

FOSTER v. CHASE et al.

(Circuit Court, D. Vermont. August 22, 1896.)

NATIONAL BANKS—ASSESSMENTS ON STOCK—MINORS AS SHAREHOLDERS.

One buying stock in a national bank in the names of his minor children himself becomes liable to assessment as a shareholder, for minors are in capable of assenting to become stockholders, so as to bind themselves to the liabilities thereof.

This was a suit in equity by Edwin L. Foster against Henry Chase and others to recover an assessment upon the stock of a national bank.

W. L. Burnap, for plaintiff.

W. P. Stafford, for defendants.

WHEELER, District Judge. The defendant bought stock in the names of his minor children in the First National Bank of Silver City, N. M., of which the plaintiff is receiver, and this suit is brought for an assessment upon it made by the comptroller of the currency. The plaintiff claims that the defendant made himself liable for the assessment because of the incapacity of his children to take the stock and make themselves liable for it. He insists that they only are the shareholders, and liable, if any one is. Assent is necessary to becoming a shareholder, subject to this liability, in a national bank. *Keyser v. Hitz*, 133 U. S. 138, 10 Sup. Ct. 290. Minors do not seem to have anywhere the necessary legal capacity for that. The principles upon which this disability rests are elementary and universal. 1 Bl. Comm. 492; 2 Kent, Comm. 233. In buying and paying for this stock, and having it placed on the books of the bank, the defendant acted for himself; in having it placed there in the names of his children, as with their assent, he assumed to act for them. As they could not themselves so assent as to be bound to the liabilities of a shareholder, they could not so authorize him to assent for them as to bind them. To the extent that they could not be bound he acted without legal authority, and bound only himself. Story, Ag. § 280. This liability has been sought for defendant to be likened to that of married women becoming shareholders; but that has been incurred where, and because, the law of the place authorized them to become such. *Keyser v. Hitz*, supra; *Bundy v. Cocke*, 128 U. S. 185, 9 Sup. Ct. 242. No law confers that capacity upon infants, but the banking law seems to refer this liability to their estates in the hands of their guardians. Rev. St. U. S. § 5152. Decree for plaintiff.

FOSTER v. WILSON et al.

(Circuit Court, D. Vermont. August 22, 1896.)

NATIONAL BANKS—ASSESSMENT ON STOCK—MINORS AS SHAREHOLDERS.

A father purchased stock in a national bank in the name of his minor son. Thereafter the bank failed, and an assessment was made on the stock. After the assessment, but before suit was brought to recover it,

the son became of age, and assented to holding the stock. *Held* that, as the cause of action accrued at the time of the assessment, and the son was incapable of assenting at that time, the father became and remained liable for the amount of the assessment.

This was a suit by Edwin L. Foster against Homer C. Wilson and others to recover an assessment upon the shares of an insolvent national bank.

W. L. Burnap, for plaintiff.

W. P. Stafford, for defendants.

WHEELER, District Judge. This case, as to defendant Henry Chase, has been heard with, and is like, the one preceding (75 Fed. 797), except that the bank is the First National of Deming, N. M., and the minor here became of age, and assented to holding the stock, after the assessment was made, and before suit was brought. The cause of action accrued when the assessment was made, to which the defendant then became, and was, accordingly, liable. The ratification by the minor on becoming of age afterwards would not affect the cause of action that before had fully accrued against the defendant. Decree for plaintiff.

HOLDEN v. WILLIAMS, United States Marshal.

(District Court, D. Alaska. April 29, 1896.)

No. 474.

1. POWERS OF DEPUTY UNITED STATES MARSHALS IN ALASKA.

Deputy United States marshals appointed under the provisions of paragraph 3, § 6, Act May 17, 1884, providing a civil government for Alaska (23 Stat. 24; Supp. Rev. St. p. 430), have power to serve and execute process issued by the United States commissioners of said district, exercising the powers of justices' courts according to the statutes of Oregon.

2. LIABILITY OF MARSHAL.

The marshal of said district is liable for acts done by said deputies under color of office in executing or serving such processes.

This was an action in tort brought by E. S. Holden against L. L. Williams, United States marshal, to recover certain gold amalgam taken by the deputy marshal on execution issued by the commissioners' court at Juneau. Demurrer by defendant.

Bostwick & Crews, for plaintiff.

J. F. Maloney and John Trumbull, for defendant.

DELANEY, District Judge. The precise point raised on this demurrer is that under paragraph 3, § 6, Act May 17, 1884, providing a civil government for Alaska (23 Stat. 24; Supp. Rev. St. p. 430), the deputy marshals, in serving process issued by the commissioners exercising powers of justices' courts, act as constables, and not as deputy marshals, and that, therefore, the marshal is not liable for the acts of such deputies in serving or executing the process of said courts. The paragraph referred to reads as follows: