

STATE NAT. BANK OF CLEVELAND, OHIO, v. SAYWARD et al.

(Circuit Court, D. Massachusetts. March 8, 1898.)

No. 756.

1. JURISDICTION—FOREIGN CORPORATION—ACTION AGAINST STOCKHOLDER.

A suit in equity may be maintained by a creditor of a corporation against a stockholder only in the courts of the state in which the corporation is created.

2. ACTION AGAINST STOCKHOLDER—DEMURRER.

In an action by a creditor of an insolvent Ohio corporation against a stockholder to enforce his liability under the laws of Ohio, the corporation is a necessary party defendant, and a demurrer on that ground will be sustained.

This was a bill in equity by the State National Bank of Cleveland, Ohio, against Samuel Sayward and others, to enforce the stockholders' liability.

Russell & Putnam, for complainant.

W. B. French, for defendant Geo. Linder.

Chas. A. Drew, for defendant John F. Annable.

Chas. D. Adams, for defendant Geo. F. Reed.

COLT, Circuit Judge. This bill is brought by a creditor of an Ohio corporation against certain stockholders, residents of Massachusetts, praying that said stockholders may be ordered to pay to the complainant a sum equal to the par value of their stock, or so much thereof as may be necessary to satisfy the claim of the complainant, in accordance with the provisions of the statutes of Ohio. A bill in equity cannot be maintained by a creditor to enforce the liability of a stockholder in a corporation organized under the laws of another state. In *Post v. Railroad Co.*, 144 Mass. 341, 345, 11 N. E. 546, Chief Justice Field said:

"This court does not take jurisdiction of a suit to enforce the liability of stockholders in a foreign corporation, not because it would be a suit to enforce a penalty, or a suit opposed to the policy of our laws, but because it is a suit against a foreign corporation which involves the relation between it and its stockholders, and in which complete justice can only be done by the courts of the jurisdiction where the corporation was created. * * * If an assessment is to be laid upon the members or stockholders, or a contribution enforced from them, according to the law of the state under which the corporation is created, the courts of that state alone can afford complete and effectual judicial relief."

There is another ground upon which the demurrer in this case is well taken, namely, that the Ohio corporation is a necessary party. The supreme court of Ohio has held that in suits of this character the corporation "ought to have been made a party." *Umstead v. Buskirk*, 17 Ohio St. 113, 118. Demurrers sustained.

TILLINGHAST v. BAILEY et al.

(Circuit Court, S. D. Ohio, W. D. November 29, 1897.)

No. 4,940.

1. NATIONAL BANKS—INCREASE OF STOCK—CONCLUSIVENESS OF COMPTROLLER'S CERTIFICATE.

The certificate of the comptroller of the currency, approving an increase of the capital stock of a national bank, is conclusive of the existence of the facts authorizing such certificate, and a subscriber to the stock cannot question its validity.

2. SAME—STOCKHOLDERS—ESTOPPEL TO QUESTION VALIDITY OF STOCK.

Subscribers to a duly-authorized increased issue of stock by a national bank, who accept certificates therefor, vote the stock by proxy, and take dividends thereon, cannot question the validity of such stock, as against the receiver, after the bank has become insolvent.

Bill by Phillip Tillinghast, receiver, against Samuel Bailey, Jr., and others, as stockholders in a national bank.

John W. Herron and Wm. C. Herron, for complainant.

J. C. Harper, F. B. James, and Oscar F. Davisson, for respondents.

CLARK, District Judge. In the view I take of this case, I do not deem it necessary to discuss the various phases of this evidence. To do so would require much time and space. As counsel in the case are perfectly familiar with the issues, and with the evidence so far as it affects the questions to be determined, it would be of no service to do more than to state in the most general way my conclusions upon the facts disclosed by the record, and the law applicable to such facts. Two propositions are mainly relied on for the complainant, either of which, if sustained, will dispose of the case without entering at large upon the facts in the case. It is insisted for the plaintiff—First, that the certificate of the comptroller of the currency authorizing the increase of stock to which the defendants were subscribers, except two, was the final act necessary to make the increase valid, and that this certificate is conclusive on the defendants, and that they cannot, as a matter of law, go behind the certificate for the purpose of making any question as to whether the facts on which the comptroller was by law authorized to give his certificate existed; and, second, that, upon the facts of the case, the defendants are as to creditors of the banking association, in whose interest this suit is prosecuted, precluded by estoppel from making any question on the regularity and validity of the increase of stock certified to by the comptroller. The second proposition would, of course, require an examination into the truth of the facts alleged as constituting the true ground of the estoppel claimed. I turn, then, for a moment to the contention that the certificate of the comptroller is conclusive of the facts necessary to be ascertained and to authorize his certificate. It is now well settled that the action of the comptroller in determining that such facts and conditions exist as authorize the appointment of a receiver for a national banking association is conclusive in all subsequent legal proceedings based upon his action and decision in that respect. So, too, his determination that it is