LIABILITY OF SHAREHOLDERS OF DETROIT BANKERS COMPANY
FOR STOCK ASSESSMENT AGAINST STOCKHOLDERS OF
FIRST NATIONAL BANK OF DETROIT.

The decision of the United States District Court in the case of Barbour v. Thomas, 7 F. Supp. 271, (which is now pending on appeal) holding the stockholders of the Detroit Bankers Company liable for a stock assessment levied against the stockholders of the First National Bank of Detroit was not based upon the theory that the stockholders of the holding company were stockholders of the bank, but was based upon a specific provision in the articles of association of the holding company and a specific contract accepted by the stockholders of the holding company when they acquired stock in the holding company whereby the stockholders of the holding company specifically agreed to assume any stockholders' liability for which the holding company might be liable.

This is shown clearly by the following quotation from the opinion of Judge Hayes on page 275:

> "The Detroit Bankers' Company, hereafter referred to as the holding company, is a corporation for pecuniary profit, chartered under the general laws of the state of Michigan. It was not chartered as a banking institution. It was the registered owner of all of the capital stock of the First National Bank - Detroit, hereafter called the bank, except the qualifying shares of directors, when the bank was placed in the custody of a conservator, and later when a receiver was appointed. The

The Comptroller has decided the necessity for, and levied, a stock assessment of 100 per cent. on all the outstanding stock. The question involved is this: Can the receiver of the bank enforce the assessment against the shareholders of Detroit Bankers' Company, or is he confined to the single remedy of proceeding against the corporation?

"The case presents a factual situation quite different from any case hitherto reported.

"The holding company came into existence through the combined efforts of the officers and directors of the First National Bank of Detroit and four state banks, all of Detroit. An appraisal of the value of the stock in each of the five banks was made, and an agreement reached on the basis for the exchange of the holding company stock for the stock in each of the five banks. The capital stock of the five banks amounted to several million dollars. The holding company was to issue 120 shares of no par value at $10 per share, and $50,000,000 of par value stock. The no par stock was subscribed for by the twelve executive officers of the five banks, apportioned among the five banks, and these were to have exclusive voting power for five years. No one could be a director unless he owned 10 shares of trustee stock, and no one could vote except a trustee stockholder. Thus the destiny of these five banks was committed for five years to these twelve trustees, with an apparent investment of $1200. The investment was apparent and not real, for the banks put up the money to pay for the stock and charged it to expense.

"The Banking Commissioner, the Attorney General, the Secretary of State, and the Securities Commission of Michigan, before chartering the holding company or permitting it to sell or exchange its stock and do business in the state of Michigan, required the insertion of this clause in the articles of association.

"'Article IX. The holders of stock of this corporation shall be individually and severally liable (in proportion to the number of shares of its stock held by them respectively) for any statutory liability imposed upon this corporation by reason of its ownership of shares of the capital stock of any bank or trust company, and the stockholders of this corporation, by the acceptance of their certificates of stock of this corporation, severally agree that such liability may be enforced in the same manner as statutory liability may

now or hereafter be enforceable against stockholders of banks or trust companies under the laws of the United States or the State of Michigan.'

"They further required that the clause be printed on each certificate of stock issued by the holding company."

The actual grounds for Judge Hayes' decision are stated in the following paragraph on page 278:

"The acceptance of this stock certificate was an assent by the shareholder to the terms of the contract assuming payment of the assessment. 2 Williston, Contracts, § 628, p. 1211. It is conclusive proof that the holder has contracted to be bound by the terms. Blue Mountain Forest Ass'n v. Borrowe, 71 N.H. 69, 51 A. 670; Jacobs v. Miller, 50 Mich. 119, 15 N.W. 42; Hassel v. Pohle, 214 App. Div. 654, 212 N.Y.S. 561; Commissioner of Banks v. Prudential Trust, 242 Mass. 78, 136 N.E. 410; Grand Rapids & Indiana Ry. Co. v. Osborn, 195 U.S. 17, 24 S. Ct. 310, 48 L. Ed. 598."