

valid, and would probably have ripened into a judgment. All parties to the transaction understood that the note and deed were executed for that purpose. We are not able to understand, therefore, upon what ground it can be successfully maintained, on the evidence found in the present record, that the note in suit was executed without a valuable consideration moving from the bank to the real-estate company, and that Leonard and Montgomery were the only persons who were benefited by the transaction. This being the only substantial defense which was urged at the trial, and it being, in our judgment, wholly unsupported by the proof, the judgment below is hereby affirmed.

COCKRILL v. ABELES et al.

(Circuit Court of Appeals, Eighth Circuit. April 11, 1898.)

No. 969.

1. RECEIVER—INSOLVENT CORPORATION—SUIT AGAINST DIRECTORS.

A receiver of an insolvent national bank has a right to maintain a suit in his own name against directors to charge them for losses that may have been sustained by the corporation and its creditors through their wrongful or fraudulent acts.

2. NATIONAL BANKS—INCREASE OF CAPITAL STOCK—LIABILITY OF DIRECTORS.

The increase of the capital stock of a bank based on a fictitious value of assets, and on notes given by the directors, with an understanding that they were not to be paid, is in violation of Rev. St. § 5142, and the directors of the bank participating are liable for all losses resulting to the creditors.

3. SAME—ACQUIREMENT OF REAL ESTATE—SATISFACTION OF LIEN.

Where a national bank has lawfully acquired an interest in real property, in satisfaction of a debt, it may purchase other undivided interests therein or incumbrances existing thereon, provided such action is necessary to enable it to manage or dispose of the property to better advantage.

4. SAME—OPERATING MANUFACTURING PLANT.

Where a national bank acquired certain mill property, in satisfaction of a debt, and the directors organized a corporation among themselves for the purpose of operating the mills as the bank's agent, using its funds, and operated them for the bank at a loss of \$23,000, the directors of the bank participating are liable to the creditors for the loss.

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

J. M. Moore and Sterling R. Cockrill (Ashley Cockrill, on brief), for appellant.

John McClure and W. E. Hemingway (U. M. Rose, G. B. Rose, E. W. Kimball, and Morris M. Cohn, on brief), for appellees.

Before SANBORN and THAYER, Circuit Judges, and PHILIPS, District Judge.

THAYER, Circuit Judge. This case is similar in some respects to the case between the same parties, No. 968, which was recently decided. 86 Fed. 7. It involves the same questions, touching the one-year statute of limitations, and the right to sue in equity, which were considered and decided in the former case, and what was therein said with reference to those questions is applicable to the case in hand.

The features of difference which the two bills of complaint present are these:

In the case at bar, the receiver complains of the conduct of the directors in devising and carrying out a scheme which was concocted by them to increase the capital stock of the bank from \$250,000 to \$500,000, and of certain action which the directors took in endeavoring to secure an indebtedness which a corporation known as the "Quapaw Mills" owed to the bank. These two transactions on account of which, as it is claimed, the directors incurred a personal liability, were as follows: On June 23, 1890, the stockholders of the bank passed a resolution to increase the capital stock of the bank to the extent of \$250,000. For the purpose of creating a fund to authorize the increase, the directors placed a fictitious valuation on certain assets of the bank, some of which were of little or no value, thereby showing on the books of the bank that it had a surplus over and above its debts and its stock liability to the extent of \$125,949.82. On the strength of this pretended surplus, a stock dividend was declared by the directors in favor of the shareholders, to the amount of 50 per cent. of the stock which they then owned, the increase based on such dividend amounting to \$125,000. As a basis for a further issue of stock to the amount of \$125,000, certain directors of the bank executed their notes in its favor to the amount of \$162,500, it being agreed that such notes should not be paid by the directors at any time, but that the same should be retired by the sale of the new stock to outside parties, as and when the same should be sold. Representations were made, however, to the comptroller of the currency, that the full amount of said increased stock had been paid in; and, by means of such representations, the requisite certificate appears to have been obtained from the comptroller that the capital of the bank had been increased to \$500,000. When the bank failed, in January, 1893, it was found that it still held notes to the amount of \$62,730, which were signed, respectively, by Nick Kupferle, by the Press Printing Company, and by the Wilson & Webb Stationery Company. These notes had been received by the bank in exchange for the notes originally drawn by the directors to furnish a basis for an issuance of new stock to the amount of \$125,000, and represented the amount of such new stock that had not been sold. Prior to that time it seems that the bank had succeeded in selling to actual purchasers about 750 shares of the new stock, receiving therefor \$75,000. It had received nothing of value for the remaining shares, although they had been issued and were outstanding in the hands of third parties. The makers of the aforesaid notes, with the exception of the Wilson & Webb Stationery Company, were at the time insolvent, and so remain, and all of them deny their liability thereon. It was averred in the bill that the directors caused a report under oath to be made to the comptroller of the currency that all the new capital stock had been paid in, and that by this means the comptroller was deceived, the public was misled, and the bank was given a false credit. The new stock, amounting to \$125,000, which was based on the notes of the directors, was originally issued in lots of 250 shares each, to the five directors who executed their notes as a basis for the issue. Before the bank failed, however, most of

the unsold stock had been surrendered by the original holders, and re-issued to H. G. Allis, the president of the bank, who had either sold or hypothecated a large part thereof in his individual transactions, the result being that the bank had received nothing of value at the time of its failure for some five or six hundred shares of its capital stock which had thus been sold or hypothecated, except the notes of Nick Kupferle, the Press Printing Company, and the Wilson & Webb Stationery Company.

The Quapaw Mills transaction was of the following character, according to the averments of the bill: The Quapaw Mills property consisted of certain lots in the city of Little Rock, Ark., upon which a cotton mill had been erected. On June 12, 1891, the title to this property was vested in the defendant P. K. Roots, and in Oscar Davis, as trustees for the First National Bank of Little Rock, and the German National Bank, of the same place. On that day, the directors of the first-named bank, who are defendants to the present bill of complaint, purchased the interest of the German National Bank in said property for the sum of \$3,000, using for that purpose the money of the First National Bank. The directors of the latter bank then caused a corporation to be organized under the name of the Little Rock Cotton Mills, for the purpose of enabling the bank to operate the cotton mills. To this corporation the cotton mills property was conveyed by the trustees, Roots and Davis, on or about June 12, 1891, to be held by it in trust for the bank. Four of the directors of the First National Bank became directors of the cotton-mills company, and the mills were operated for the benefit of, and at the expense of, the bank, until about November 1, 1892, during which period the sum of \$23,000 of the bank's money was lost in an attempt to conduct the business successfully. In March, 1893, the directors of the Little Rock Cotton Mills caused that corporation to execute a mortgage on its property to secure notes in the sum of \$4,000 which the cotton-mills company had executed in favor of its directors for money claimed to be due to them. These notes were subsequently sold by the directors to third parties. A few days later, a second mortgage was executed on the cotton-mills property, to secure the sum of \$23,000 which the First National Bank had advanced as aforesaid in an attempt to operate the plant. That indebtedness, it seems, was represented at the time by notes of the cotton-mills company then outstanding, a portion of which, amounting to \$8,000, were held by the First National Bank when it failed, and the residue of which were held by third parties to whom the notes had been sold. The cotton-mills property was subsequently sold under a decree of the circuit court of the United States for the Eastern district of Arkansas for \$15,000; and, by the provisions of said decree, the sum of \$4,605.29 was paid to the receiver of the First National Bank on the notes held by him, which were secured by the second mortgage. The sum of \$1,314.44 was also paid out of the proceeds of the sale to redeem the cotton-mills property from taxes and other charges. The balance of the proceeds of the sale was paid to the holders of the other notes, the result being that the First National Bank and its receiver ultimately lost the sum of \$3,000 which was paid to the German National Bank for its interest in the Quapaw Mills prop-