CASES RE LIABILITY OF SHAREHOLDERS OF CORPORATIONS OWNING BANK STOCK

There apparently have been only two cases of record in which the courts have held that a stockholder in a corporation which owns stock in a bank is liable for an assessment on such bank stock:

(1) Barbour v. Thomas, 7 F. Supp. 271 (now pending on appeal), wherein the court held the stockholders of the Detroit Bankers Company liable for an assessment levied against the stockholders of the First National Bank of Detroit; and

(2) Corker v. Soper, 53 Fed. (2d) 190, wherein the Circuit Court of Appeals for the Fifth Circuit held that, where a bank president organized a "dummy" corporation to hold shares of bank stock as his mere instrument or agency, he remains liable for assessments on such bank stock.

Neither case was based on the theory that a stockholder in a holding company is a stockholder in a bank owned by such holding company.

The first case was based upon specific provisions in the articles of association and stock certificates of the holding company whereby the shareholders of the holding company expressly agreed to assume liability for any assessments on bank stocks for which the holding company should be liable.

The other case was one in which, for the specific purpose of escaping stockholders' liability, a bank president created a "dummy" corporation with a nominal capital of $10, which never held any shareholders' meetings, issued any shares, kept any books, or did any business,

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but which merely acted as his agency, and the court held that under the facts of the case the title to the stock which the president attempted to transfer to such corporation never vested in the corporation but remained in the president. In other words, he was not held liable as a stockholder in the holding company but as the real stockholder in the bank, in accordance with a well settled rule that a fraudulent transfer of bank stocks for the purpose of escaping stockholders' liability is void and of no effect.

Two cases growing out of the failure of the National Bank of Kentucky (Keyes v. American Life and Accident Insurance Company, 1 F. Supp. 512 and Laurent v. Anderson, 70 Fed. (2d) 819) and one case growing out of the failure of the Federal National Bank of Boston (O'Keefe v. Pearson, 73 Fed. (2d) 673) involved arrangements whereby bank stock was placed in the hands of trustees who issued participation certificates to the beneficial owners; but in each case the trust instrument provided specifically that the holders of the trust certificates should assume all liability for assessments on such bank stock.

All of these cases are clearly distinguishable from the case of the Eccles Investment Company, which was not organized for the purpose of holding bank stock, but was organized over twenty years ago for the bona fide purpose of conserving the assets of the estate of Governor Eccles' father for the benefit of his widow and his nine children, seven of whom were minors. The assets of the Eccles Investment Company are not princi-

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pally bank stocks, but include a large variety of investments, including real estate bonds, notes and stocks of corporations engaged in widely diversified types of business. Moreover, Governor Eccles is not the sole or even a principal stockholder of the corporation, but has only a small minority interest therein, which amounts to less than 9 per cent of the total stock.

The Eccles Investment Company is in no sense a "dummy" corporation nor was it organized for the purpose of evading the provisions of the Federal Reserve Act nor the National Bank Act. There are no grounds whatsoever for disregarding its separate entity or for considering the transfer of stock to it as a fraudulent or fictitious transfer. On the contrary, the good faith of the transaction is evidenced by the fact that Governor Eccles sold all of his stock in the First Security Corporation to the Eccles Investment Company at a financial sacrifice of $90,870.25 and reported this capital loss in his income tax return for the year 1934 when he had a net capital gain of only $1,071.15, thereby waiving any right to deduct such capital loss from any capital gain which he might have in future years.

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