Wyman Vs. Wallace

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Appeal No. : 201 U.S. 230

Appellant : Wyman

Respondent : Wallace

Judgement :

Wyman v. Wallace - 201 U.S. 230 (1906)
U.S. Supreme Court Wyman v. Wallace, 201 U.S. 230 (1906)

Wyman v. Wallace

No. 131

Submitted March 6, 1906

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201 U.S. 230

APPEAL FROM THE UNITED STATES CIRCUIT

COURT OF APPEALS FOR THE EIGHTH CIRCUIT

SYLLABUS

Where a national bank has gone into liquidation under 5220, Rev.Stat., and one holding its notes seeks to enforce the additional liability imposed by 5151, Rev.Stat., against a stockholder by a suit in the nature of a creditor's bill on behalf of himself and all other creditors, a case is presented under the laws of the United States giving the Circuit Court jurisdiction independently of diverse citizenship, and the decree of the circuit court of appeals is not final, but an appeal therefrom will lie to this Court.

It is not necessary in order to maintain such a suit that the creditor should first obtain judgment on the notes.

A national bank, finding itself embarrassed though possessed of a large amount of assets apparently in excess of its obligations, is not prohibited

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by the National Banking Act from borrowing, and it has the power to borrow, money to meet pressing demands which it has not the cash to meet, and to give its time obligations therefor, secured by all of its assets, and if it subsequently goes into liquidation, and the collateral is insufficient to meet the obligations, the stockholders, both assenting and nonassenting to the liquidation, are subject to the additional liability to the extent imposed by 5151, Rev.Stat., and the holder of the notes can enforce the same by creditor's bill.

Prior to December 21, 1895, the American National Bank and the Union National Bank, hereinafter called, respectively, the American Bank and the Union Bank, were each engaged in business in the City of Omaha, Nebraska. During that month, the American Bank was in such financial condition that it became necessary for it to provide for the payment of a large amount of deposits on or about January 1, 1896, for though possessed of abundant nominal assets, it did not have sufficient cash to make such payment. It knew that a neglect to pay would precipitate a run and bring on a failure of the bank. Thereupon, in order to obtain the money necessary therefor, its officers and leading stockholders entered

into negotiations with the Union Bank for the payment of its immediate obligations, and thus enabling it to secure an opportunity to realize upon its assets. As a result of such negotiations, a contract was entered into by and between the two banks through their boards of directors. By its terms, the Union Bank was to assume the payment of all the liabilities of the American Bank, receiving therefor cash and such bills receivable as it was willing to accept at par and without recourse. The difference between the amounts so received and the liabilities assumed was to be represented by three nonnegotiable promissory notes of the American Bank, the payment of which was to be secured by a pledge of all its remaining assets to Thomas L. Kimball as trustee. This contract was carried out. The Union Bank moved into and took possession of the offices of the American Bank. Upon adjustment, as above indicated, the difference was found to be $201,000, for which the American Bank executed to the Union Bank three nonnegotiable promissory

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notes, each being for $67,000 and payable in one, two, and three years, respectively. In accordance with the contract, the remaining assets of the American bank were placed in the hands of the trustee, Thomas L. Kimball, who proceeded to collect them and apply the proceeds on the notes until his death during the pendency of this suit. Subsequently, a successor was appointed who continued in performance of the trust until the entry of the decree. The execution of the contract of December 21, 1895, by the president and cashier of the American bank was directed by resolution of its board of directors. On January 14, 1896, at an annual meeting of the shareholders of that bank at which were represented 1,665 3/4 shares out of a total of 2,000, a resolution was adopted instructing the directors to take action looking to the liquidation of the bank. On February 25, 1896, another meeting of the shareholders was held at which 1,696 shares were represented, and a resolution for voluntary liquidation was adopted by an affirmative vote of 1,639 3/4 shares. The Union bank fulfilled its obligations under the contract, having taken up all the liabilities assumed by it. The trustee meeting with little success in collection of the assets, this suit was, after the first

note had matured, instituted in the Circuit Court of the United States for the District of Nebraska by Sumner Wallace, a citizen of New Hampshire, to whom the note had been transferred, against the Union Bank, Thomas L. Kimball, the trustee, the American Bank, and its stockholders, including the appellants. By an amended bill, the complainant sought, on behalf of himself and all other creditors of the American Bank, the winding up of the affairs of that bank, the determination of the amount due upon his note, the ascertainment of all the creditors and the amounts of their claims, the subjection of the remaining assets to the payment of those claims, and the enforcement of the liability of the stockholders. He had not reduced the note to judgment prior to the commencement of this suit. Upon a final hearing, a decree was entered ascertaining the amounts due the complainant and the Union Bank

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(they being the only creditors) after the application of all credits, the number of shares of stock held by each shareholder of the American Bank, and directing a recovery of $97.23 on account of each share of stock. This decree was affirmed by the United States Circuit Court of Appeals for the Eighth Circuit, 135 F. 286, from whose decision an appeal was taken to this Court.

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MR. JUSTICE Brewer delivered the opinion of the Court.

A matter of jurisdiction is first presented. The note, which is the foundation of plaintiff's suit, is one made by the American Bank to the Union Bank, both located in Nebraska, and, under the statute, for the purpose of jurisdiction, to be considered citizens of Nebraska. 25 Stat. 436, c. 866, sec. 4. The plaintiff is a citizen of New Hampshire. He could not maintain

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an action against the maker of the note, although a citizen of a state other than that of the maker and payee. 25 Stat. 434, sec. 1. But if diverse citizenship was

the sole basis of the jurisdiction of the circuit court, the decision of the court of appeals would be final, and there would be no appeal to this Court. 26 Stat. 828, 6. But the jurisdiction of the circuit court was not invoked on the ground of diverse citizenship -- at least not on that alone. The case presented was one arising under the laws of the United States. It was a suit to enforce a special right given by those laws. Section 5220, Rev.Stat., reads: "Any [national banking] association may go into liquidation and be closed by the vote of its shareholders owning two-thirds of its stock."

By section 5151, Rev.Stat., stockholders in national banks are made liable for

"all contracts, debts, and engagements of such association to the extent of the amount of their stock therein at the par value thereof in addition to the amount invested in such shares."

Section 2 of the Act of June 30, 1876, 19 Stat. 63, is as follows:

"SEC. 2. That when any national banking association shall have gone into liquidation under the provisions of section five thousand two hundred and twenty of said statutes, the individual liability of the shareholders provided for by section fifty-one hundred and fifty-one of said statutes may be enforced by any creditor of such association, by bill in equity in the nature of a creditor's bill, brought by such creditor on behalf of himself and of all other creditors of the association, against the shareholders thereof, in any court of the United States having original jurisdiction in equity for the district in which such association may have been located or established."

More than two-thirds of the stock voted, on February 25, 1896, for a voluntary liquidation, and on April 27, 1896, the Comptroller of the Currency formally approved the liquidation and notified the cashier of the American Bank to that effect.

In proceeding therefore by this suit to enforce, in behalf

of himself and all other creditors of the American Bank, the extra liability imposed by Rev.Stat. 5151, a case was presented arising under the laws of the United States, and of which, independently of the matter of diverse citizenship, the circuit court had jurisdiction.

The bill is not multifarious.

"The two subjects of applying the assets of the bank and enforcing the liability of the stockholders, however otherwise distinct, are by the statute made connected parts of the whole series of transactions which constitute the liquidation of the affairs of the bank."

Richmond v. Irons, 121 U. S. 27 , 121 U. S. 50 .

It is suggested that no judgment had been obtained upon the note prior to this suit in equity, but, as one object of the suit was to subject to the satisfaction of the debt certain property conveyed to a trustee as security therefor, no judgment at law was a prerequisite. *Day v. Washburn,* 24 How. 352; *Case v. Beauregard,* 101 U. S. 688 , 101 U. S. 691 , in which the Court said:

"Without pursuing this subject further, it may be said that whenever a creditor has a trust in his favor, or a lien upon property for the debt due him, he may go into equity without exhausting legal processes or remedies. *Tappan v. Evans,* 11 N.H. 311; *Holt v. Bancroft,* 30 Ala.193."

We come, then, to the final question in the case, and that is whether the notes executed by the American Bank were its valid obligations. And, in reference to this question, these are the significant facts: the demands against the American Bank were pressing. It had not the money with which to meet them. It arranged with the Union Bank to advance the money for the payment of all its outstanding obligations. When the Union Bank paid these obligations of the American Bank, it was the same as though it advanced money to that bank to pay them. To reimburse and secure the former, the latter bank turned over certain property, and executed these notes for the balance, securing them by a pledge of all its other assets, which were placed in the hands of its president as trustee.

All the stipulations and agreements made by the directors of the two banks were carried out in good faith, and, with full knowledge of what had been done, the stockholders voted for a voluntary liquidation. The borrowing of the money by the American Bank did not necessarily put it into liquidation. It had a large amount of assets, and if the real had equaled the nominal value of these assets, it would have been enabled, after discharging its obligation to the Union Bank, to continue business. But on an examination, the stockholders felt that it was wiser to stop at once. But that decision did not at all impugn the wisdom or *bona fides* of the transaction by which the money was obtained to pay off the pressing demands of the American Bank. The question, therefore, is whether a national bank, finding itself embarrassed, with a large amount of assets, much in excess of its obligations, yet without the cash to make payment of those which are due and urgent, can borrow to meet those pressing demands. A very natural answer is, why not? It is not borrowing money to engage in a new business. It simply exchanges one creditor for others. There may be wisdom in consolidating all its debts into the hands of one person. At least such a consolidation cannot be pronounced beyond its powers. When time is obtained by the new indebtedness (in this case a year), it gives the borrowing bank and its officers and stockholders time to consider and determine the wisdom of attempting a further prosecution of business. In the case of an individual, it would be a legitimate and often a wise transaction. It is not in terms prohibited by the National Banking Act. *Aldrich v. Chemical National Bank,* 176 U. S. 618 , is very clearly in point. The opinion in that case is quite lengthy, and considers many authorities, but the gist of the decision is expressed in these words (p. 176 U. S. 635):

"Without further citation of cases, we adjudge, both upon principle and authority, that as the money of the Chemical Bank was obtained under a loan negotiated by the vice-president of the Fidelity Bank, who assumed to represent it in the transaction, and as the Fidelity Bank used the money so obtained in

its banking business and for its own benefit, the latter bank, having enjoyed the fruits of the transaction, cannot avoid accountability to the Chemical Bank, even if it were true, as contended, that the Fidelity Bank could not, consistently with the law of its creation, have itself borrowed the money."

We are of the opinion that the notes given by the American Bank for the money advanced by the Union Bank were its valid obligations, and can therefore be enforced against its stockholders.

The decree of the circuit court of appeals is

Affirmed.