Ferry Vs. Ramsey

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Court : US Supreme Court

Decided On : May-14-1928

Appeal No. : 277 U.S. 88

Appellant : Ferry

Respondent : Ramsey

Judgement :

Ferry v. Ramsey - 277 U.S. 88 (1928)
U.S. Supreme Court Ferry v. Ramsey, 277 U.S. 88 (1928)

Ferry v. Ramsey

Nos. 407 to 418, inclusive

Argued April 25, 1928

Decided May 14, 1928

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ERROR TO THE SUPREME COURT OF KANSAS

SYLLABUS

1. A state statute making a bank director individually liable for deposits, the receipt of which by the bank was assented to by him with knowledge that it was insolvent, and which provides that his failure to examine the bank's affairs to learn of its condition shall charge him with knowledge of its insolvency, and that, in suits against him for such deposits, the fact of insolvency when the deposits were received shall be *prima facie* evidence that the director both knew of the insolvency and assented to the deposits, *held* consistent with due process of law. P. 277 U. S. 94 .

2. The statute might have made directors liable to depositors in every case. By accepting the office, they assume the risks it imposes. *Id.*

122 Kans. 675, 691, affirmed.

Error to judgments of the Supreme Court of Kansas affirming recoveries against a director, and the executor of a deceased director, of a bank in twelve suits by depositors.

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MR. JUSTICE HOLMES delivered the opinion of the Court.

These writs of error are brought by Ferry, formerly a director of the Butler County State Bank, of Kansas, and by the executor of a deceased director, to set aside judgments against them in suits by depositors in the bank on the ground that the statutes of Kansas purporting to establish the directors' liability were contrary to the Fourteenth Amendment of the Constitution of the United States. The statutes were upheld by the state court. *Ramsey v. Adams,* 122 Kan. 675; *ibid.* 691.

The plaintiffs (the defendants in error) made deposits in the bank at a time when it was insolvent but had not closed its doors. The statutes under which the directors were held liable to depositors and which are attacked here are Revised Statutes of Kansas, 1923, Chapter 9, 163, 164. The former of these makes it unlawful for any director to assent to the reception of deposits by his bank after he shall have had knowledge of the fact that it is insolvent. The law makes it the duty of the directors

to examine into the affairs of the bank, and, if possible, to know its condition, and in case of his failure to do as required, he is to be held to have had knowledge of the insolvency of the bank, and is made "individually responsible for such deposits so received." By 9-164, in suits for deposits against officers

"the fact that such banking institution was so insolvent or in failing circumstances at the time of the reception of the deposit charged to have been so received, . . . shall be *prima facie* evidence of such knowledge and assent to such deposit . . . on the part of such officer, . . . so charged therewith."

It is said that 163 denies due process

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of law by creating a conclusive presumption of knowledge from ignorance and by implying that the director knowingly assented to a deposit that he should not have received, of which in fact he knew nothing. As to 164, it is said that facts are made *prima facie* evidence of other facts that they have no rational tendency to prove. The law as construed by the Supreme Court of Kansas meets its severest test in the cases against the executor of Kramer, because Kramer, although not so ignorant or incapable of knowledge as thought by the court of first instance, was seriously ill at the time of the deposits, and seemed to have much to be said in his behalf, if the actual state of his knowledge had any relevancy as an excuse.

It is said that the liability is founded by the statute upon the directors' assent to the deposit, and that, when this is the ground, the assent cannot be proved by artificial presumptions that have no warrant from experience. But the short answer is that the statute might have made the directors personally liable to depositors in every case if it had been so minded, and that, if it had purported to do so, whoever accepted the office would assume the risk. The statute, in short, imposed a liability that was less than might have been imposed, and that being so, the thing to be considered is the result reached, not the possibly inartificial or clumsy way of reaching it. If, without any mention of assent or presumptions or *prima facie* evidence, the statute had said: every director of a bank shall be personally liable to

depositors for every deposit accepted by the bank after it has become insolvent, all objections would be met by the answer, "You took the office on those terms." The statute would be none the worse if it allowed a defence in the single case of the defendants' having made an honest examination and having been led to believe that the bank was solvent. The mention of assent and evidence of knowledge cannot be pressed to conclusions that the statute manifestly does

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not allow. The conclusions that, as construed by the state court, it does impose, it imposes however much it may cut down the significance of the assent or knowledge to which it refers. As a matter of law, there is nothing new in charging a party with knowledge of what it is his duty to know, in this case the insolvency of the bank, or with assent to deposits that he must expect while the bank's doors remain open. But the essential thing is that whether, in a roundabout or a perfectly natural way, the statute has said if you take the office you must take the consequences of knowledge whether you have it or not. In most contracts, men take the risk of events over which they have imperfect or no control. The acceptance of a directorship is as voluntary an act as a contract.

The Supreme Court of Kansas affirmed judgments against Ferry and reversed judgments in favor of the executor of Kramer based on Kramer's incapacity to know of or assent to the deposits in question and ordered judgments against him. In so doing, it violated no provision of the Constitution of the United States.

Judgments affirmed.

MR. JUSTICE SUTHERLAND, dissenting.

In respect of the *prima facie* presumption created by 9-164 of the Kansas statute, I am unable to agree with the opinion of the Court insofar as that section affects the cases against Harris, executor of the will of Kramer, deceased. The evidence shows very clearly that, at the time the deposits in question were made and for a long time prior thereto, Kramer was physically incapable of investigating and ascertaining the condition of the bank, or of assenting to the reception of deposits

by the bank, because of his serious illness which resulted in his death after undergoing a major surgical operation. It was substantially so found by the jury in one of the cases, and by the trial court in the others. Under these circumstances,

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the application of the statutory presumption was obviously injurious. Section 9-163 provides that it shall be unlawful for any president, director, etc., to assent to the reception of deposits, etc., after he shall have had knowledge of the fact that the bank is insolvent. Section 9-164, which creates the objectionable presumption, provides that:

"The fact that such banking institution was so insolvent or in failing circumstances at the time of the reception of the deposit charged to have been so received . . . shall be *prima facie* evidence of such . . . assent to such deposit, . . . on the part of such officer. . . ."

Of course, the state may provide that proof of one fact shall be *prima facie* evidence of another; but this can be done consistently with the due process of law clause of the Fourteenth Amendment only where there is a rational relation between the two facts. *Bailey v. Alabama,* 219 U. S. 219 , 219 U. S. 238 ; *McFarland v. American Sugar Co.,* 241 U. S. 79 , 241 U. S. 86 . In the latter case, this Court said, quoting from *Mobile, J. & K. C. R. Co. v. Turnipseed,* 219 U. S. 35 , 219 U. S. 43 :

"It is 'essential that there shall be some rational connection between the fact proved and the ultimate fact presumed, and that the inference of one fact from proof of another shall not be so unreasonable as to be a purely arbitrary mandate.'"

To me, it seems clear that there is no rational relation between the fact of insolvency to the reception of a particular deposit. to the reception of a particular deposit. Rather, the rational presumption is the other way, since the law itself requires that an insolvent bank shall not receive deposits, and the assent of the director thereto would be an assent to a violation of law. I do not quarrel with the

suggestion that it was within the constitutional power of the state to create an absolute liability against a director if, while insolvent, the bank of which he is a director receive a deposit. But this the state did not do.

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Instead, it adopted a statute creating a liability only in case the director assents to the deposit, and I should have supposed the liability of the director must be measured by what the state has enacted, and not by what it had the power to enact. Under such a statute, without more, it is perfectly plain that proof by the state of such assent would be necessary. But here, the state by legislative fiat substituted for such proof on its part the *prima facie* presumption set forth. It was said that the bank was open and doing business, and that it is a reasonable presumption from that fact that assent was given to the receipt of particular deposits. But we are dealing with a specific statutory provision, and must take it as we find it, and, by that provision, the general transaction of business by the bank at the time it received the particular deposits is not made the basis of the statutory presumption. If it were, a different question would be presented. Under these circumstances, as it seems to me, the rule, requiring a rational connection between the fact proved and the ultimate fact to be presumed therefrom plainly applies, and consequently the statutory provision in question is void.

MR. JUSTICE BUTLER, and MR. JUSTICE SANFORD concur in this opinion.