent demand upon the L. Bank to send \$5,000 by telegraph in aid of the D. Bank. Within a week after this demand, L. transferred his stock in the D. Bank, without consideration, to his five children, one of whom was a married woman and two minors. Within five months thereafter, the D. Bank failed, and an assessment was made on the stockholders. *Held*, that the transfer must have been made by L., in contemplation of the liability, and that both he and his transferees were liable for the assessment, the latter because the liability was cast upon them by law when they became stockholders.

W. L. Burnap, for orator.

C. A. Prouty, for defendants.

WHEELER, District Judge. The defendant Benjamin F. Lincoln was president of the National Bank of Lyndon, Vt., and held 25 shares in the First National Bank of Deming, N. M., his bank

held 50 shares, and other individuals and banks in his vicinity held shares. On September 15, 1891, a telegram came to the Lyndon bank urgently calling for \$5,000 to be sent by telegraph in aid of the Deming bank, and which came to the knowledge of the defendant, and was considered by him and others. On September 21st he transferred his stock in the Deming bank in equal parts to his five children, the other defendants, one of whom was a married woman, two of whom were minors, and all of whom were irresponsible for assessments on it. He has testified that he had contemplated giving them property, for which they began to ask, and that he said to them: "I have \$5,000 in New Mexico bank stock. I will give you \$1,000 each." And the transfer was made without other consideration. The bank, according to the testimony of the cashier, had never been solvent, was badly insolvent, with liabilities of about \$150,000 to depositors and other banks at that time, and on February 3, 1892, failed. The plaintiff is receiver, and has brought this suit to recover an assessment of 82 per cent. laid by the comptroller of the currency.

The national bank law provides that "the shareholders of every national banking association shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such association." Rev. St. U. S. § 5151. This liability of the shareholders attaches when the contracts, debts, and engagements of the bank are entered into. *Richmond v. Irons*, 121 U. S. 27, 7 Sup. Ct. 788; *Witters v. Sowles*, 32 Fed. 767. Such stock is transferable "on the books of the association in such manner as may be prescribed in the by-laws or articles of association. Every person becoming a shareholder by such transfer shall, in proportion to his shares, succeed to all the rights and liabilities of the prior holder of such shares; and no change shall be made in the articles of association by which the rights, remedies, or security of the existing creditors of the association shall be impaired." In *Johnston v. Laffin*, 103 U. S. 804, Mr. Justice Field, in speaking of the entry of the transfer on the books of the bank, said: "It is necessary to protect the seller against subsequent liability as a stockholder." Creditors of the bank, when becoming such, have a right to rely upon the responsibility of the shareholders, as shown by the books, at that time. *Id.* The defendant Benjamin F. Lincoln appears to have been under liability to the creditors of the bank when this transfer was made. These statutes seem to intend that this liability should not be impaired by transfer, and especially should it not be by a transfer merely voluntary. As a bank man he must have known of this liability, and he had warning of the straits of the bank by the telegram six days before the transfer. In these circumstances he must have made the transfer in contemplation of this liability, although he did not know what it would amount to, and hoped, and perhaps expected, it would not amount to anything. Had the transfer been made, on adequate consideration for such shares in a solvent bank, to a purchaser without the warning he had, the sale would probably be voidable, at the instance of the purchaser, for the de-

ceit. The transfer should be so now at the instance of the creditors, represented by the receiver. *Bowden v. Johnson*, 107 U. S. 251, 2 Sup. Ct. 246. He has died since the case was ready for hearing, and his personal representatives have entered to defend. The assets in their hands are liable as he would have been. Rev. St. U. S. § 5152. The other defendants are liable because the liability was cast upon them by law when they became stockholders. Decree for the plaintiff.

EWING v. BURNHAM.

(Circuit Court, D. Vermont. May 19, 1896.)

PRACTICE—FOLLOWING STATE PROCEDURE—REV. ST. §§ 914, 918.

The provision of Rev. St. § 914, that the practice, etc., in the courts of the United States shall conform as near as may be to the practice, etc., of the state courts, applies to systems of judicial procedure, not to the details of doing the business of courts, which are left to be provided for by rules of court, made pursuant to Rev. St. § 918. Accordingly, *held*, that rules of a United States circuit court, providing that writs shall be returnable to the regular terms of the court, and that suits are to be docketed on the first day of the term, is not abrogated by the passage of a state statute providing that writs in the state courts shall be returnable to the clerk's office and be docketed therein within 21 days.

P. M. Meldon and C. A. Prouty, for plaintiff.
D. J. Foster, for defendant.

WHEELER, District Judge. The practice, pleading, and forms and modes of procedure in civil causes other than equity and admiralty causes in the circuit and district courts of the United States are to conform, as near as may be, to the practice, pleadings, and forms and modes of proceeding existing at the time in like causes in the courts of record of the state. Rev. St. U. S. § 914. And these courts may, in any manner not inconsistent with any law of the United States or rule of the supreme court, make rules and orders directing the returning of writs and processes, the filing of pleadings, the taking of rules, the entering and making up of judgments by default, and other matters in vacation, and otherwise regulate their own practice. *Id.* § 918. The common-law mode of procedure exists in this state, and till 1892 writs were returnable to the regular terms of the courts. By the eighth rule of this court, processes were and are returnable at the regular terms; by the thirteenth rule suits were and are to be docketed; and by the fourteenth rule the appearance of the defendant was and is to be entered on the first day of the term. In 1892 writs in the state courts were made returnable to the clerk's office and to be entered and docketed there within 21 days, and the appearance of the defendant was required to be entered there within 42 days. St. Vt. §§ 1088-1090. The rules of this court have not been changed. This writ was made returnable to this term. The suit was docketed, a special appearance of defendant to move to dismiss was entered, and a motion to dismiss because the writ was