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Pollard Vs. Bailey

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Court : US Supreme Court

Decided On : 1874

Appeal No. : 87 U.S. 520

Appellant : Pollard

Respondent : Bailey

Judgement :

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Pollard v. Bailey

87 U.S. (20 Wall.) 520

ERROR TO THE DISTRICT COURT FOR

THE MIDDLE DISTRICT OF ALABAMA

SYLLABUS

Where by the charter of a bank, stockholders are "bound respectively for all the debts of the bank *in proportion* to their stock holden therein," one creditor cannot sue a stockholder at law (there being numerous other creditors) to recover the full

amount of his debt, without regard to those other creditors or to the ability of the other stockholders to respond to their obligations under the charter, and so appropriate to himself the entire benefit of that stockholder's security and exclude all other creditors from it. He should proceed in equity, where the "proportion can be ascertained upon an account taken of debts and stock, and a *pro rata* distribution of the debts among the several stockholders."

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Especially is this so when other parts of the charter indicate plainly that the exercise of the powers of a court of chancery which could bring before it all the necessary parties, and adjust all their rights, was, in a case of insolvency, contemplated.

By an act passed in 1854, the Legislature of Alabama chartered a bank to be called the Central Bank of Alabama. The capital was $900,000, divided into shares of $100 each.

The charter made certain provisions in case of the insolvency of the bank, or of its suspension of payments in specie. They were thus:

"SECTION 16 (ARTICLE 2). Individual stockholders, having shares in said bank, shall be bound respectively for all the debts of the bank in proportion to their stock holden therein."

"SECTION 20. If any debt due from said bank for an amount exceeding $100, shall remain unpaid for more than ten days after proper demand, the holder of such debt may file a bill in the chancery court, of the county . . . in which said bank may be located, for the settlement of all the debt of the bank, if he elect so to do, and may, on proof &c.;, pray an injunction to restrain the said bank and its officers from paying out, or in any way transferring or delivering to any person any money or assets of said bank, or incurring any obligation or debt until such order be vacated or modified; and if such chancellor shall be of opinion that the debt is justly due, and that the bank has no just defense against the demand, and if it shall appear expedient and necessary, upon the proof presented, in order to prevent fraud and

injustice, he shall grant an order for such injunction, and the said chancellor shall then proceed to inquire whether the said bank be solvent or not; and if it shall appear that the said bank is not clearly solvent, then he may make an order declaring the same to be insolvent, and requiring its affairs to be wound up and settled; and, further, if, in his opinion, the safety of the creditors shall require it, such chancellor may appoint a receiver to take charge of all the assets of the bank, and to close and settle its affairs."

"SECTION 21. In case the said bank be found insolvent, and settlement of its affairs be ordered, the same shall be done upon

bill filed in said chancery court, under the orders of the court and rules of chancery, and full distribution shall be made of the assets according to the rights of all parties; but the holders of bank notes and obligations issued by the bank for circulation as money shall be first called in and paid, and shall have priority over debts due from the bank; and after the assets of the bank are exhausted, if they be not sufficient to pay all debts and liabilities, a further call shall be made on the shareholders in the bank for further payment *of* capital, over and above the sum of $100, of an amount equal to the deficiency, which shall be apportioned among all the shares of stock; and an order shall be made by the court for the payment of each shareholder of the sum or proportion due on his shares of stock; and each shareholder shall pay the sum so assessed to him severally in proportion to his stock, which shall be collected by the receiver and applied."

"SECTION 22. The summary remedy in this act, specially given for settling up and closing the affairs of said bank, shall apply to the case of insolvency, but shall not be allowed in case of a suspension only by the bank of specie payment, so long as suspension shall be sanctioned by the General Assembly; but nothing in this act shall be *construed so as to deprive a creditor of said bank from his right to suit in any other appropriate mode of proceeding,* or to prevent the General Assembly from hereafter regulating, by a general law in relation to banking institutions, the mode of enforcing and satisfying the rights of creditors of said bank, *provided,*

any bill-holder shall also have the right to move in any court having jurisdiction, or before any justice of the peace in the city or county in which said bank is located, as the case may require, for the collection of any bill the payment of which may be refused."

Of the capital authorized by the charter a certain Pollard took $20,000, or two hundred shares. In 1865, the bank became insolvent, and in 1869 had ceased to do any business, having about $700,000 of bills outstanding and unpaid. In 1872, one Bailey, who had $17,000 of these bills, sued Pollard, *at law,* as the owner of two hundred shares of stock, assuming that he could thus sue him under the above-quoted section sixteen (article two) of the charter of the bank, which prescribes, as the reader will remember, "that the stockholders

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shall be respectively bound for all of the debts of the bank in proportion to their stock holden therein." The declaration contained averments that the bank had ceased to do business since 1868, and that no demand had been made of the bank for the payment of the bills, and that a demand had been made of the defendant, who was a stockholder of the bank during the period the plaintiff had been the owner. But there was no reference to the other creditors or the ability of the other stockholders to pay any proportion of the claim.

The defendant demurred to the declaration, but the court overruled the demurrer and gave judgment for the plaintiff. From that judgment the defendant brought the case here.

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THE CHIEF JUSTICE delivered the opinion of the Court.

The right of Bailey to maintain his action against Pollard depends upon the construction to be given to the charter of the bank. Pollard does not deny his liability to the creditors, but insists that it cannot be enforced in this manner.

He is one of the stockholders of the bank and Bailey one of its creditors. Stockholders are, by article two, section sixteen of the charter, "bound respectively for all the debts of the bank in proportion to their stock holden therein." The action below was at law, by one creditor against one stockholder, to recover the full amount of his debt without regard to the other creditors or the ability of the other stockholders to respond to their obligations under the charter. The stock of Pollard, at its par value, exceeds in amount the debt owing to Bailey, but it is admitted that the other indebtedness of the bank is very large, and nearly, if not quite, equal to the entire capital.

Each stockholder is bound for the debts in proportion to his stock. His liability is not limited to the par value of his stock, neither is he bound absolutely for the payment of

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the full amount of that. He must pay a sum which shall bear the same proportion to the whole indebtedness that his stock bears to the whole capital, and is not required to pay more. For the purposes of this case, it is not necessary to decide what effect the insolvency of any of the stockholders would have upon the liability of such as are solvent. It is certain that no stockholder is liable for more than *his proportion* of the debts. This proportion can only be ascertained upon an account of the debts and stock and a *pro rata* distribution of the indebtedness among the several stockholders. The proper action, therefore, to enforce the liability is one in which such an account can be stated and distribution made. Such an action calls specially for the exercise of the powers of a court of equity, which can bring before it all the necessary parties and adjust all their rights. Every stockholder, when called upon to perform his obligations, has the right to require that the extent thereof shall then be determined once for all, as well that which he is under to his associate stockholders as that to the creditors. Otherwise he might be made to respond to the creditors under one rule and obtain his relief from the other stockholders under another. The provision, therefore, for a proportionate liability is equivalent to a provision for an appropriate form of equitable action to enforce it. The case is different from what it would be if the charter had provided generally

that all stockholders should be individually liable for the payment of the debts. The cases from New York cited upon the argument, and which are supposed to be in opposition to the view we have taken, involved the consideration of such a liability.

But when section sixteen is taken in connection with sections twenty and twenty-one, it is very apparent that it was the intention of the legislature only to charge the stockholders upon a proper account, and in the manner therein provided for. The intention of the legislature, when properly ascertained, must govern in the construction of every statute. For such purpose the whole statute must be examined. Single sentences and single provisions are not to be

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selected and construed by themselves, but the whole must be taken together.

As has been seen, section sixteen created the liability, but provided no remedy for its enforcement except by implication. Section twenty, however, provides in substance that if any debt due from the bank, exceeding $100 in amount, shall remain unpaid for more than ten days after proper demand, the holder may file a bill in the proper chancery court for the settlement of all the debts of the bank, if he elects so to do, and may, on certain specified proof, pray an injunction to restrain the bank and its officers from paying out, or in any manner transferring or delivering to any person, any money or assets of the bank, or incurring any obligations until the order is vacated or modified. It further provides that, upon certain findings, the chancellor shall proceed to inquire whether the bank is solvent or not; and if, upon such inquiry, he shall find that it is not clearly solvent, he may make an order declaring the same to be insolvent and require its affairs to be wound up and settled, and, under certain circumstances, appoint a receiver for that purpose. Section twenty-one provides that if the bank be found insolvent, and settlement of its affairs ordered, the same shall be done upon bill filed in said chancery court under the orders of the court and the rules in chancery, and that full distribution shall be made of the assets according to the rights of all parties, bill-holders having priority over other debts due from the bank. After the assets were exhausted, if they were not sufficient to pay all debts and liabilities, a further

call was directed upon the shareholders for further payment of capital to an amount equal to the deficiency, which was to be apportioned among all the shares of stock, and an order made for the payment by each shareholder of the sum or proportion of his shares. This apportioned call the receiver was required to collect and apply.

The individual liability of stockholders in a corporation for the payment of its debts is always a creature of statute. At common law it does not exist. The statute which creates

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it may also declare the purposes of its creation, and provide for the manner of its enforcement.

After an examination of the several sections of this charter, it cannot for a moment be doubted that it was not only the intention to provide for a proportionate liability, but for a *pro rata* distribution of the fund arising therefrom among the different creditors, according to their several priorities. Every provision is entirely inconsistent with the idea that one creditor could, by an individual suit, appropriate to himself the entire benefit of the security, and exclude all others. A common fund was created for the common benefit, to be collected and distributed by the receiver, who was made the common agent of all. There was no liability except for the deficiency. That was to be apportioned and collected for the common benefit.

It was not only to be apportioned and collected, but the mode of apportionment and the manner of collection were specially provided for. The liability and the remedy were created by the same statute. This being so, the remedy provided is exclusive of all others. A general liability created by statute without a remedy may be enforced by an appropriate common law action. But where the provision for the liability is coupled with a provision for a special remedy, that remedy, and that alone, must be employed.

It follows as a necessary consequence from these premises that the action of Bailey cannot be maintained, and that the demurrer to his declaration should have

been sustained.

But it is claimed that by section twenty-two, Bailey, as a bill-holder, had the right to move in the proper court for the collection of any bill the payment of which had been refused. This clearly refers to an enforcement of the liability of the bank itself and not to that of the stockholders.

Judgment reversed and the cause remanded with instructions to sustain the demurrer to the declaration, and give judgment accordingly.

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