

Fisher Vs. Whiton

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Court : US Supreme Court

Decided On : Dec-07-1942

Appeal No. : 317 U.S. 217

Appellant : Fisher

Respondent : Whiton

Judgement :

Fisher v. Whiton - 317 U.S. 217 (1942)

U.S. Supreme Court Fisher v. Whiton, 317 U.S. 217 (1942)

Fisher v. Whiton

No. 85

Argued November 16, 1942

Decided December 7, 1942

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CERTIORARI TO THE COURT OF APPEALS OF TENNESSEE

SYLLABUS

1. The question as to when the period of limitations begins to run against a receiver's claim upon an assessment levied by the Comptroller of the Currency on stockholders of an insolvent national bank is a federal question, and, in the present case, the question was duly raised and preserved by appropriate exceptions and assignments of error. P. [317 U. S. 220](#) .

2. It is within the authority of the Comptroller of the Currency to extend from time to time the date fixed for payment of assessments against stockholders of insolvent national banks. Nothing in the pertinent legislation, 12 U.S.C. 63, 64, 66, 191, 192, prevents such extension. P. [317 U. S. 220](#) .

3. The receiver of an insolvent national bank did not have a complete and present cause of action to enforce the liability of a deceased stockholder until the date finally fixed by the Comptroller of the Currency, after extensions of dates previously fixed, for payment, and, in this view, the receiver's claim against the stockholder's estate was not barred by 8225 and 8604 of the Tennessee Code. *Pufahl v. Estate of Parks*, [299 U. S. 217](#) , distinguished. P. [317 U. S. 220](#) .

4. The desirability of closing decedents' estates speedily does not warrant limiting the power of the Comptroller of the Currency to extend the time for payment of an assessment against stockholders of insolvent national banks. P. 317 U. S. 221 .

25 Tenn.App. 230, 155 S.W.2d 882, reversed.

Upon a petition for rehearing, an earlier order of this Court denying certiorari, 316 U.S. 691, was vacated, and certiorari was granted, 316 U.S. 707, to review a decree of an intermediate state court which affirmed a decree of the state Chancery Court barring, on the ground of limitations, a claim by the receiver of an insolvent national bank upon a stockholder's assessment. The highest court of the State denied a petition for a writ of certiorari.

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MR. JUSTICE MURPHY delivered the opinion of the Court.

In *Rawlings v. Ray*, [312 U. S. 96](#) , we decided that state statutes of limitations govern the time within which to enforce the liability imposed upon stockholders of insolvent national banks by assessments levied by the Comptroller of the Currency; that the question as to the time when a complete and present cause of action arises in the receiver to enforce that liability by suit is a federal question; that nothing in the applicable statutes, 12 U.S.C. 63, 64, 191, 192, prevents the Comptroller, in making an assessment, from fixing a later date for payment; and, that suit cannot be instituted prior to the date fixed for payment, and a state statute of limitations does not begin to run until that date. In this case, the Comptroller extended the time for payment beyond the date originally set, and we must decide whether time runs from the first or the final date fixed for payment.

Petitioner is the successor to the original receiver for the insolvent First National Bank of Chattanooga. On April 19, 1934, the Comptroller of the Currency levied an assessment against the Bank's stockholders for 100% of the par value of their shares, payable on May 26, 1934. [[Footnote 1](#)] By successive orders entered on May 17, 1934, June 19, 1934, June 22, 1934, and March 11, 1935, the original maturity date of May 26, 1934, was extended to make the assessment

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payable on April 15, 1935. Notice of the assessment was given to all stockholders on March 13, 1935.

Respondent, as successor to the original executrix, represents the estate of C.C. Nottingham, which held stock of the Bank to the extent of \$138,000 par value at the time of the assessment. No steps were taken to enforce against the estate the liability imposed by the assessment until August 2, 1935, when petitioner's predecessor filed an answer and a cross-bill in an action commenced on July 24, 1935, in the Chancery Court for Hamilton County, Tennessee, by the original executrix to require all creditors to appear and establish their claims.

The Chancery Court held that petitioner's assessment claim accrued on the date first fixed for payment, May 23, 1934, [[Footnote 2](#)] and that the claim was barred

by 8225 of the Tennessee Code, [[Footnote 3](#)] fixing a period of "six months from the date the cause of action thereon accrued" within which to enforce previously unmatured claims against decedents. The Court of Appeals affirmed, relying upon 8604 of the Code, [[Footnote 4](#)] as well as 8225. *Nottingham v. Kent*, 155 S.W.2d 882. The Supreme Court of the State denied a petition for writ of certiorari. The importance of the question in the administration of insolvent national banks [[Footnote 5](#)] and a conflict with the decision in *Strasburger v. Schram*, 68 App.D.C. 87, 93 F.2d 246, caused us to grant certiorari.

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Our starting point, of course, is *Rawlings v. Ray, supra*. That case adequately disposes of respondent's contention that no federal question is presented by this case; whether petitioner's cause of action was complete on May 26, 1934, or April 15, 1935, is a federal question, 312 U.S. at [312 U. S. 98](#) , which was duly raised and preserved by appropriate exceptions and assignments of error. And, even as we found nothing in the applicable statutes to question "the authority of the Comptroller in making an assessment to fix a later date for its payment," 312 U.S. at [312 U. S. 99](#) , we see nothing in the pertinent legislation, 12 U.S.C. 63, 64, 66, 191, 192, forbidding the Comptroller to extend the date fixed for payment within reasonable limits from time to time. Such extensions seem to be in accord with a long established practice designed to achieve the desirable result of avoiding excessive and unnecessary assessments. [[Footnote 6](#)] See *Strasburger v. Schram*, 68 App.D.C. 87, 93 F.2d 246, 248. Compare *Korbly v. Springfield Institution for Savings*, [245 U. S. 330](#) , where, in upholding the power of the Comptroller to withdraw one assessment and levy a later one, we emphasized the desirability of a large measure of administrative discretion and flexibility in the adjustment of assessments to the "exigencies of each case." P. [245 U. S. 333](#) .

Since the Comptroller has power to extend the time for payment, respondent was not required to pay until April 15, 1935, and, prior to that time, suit could not be instituted against her. *Rawlings v. Ray, supra*, 312 U.S. at [312 U. S. 98](#) . While the receiver enforces the liability created by the assessment, 12 U.S.C. 191, 192,

he does so subject to the direction of the Comptroller, [Kennedy v. Gibson](#), 8 Wall.

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498, [75 U. S. 505](#) . So petitioner did not have a complete and present cause of action until April 15, 1935. Since the words "from the date the cause of action thereon accrued" as used in 8225 of the Tennessee Code, seem to have their usual meaning and refer to the time when suit may be instituted, [[Footnote 7](#)] it follows that petitioner's claim, filed on August 2, 1935, was in time.

Respondent stresses 8604 of the Code. [[Footnote 8](#)] But, as pointed out above, petitioner had no right to demand payment before April 15, 1935, so, even if 8604 applies, it does not bar petitioner's claim.

Respondent mistakenly relies upon *Pufahl v. Parks' Estate*, [299 U. S. 217](#) , which has no application, because, in that case,

"we were not considering or deciding the question of the application of a statute of limitations to a suit against a stockholder upon an assessment made by the Comptroller where payment was not required before a specified date, prior to which no suit could be maintained."

Rawlings v. Ray, supra, 312 U.S. at [312 U. S. 99](#) .

We are not unmindful that it is desirable to close decedents' estates speedily, but there is no warrant in the federal legislation for allowing that consideration to limit the power of the Comptroller to extend the time for payment of an assessment.

The judgment below is reversed, and the cause remanded for further proceedings not inconsistent with this opinion.

Reversed.

[[Footnote 1](#)]

This is the date given in the pleadings. However, the opinions of the courts below refer to May 23, 1934, as the first date fixed for payment.

[[Footnote 2](#)]

See [Note 1](#) *supra*.

[[Footnote 3](#)]

Michie's Tennessee Code of 1938, Annotated.

[[Footnote 4](#)]

"Sec. 8604. *Time runs from accrual of right, not demand.* When a right exists, but a demand is necessary to entitle the party to an action, the limitation commences from the time the plaintiff's right to make the demand was completed, and not from the date of the demand."

[[Footnote 5](#)]

The double liability feature of national bank stock has been eliminated where there has been compliance with the provisions of the statute, but this does not apply to banks in difficulty prior to July 1, 1937, except as to stock issued after June 16, 1933. 12 U.S.C. 64a.

[[Footnote 6](#)]

The record does not disclose the reason for the extensions of time here, but it appears that they were made at the request of a stockholders' committee which protested the necessity of a 100% assessment and asked for a reappraisal of the Bank's assets. See *Coffey v. Fisher*, 100 F.2d 51, 52, involving the same assessment here considered.

[[Footnote 7](#)]

See *Jones v. Whitworth*, 94 Tenn. 602, 616, 30 S.W. 736; *Gillespie v. Broadway National Bank*, 167 Tenn. 245, 249, 68 S.W.2d 479; *City of Knoxville v. Gervin*, 169 Tenn. 532, 544, 89 S.W.2d 348.

[[Footnote 8](#)]

See [Note 4](#) *supra*.

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