Form No. 131

Office Correspondence

FEDERAL RESERVE BOARD

Date January 25, 1936

To Governor Eccles

From Mr. Wyatt, General Counsel

Subject: Compliance of Mr. Eccles with section 10 of the Federal Reserve Act.

GPO 16—852

In order to be fully prepared in case any one raises again the questions which were raised last year about your compliance with the provision of section 10 of the Federal Reserve Act forbidding any member of the Board to hold stock in any bank, banking institution, or trust company, we have prepared and I am handing you herewith the following:

(1) Concise summary of all legal points in form convenient for use in debate.

(2) Analyses of court decisions bearing on the points raised last year.

(3) A copy of your statement before the Senate Banking and Currency Committee.

(4) A copy of my opinion on the subject.

The first two items listed above were prepared by Mr. Dreibelbis, who has had a lot of experience preparing cases for trial; and I think they are in much more useable shape than the material we prepared last year under pressure.

I think it would be advisable to place this material in the hands of Senator Byrnes or some other Senator friendly to you.

Respectfully,

Walter Wyatt

Walter Wyatt,
General Counsel.

Attachments.

Section 10 of the Federal Reserve Act specifically provides that upon the expiration of their terms of office, members of the Board shall continue to serve until their successors are appointed and have qualified. The same paragraph provides that of the members appointed to the Board, one shall be designated by the President as Chairman and one as Vice Chairman of the Board to serve as such for a term of four years.

Members of the Board are appointed by the President by and with the advice and consent of the Senate but the Chairman and Vice Chairman are merely designated by the President to serve as such for a term of four years. Prior to the Banking Act of 1935 the Federal Reserve Act provided for the designation by the President of a Governor (now Chairman) and Vice Governor (now Vice Chairman) and the provision was consistently interpreted as meaning that they served at the pleasure of the President. The Banking Act of 1935 added language providing for the Chairman and Vice Chairman to serve for a term of four years, the purposes of the addition being to clarify the existing law and to make plain its purpose of enabling the administration in office to maintain a laison and responsive relation with the Board.

Other than to act as the Board's executive officer with the right to call meetings of the Federal Open Market Committee the Chairman and the Vice Chairman, in his absence, perform no statutory duties different from any other member of the Board. The office of Chairman is an incident to membership upon the Board and the characteristics of membership radiate through the member to the office of Chairman. Thus, a member of the Board whose term has expired by specific language of the statute would continue to serve and perform all of his duties as a member until his successor has been appointed and qualified and it would follow that if such member also was Chairman he would continue to perform all of the duties of the office, including the duties of Chairman.

Furthermore, the hold-over provision refers to "terms of office" and the Chairman and Vice Chairman are appointed for a "term". Therefore, it would appear that the hold-over provision in the paragraph in question relates both to the terms of office of members of the Board and to the terms of office of the Chairman and Vice Chairman. This is emphasized by the fact that the hold-over provision is but a part of the general paragraph and follows the provisions dealing with appointment of the members of the Board and the provisions dealing with the designation of a Chairman and Vice Chairman, thus indicating its general application.

STEPS TAKEN BY MR. ECCLES IN COMPLYING WITH LETTER AND SPIRIT OF SECTION 10 OF THE FEDERAL RESERVE ACT

Prior to his appointment as Assistant to the Secretary of the Treasury about two years ago, Mr. Eccles over a period of twenty years had been engaged in the banking business and was a director and officer of a number of banks and owned a few shares of stock in such banks.

Upon moving to Washington to assume his duties as Assistant to the Secretary of the Treasury he disposed of all such stock and resigned all such offices.

He continued to own 4,912 shares of the stock of First Security Corporation, (a holding company for bank stocks), acquired at a cost of $26.49 per share and representing a total investment of $130,166, and owned same when he was appointed a member of the Federal Reserve Board. These shares represent about 15% of the total stock of First Security Corporation.

This stock is not listed upon any exchange, and it is to be remembered that during this period there was practically no market for bank stocks or stocks the value of which depended upon bank stocks. Mr. Eccles had 15 days within which to qualify as a member of the Board. Therefore, acting with a desire to comply with the spirit of the law and disregarding any technical compliance that might already have been accomplished with respect to the letter of the same, he made a bona fide sale of this stock to Eccles Investment Company at this time. This sale was made in good faith at a price of eight dollars per share, and the ensuing capital loss of $90,870 was recorded in his income tax return for 1934, when he had a net capital gain of only $1,071.

CHARACTER OF BUSINESS OF ECCLES INVESTMENT COMPANY

Eccles Investment Company is not a bank, banking institution or trust company. Neither is it principally engaged in the business of holding bank stock. It is a family holding company organized upon advice of counsel over twenty years ago as the most convenient and best way to preserve and manage the estate of Mr. Eccles' father for the benefit of his mother and nine children, including Mr. Eccles, seven of whom were then minors. Aside from the ownership of the aforesaid 15% of the capital stock of the First Security Corporation its assets consist of holdings in real estate, bonds, notes and stocks of corporations engaged in widely diversified businesses, including substantial holdings in sugar stock, stock in a lumber manufacturing company, stock in a retail lumber company, stock in an implement company, stock in an electric railroad, and stock in a construction company.

PRESENT SITUATION WITH RESPECT TO COMPLIANCE WITH PROVISIONS OF SECTION 10 OF FEDERAL RESERVE ACT

Mr. Eccles, therefore, is not, at this time, an officer or director of any bank, banking institution, trust company or Federal Reserve bank, nor does he hold stock in any bank, banking institution or trust company.

He is the owner of less than 9% of the capital stock of Eccles Investment Company.

Eccles Investment Company is the owner of about 15% of the capital stock of First Security Corporation.

First Security Corporation is a holding company engaged in the business of holding stock in a group of banks in Utah and Idaho.

IT IS WELL SETTLED THAT THE OWNERSHIP BY A PERSON OF STOCK IN A CORPORATION WHICH IS A STOCKHOLDER IN ANOTHER CORPORATION DOES NOT MAKE SUCH PERSON A STOCKHOLDER IN THE SECOND CORPORATION.

This is so obvious to persons familiar with corporation law that the question has seldom been raised in court; but a hasty search has revealed at least two cases in which the question has been squarely passed upon by the courts. Hoopes v. Basic Company, 61 Atl. 979; Sabre v. United Traction and Electric Company, et al. 225 Fed. 601. An analysis of these cases is attached hereto.

OWNERSHIP OF 9% OF THE STOCK OF ECCLES INVESTMENT COMPANY IS NOT IN VIOLATION OF EITHER THE SPIRIT OR LETTER OF SECTION 10 OF THE FEDERAL RESERVE ACT.

Certainly it was not the intent of Congress in the enactment of section 10 of the Federal Reserve Act to make such an indirect connection with a bank the basis for disqualification to membership to the Board of Governors of the Federal Reserve System, for:

(a) The language of the act is clear and unambiguous and expressly applies to ownership of stock in banks, bank-

ing institutions or trust companies; Whereas, had it been intended to include within the scope of such act an indirect and remote interest in banks, banking institutions or trust companies as distinguished from such direct interest it would have been so stated as was done in connection with other provisions of the Federal Reserve Act.

(b) To attempt to extend the application of the particular section to include within its scope an indirect interest however remote would be to apply a vague and uncertain test as to qualification as against a clear and certain one and would lead to unreasonable and absurd results. To illustrate it need only be pointed out that there are numbers of large industrial and mercantile concerns whose stock is very widely distributed among the investing public which, as an incident to their principal business, operate or hold stock in banking institutions. Certainly, it is not within the spirit or purpose of the act to disqualify as a member of the Board of Governors of the Federal Reserve System all persons who might own a share of stock in any such companies.

THE UNDERLYING PRINCIPLE INVOLVED IN CONNECTION WITH CERTAIN CASES FIXING LIABILITY AGAINST INDIRECT BENEFICIAL OWNERS OF BANK STOCK ON ACCOUNT OF ASSESSMENTS MADE AGAINST SHAREHOLDERS SHOULD NOT BE CONFUSED WITH THE PRINCIPLE UNDERLYING THE APPLICATION OF SECTION 10 OF THE FEDERAL RESERVE ACT TO PROPOSED MEMBERSHIP OF THE BOARD OF GOVERNORS.

In connection with assessments levied against shareholders cases have arisen where the owners of shares in a company holding bank stock have been held liable. Barbour v. Thomas, 7 Fed. Supp. 271; Corker v. Soper, 53 Fed. (2d) 190.

Likewise cases have arisen where former shareholders in a bank who transferred their stock to a trustee have, upon subsequent solvency of the bank and the subsequent levying of an assessment, been held liable. Keyes v. American Life and Accident Insurance Company, 1 Fed. Supp. 512; Laurent v. Anderson, 70 Fed. (2d) 819; O'Keefe v. Pearson, 73 Fed. (2d) 673.

These cases, however, and the principles upon which they have been decided should not be confused with the principle involved in section 10 of the Federal Reserve Act.

In the first of the holding company cases - to wit, the case of Barbour v. Thomas, 7 Fed. Supp. 271 - the holding company in question in its articles of association had provided for the assumption of such liability by its shareholders. In consequence, the court held that the liability of the shareholders was a matter of contract and that the acceptance of such shares by shareholders amounted to acceptance of the contract. Thus, in this case the liability of the shareholders was based upon the contract and not upon any principle of law to the effect that ownership of stock in the holding company amounted to ownership of stock in the bank.

In the last case - to wit, the case of Corker v. Soper, 53 Fed. (2d) 190 - it appeared that the defendant Corker, under circumstances, that might, if properly presented, have been made the basis of a finding by the court of fraud, organized the holding company in question with only a nominal amount of capital, (ten dollars) for the sole purpose of owning the bank stock, pursuant to the idea that thereby he would not be liable for assessment. Under the facts of that particular case, the court held that the holding company was "organized and maintained for the purpose of holding, not really, but as agent" the stock in the bank, and that the defendant was the "real owner". No such facts exist in the instant situation as the sale of the holding company stock to Eccles Investment Company was made in good faith and, in no sense, is the Eccles Investment Company holding the stock as agent. It is the "real owner".

An analysis of these holding company cases is attached hereto.

The court, in the trustee cases, held that the transferor and not the trustees was the "beneficial" and "real owner" and hence was liable for the assessment. The transfer of the stock in First Security Corporation to Eccles Investment Company was not made in trust for the transferor, Mr. Eccles, and the two situations are in no respects similar. An analysis of these cases is also attached, as well as an analysis of some of the many distinctions between creating a trust in stock and making an out-right sale of the same to a corporation.

It is quite apparent therefore that the reason for these decisions itself demonstrates the inapplicability of the decisions to the instant situation. Mr. Eccles is neither the "real" nor "beneficial

owner" of any bank stock. He is not even the owner of stock in the holding company which does own bank stock. He can vote neither the bank stock nor the holding company stock. He is taxed neither for the bank stock nor the holding company stock. And finally, he exercises no control over either the bank stock or the holding company stock. Obviously the purposes of section 10 of the Federal Reserve Act have been squarely met and complied with.

Attachments.

Analysis of Cases to the Effect that Ownership by a Person of Stock in a Corporation which is a stockholder in another Corporation does not make such Person a Stockholder in the Second Corporation.

In the case of Hoopes v. Basic Co., 69 N. J. Eq. 679, 61 Atl. 979, the plaintiff filed a bill to have the Basic Company placed in receivership. The bill was filed under a statute providing that "any creditor or stockholder" could request the appointment of a receiver. The defendant sought to have the bill dismissed on the ground that the plaintiff was not a creditor or stockholder. The evidence showed that plaintiff was a stockholder of the Union Dredging Company which owned stock in the Basic Company and that the plaintiff held in his own name only one directors' qualifying share of stock in the Basic Company, which admittedly belonged to the Union Dredging Company. On the basis of these facts, the court held that the plaintiff was not a stockholder of the Basic Company and therefore, the court dismissed the bill.

This case is especially notable because it was a suit brought in the Court of Chancery of the State of New Jersey, which does not hesitate to disregard corporate fictions or look through the form to the substance of a transaction whenever the ends of justice or equity required such action.

The case was appealed to the Court of Errors and Appeals of New Jersey, the highest court of the State, which affirmed the decision of the Chancery Court by a per curiam opinion (65 Atl. 1118) as follows:

> "We agree with the Vice Chancellor that the proofs show that Mr. Hoopes was not a stockholder within the meaning of the statute, and therefore could not maintain this suit. It is not necessary to express any opinion upon other matters discussed by the Vice Chancellor."

In the case of Sabre v. United Traction and Electric Co. et al., 225 Fed. 601, the court held that stockholders in holding companies are not stockholders or entitled to the rights of stockholders in other corporations, a part of whose stock is owned by the holding company and that, therefore, a sale or lease of all the property of a corporation controlled by the holding company through its ownership of stock does not require the unanimous consent of the stockholders of the holding company; but it is sufficient if there is unanimous consent of the stockholders of the company whose property is leased or sold. In so holding the court said:

"It is impossible, however, to accept the contention that the nonassent of a shareholder of the Traction Company should be given the same effect as the nonassent of a shareholder in each of the lessor street railway companies. Neither as a matter of form nor as a matter of substance can the complainant be regarded as a shareholder, or entitled to claim the rights of a shareholder in any one of the lessor companies. He is merely a shareholder in a corporate owner of all the stock of the street railway corporations, each of which is still a distinct corporation whose individual existence cannot be ignored."

ANALYSIS OF HOLDING COMPANY CASES

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 273:

> "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 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?
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> "The case presents a factual situation quite different from any case hitherto reported.
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> "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, sec. 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, 193 U.S. 17, 24 S. Ct. 310, 48 L.Ed.598."

The case of 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 corporation to hold shares of bank stock as his mere instrument or agency he also will be liable for assessments on the bank stock, is a case in which the corporation was a mere sham with only a nominal capital of $10 and never transacted any business on its own account whatever. The facts regarding the organization of the company are stated as follows in the opinion:

> "The facts as to the Laurens Company and its organization are: On February 3d the charter of the Laurens Investment Company, Inc., on a petition filed December 27, 1927, was issued, with an authorized capital stock of $10, Corker and his two sons incorporators. On the next day the capital stock was subscribed for, by-laws were adopted, the subscription of F. G. Corker as agent for the Laurens Company to 150 shares of the Dublin Bank stock was ratified, and it was resolved that the Laurens Company purchase Mrs. Corker's stock in the bank, and that of appellant, except 21 shares which he retained to qualify him as a director in the bank; and that it give to appellant and his wife notes dated back to January 5, 1928, bearing interest at 8 per cent., representing the par value of 156⅔ and 28 shares respectively, making up the total of 184½ shares which stood in the name of the Laurens Company. The January dividends already paid were credited on these notes. No other corporate action was ever taken by the Laurens Company, its stockholders, or its officers. It issued no stock certificates, kept no books, had no seal. The only money it ever possessed was the $20 paid by appellant for organization expenses. It claimed no assets, except the stock in its name; it had no credit; the money with which the stock was purchased was acquired entirely upon the credit of appellant. No record except the credit on the back of the notes was ever made of the receipt by it of dividends. It was organized for the sole purpose of owning the bank stock, pursuant to the idea of appellant that its organization and the placing of the stock in its name would prevent his being liable for stock assessments.
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> "There is no evidence in the record of any activity of Laurens Investment Company except in name. Every transaction had by or with reference to it was managed, controlled, and directed by appellant, and it functioned entirely as an agency or instrumentality of his. * * * "

(page 191)

There were allegations in the bill that the stock was placed in the name of Laurens Investment Company fraudulently for the purpose of avoiding liability at a time when the bank was insolvent or in danger of becoming so and this would seem to be the true ground for holding the bank president liable. Unfortunately, however, these allegations were abandoned at the trial and the Court was forced to find some other theory upon which to base liability. It did so by the following rather peculiar line of reasoning:

> "Appellant's troubles do not arise from the fact that the corporate entity of the Laurens Company has been disregarded. The judgment of the court below fully recognized and gave effect to that entity. It found that, though it did in fact exist, it existed as a mere creature organized and maintained for the purpose of holding, not really, but as agent for appellant, the stock which he caused to be put in its name, that appellant at all times remained the real owner of the shares, and that the law will look through the subterfuge of pretended ownership to fasten liability upon the shareholder to whom, in fact, the shares belong.
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> "The view which the court below took, and which we take, does not require, in fact, it prevents, the conclusion that the corporation in this case was a fiction, having no corporate existence. In this view, the judgment, thoroughly consistent with itself, stands upon the sound foundation on which alone a just disposition of this case may rest. It correctly gives effect to the general intent of appellant to create a corporation for the purpose of placing in its name his and his wife's stock in the bank, because what was done made that intent effectual. It with equal correctness denies effect to the particular intent which induced him to act as he did, to avoid liability on the stock, because the things done by appellant were not in accord, but wholly inconsistent, with that intent. For while the things done did place the certificates of stock in the name of the Laurens Company, they did not divest appellant of his beneficial ownership of them, but left him the real owner, and therefore liable to assessment."

ANALYSIS OF TRUSTEE CASES

The case of Keyes v. American Life & Accident Ins. Co., 1 F. Supp. 512, decided August 17, 1932 by the United States District Court for the Western District of Kentucky, did not hold that a stockholder in a holding company is a stockholder in a bank owned by such holding company. In fact, there was no holding company involved at all but merely an arrangement whereby the stock of the bank was held by trustees who issued participation certificates to various investors.

The facts in the case are summarized very briefly as follows in a head note published on page 512:

> "After the merger of the banks was accomplished by the exchange of stock, stockholders placed their stock in legal ownership of trustees to hold for their benefit under terms of trust agreement whereby trustees were empowered to vote the stock in each institution subject to control of certificate holders, and were to collect the dividends and distribute them among the holders. Some of the certificates were held by former stockholders who transferred stock in exchange for certificates, but most of the certificates were held by another bank acquiring them by purchase. The trust agreement expressly provided that owners of the certificates should be subject to the same liabilities as if they had been owners of proportionate part of shares held by the trustees, and should indemnify trustees for any loss or liability."

The court held that the beneficial owner of the stock was liable for the assessment notwithstanding the fact that the stock was registered in the hands of the trustee. In so holding the court stated:

> "It is well settled, as much as it is possible, that the actual and real owner of stock of a national bank is liable to assessment, whether his name appears on the books as owner or not. Where such stock is held by one in trust for another, such other is the actual and real owner. There is no room to question this. The beneficial owner is the actual and real owner. * * * It is unthinkable that a legal owner of such stock can relieve himself of liability by the device of transferring it to another for his benefit. In such case he is as much the actual and real owner as he was before the transfer."

The very recent case of O'Keefe v. Pearson, 73 Fed. (2d) 673, which was decided on December 1, 1934 by the Circuit Court of Appeals for the First Circuit, did not involve a holding company but involved a trustee arrangement similar to that involved in the National Bank of Kentucky cases (Keyes v. American Life & Accident Ins. Co., 1 F. Supp. 512, and Laurent v. Anderson, 70 F. (2d) 819).

The stock of the Federal Trust Company, which was later converted into the Federal National Bank of Boston, was delivered to a trustee in return for trust certificates. The trustee was to hold the shares for the holders of such trust certificates, to pay over all earnings to them, and to deliver the shares to them upon termination of the trust. The holders of the trust certificates retained the right to vote the shares. Moreover, the trust agreement contained the following specific provision whereby the holders of the trust certificates undertook to pay any assessment levied upon the shareholders of the bank:

> "In the event of any assessment being made or ordered upon the stockholders of the Federal Trust Company each registered holder of a trust certificate hereby agrees for himself, his heirs, executors, administrators and assigns to forthwith pay such assessment as may be made upon or against the stock of the Federal Trust Company held by the Depositary under this agreement and represented by the trust certificate held by him at the time such assessment is made or ordered, and while such assessment in unpaid, no trust certificate shall be transferred or new certificate issued therefor."

In accordance with the well established rule that assessments levied on stockholders of National banks are collectible from the real owners of the shares rather than the nominal or fictitious owners, the court held that the holders of the trust certificates were liable for the assessment.

DISTINCTIONS BETWEEN TRUSTEEING STOCK AND
SELLING IT TO A CORPORATION

(1) Where stock is transferred to a trustee to hold it for the benefit of the transferor, legal title passes to the trustee, but equitable title remains in the transferor; whereas the sale of stock to a corporation in which the seller owns stock transfers both legal and equitable title to the purchasing corporation.

(2) Where stock is transferred to a trustee for the benefit of the transferor, the transferor is entitled to all the income therefrom and the entire proceeds of any sale thereof; whereas the sale of stock to a corporation in which the seller owns stock deprives the seller of any right to the income from the stock sold or the proceeds of any resale thereof in the absence of express contract to the contrary. In the latter case the seller of the stock can thereafter share in such income or proceeds of sale only if the directors of the purchasing corporation choose to declare dividends and only in the proportion which his number of shares in the purchasing corporation bears to the total outstanding shares of said corporation.

(3) If a person transfers National bank stock to a trustee for his own benefit, he remains liable for any assessment thereon; whereas a bona fide, unconditional sale of bank stock to a bona fide corporation prevents the seller from being liable for any stockholders liability incurred thereafter.

(4) Where stock is transferred to a trustee for the transferor's benefit, the transferor can retain the right to vote the same or to instruct the trustee how to vote it; whereas an unconditional sale of stock to a corporation deprives the seller of any right to vote the stock or to direct the manner in which it can be voted, unless the seller is in a position to control the management of the corporation.

(5) Where stock is transferred to a trustee for the transferor's benefit the transferor remains subject to taxation on such stock; whereas the bona fide, unconditional sale of stock to a corporation relieves the seller of any further liability for taxes subsequently levied on such shares.

(5) Where stock is transferred to a trustee for the transferor's benefit, it is not subject to the claims of the creditors of the trustee; whereas stock sold unconditionally to a corporation becomes subject to the claims of all creditors of the corporation.