

protect her estate from possible loss until his mother could be advised. Her repudiation of Heilig's acts immediately upon her return, and upon notice of them, was, we think, timely, and efficient to discharge her of responsibility for them. The judgment is affirmed.

GROSSCUP, Circuit Judge, sat at the hearing, and concurred in the decision of this cause, but, by reason of illness, had no share in the preparation of the opinion.

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EARLE v. COYLE.

(Circuit Court, E. D. Pennsylvania. June 22, 1899.)

No. 82.

NATIONAL BANKS—SALE OF SHARES BY STOCKHOLDER—LIABILITY FOR ASSESSMENT.

The owner of shares of stock in a national bank placed them in the hands of auctioneers for sale, delivering to them his certificate, with an assignment and power of attorney to transfer in blank, indorsed thereon and duly executed. The bank was in good repute, and believed by the stockholder to be solvent. The stock was sold at auction, and purchased at its par value by the cashier of the bank, to whom the certificate was delivered at the bank by the auctioneers, with a request that it be transferred. The certificate provided, in accordance with the by-laws, that the stock was only transferable on the books of the bank, and the cashier was one of the officers authorized to make transfers. The by-laws further provided that no officer, except the president and vice president, should become stockholders without the consent of the board of directors. No consent to the purchase of this stock by the cashier was shown by the records of the bank, nor was it ever transferred to him on the books, but during nearly four years, and until the failure of the bank, semiannual dividends on the stock were paid to the cashier. The seller had no actual knowledge by whom the stock had been purchased, or that it had not been transferred. *Held* that, under the circumstances shown, he was not bound to see that the transfer was actually made, and could not be held liable for an assessment made by the comptroller on the stock after the bank became insolvent.<sup>1</sup>

Action by the receiver of an insolvent national bank to recover an assessment made against defendant as a stockholder.

The facts agreed upon by the parties appear in the following case stated:

"The Chestnut Street National Bank was duly incorporated and organized in the year 1887 as a national bank under the laws of the United States, and was located in Philadelphia. Prior to the 13th day of February, 1894, the decedent, D. Lynn Coyle, was the owner of five (5) shares of stock in the said bank. His name was entered in the books of the bank as the owner of said five (5) shares, and he held a certificate therefor in the form hereinafter set out. On the said 13th day of February, 1894, the said decedent placed the said five (5) shares of stock with Barnes & Lofland, auctioneers, doing business at Philadelphia, for sale at public auction, and the same were put up at public sale by them on the said day, and knocked down to William Steele at the price of one hundred dollars (\$100) per share, or five hundred dollars (\$500) for the five (5) shares. At the time of the sale the said bank was in good credit in the said city, and the said decedent had no reason whatever to believe that it was insolvent, or was about to become so, but, on the contrary, believed it to be sol-

<sup>1</sup> As to liability of shareholders in national banks, see note to *Beal v. Savings Bank*, 15 C. C. A. 130.

vent. At the said time the said decedent delivered his certificate for the said five (5) shares of stock to the said Barnes & Lofland, the same having indorsed upon it an assignment of the said shares in blank, with a power of attorney in blank to transfer the same, which assignment and power of attorney were signed by the said D. Lynn Coyle. A copy of said certificate and the said assignment and power of attorney is as follows:

“No. 87.

“The Chestnut Street National Bank of Philadelphia, 5 Shares.

“This is to certify that D. Lynn Coyle is entitled to five shares of the capital stock of the Chestnut Street National Bank of Philadelphia, transferable only on the books of the said bank.

“Philadelphia, November 14, 1887.

William Steele, Cashier.

“Robert E. Pattison, President.”

“On the said certificate was indorsed the following:

“For value received, \_\_\_\_\_ hereby sell, assign, and transfer unto \_\_\_\_\_ shares of the capital stock represented by the within certificate, and do hereby irrevocably constitute and appoint \_\_\_\_\_ attorney to transfer the said stock on the books of the within-named company, with full power of substitution in the premises.

“Dated Feb. 14, 1894.

D. Lynn Coyle.

“In the presence of J. H. Lofland.

“Signature guaranteed.

Barnes & Lofland.”

“The said William Steele, to whom the said stock was knocked down at the sale, was at that time the cashier of the said the Chestnut Street National Bank, and the said Barnes & Lofland supposed that he was purchasing it for William M. Singerly, who was then the president of the bank. The said Barnes & Lofland, on the said 13th day of February, 1894, took the said certificate, indorsed as aforesaid, to the banking house of the said bank, delivered it to the said William Steele, as cashier thereof, and then and there requested him to transfer the said five (5) shares of stock to the purchaser thereof, and left the said certificate with him. The said William Steele before that had paid to Barnes & Lofland the sum of five hundred dollars (\$500) in payment for the said stock. The by-laws of the said bank regulating the transfers of its stock are as follows, and were in force from its organization continuously down to its suspension, on December 23, 1897, and have not been changed since, and it is agreed are the only by-laws affecting the question herein:

“Art. 12. Certificates of stock signed by the president and cashier, and bearing the seal of the bank, shall be issued to shareholders, and state upon the face thereof that the same are transferable only upon the books of the bank, which transfer shall be in the presence of the president or cashier by the person in whose name it appears, or by his duly-authorized attorney or representative.

“Art. 13. In all cases of transfer by attorney, the original letter of attorney, duly proved (or a notarial copy thereof), shall be deposited and remain with the bank, and, in cases of transfer by executors, administrators, guardians, or other legal representatives, duly-authenticated evidence of their authority shall be produced to the bank, at its discretion. No transfer shall be made in any case until the certificates granted to the transferee be delivered up to the bank, and no transfer shall be made, without the consent of the board, by any shareholder who shall owe the bank any obligation, either as drawer or indorser, that is due and unpaid.”

“Art. 15. No officer of the bank, except the president and vice president, shall, without the permission of the directors, hold stock in the bank, nor shall any officer, except the president and vice president, keep an account with the bank. The cashier's official accounts shall be kept in the general ledger.”

“Duties of Cashier [from Article 35]. The stock ledger, transfer books, and certificates of stock shall be kept under his immediate direction. He shall affix the seal of the association to all certificates of stock issued by the bank, and to such other documents as the board may order, and shall also direct the working of the bank and the duties of all those employed therein, except the