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Constitutional Law-Banks and Banking

RECENT CASE NOTES

CONSTITUTIONAL LAW—BANKS AND BANKING—A general creditor brought the action in behalf of the other creditors against a shareholder of a defunct bank to enforce the double liability laid down by Sec. 6, Art. 11, Constitution, Sec. 212 Burns Ann. St., 1926, stating that "stockholders in every bank or banking corporation shall be individually responsible to an amount over and above their stock, equal to their respective shares of stock, for all debts and liabilities of said bank or banking company." The defendant shareholder filed a demurrer alleging insufficient facts were stated. Demurrer was upheld and plaintiff appealed. *Held,* reversed. (1) The provision applies to banks of deposit as well as to banks of issue; (2) The constitutional provision was self-executing, and no means of enforcement was necessary. *Gaiser v. Buck,* Supreme Court of Indiana, Dec. 12, 1930, 174 N. E. 83.

A bank is an association or corporation whose business is to receive money on deposit, cash checks and drafts, discount paper, make loans and issue promissory notes payable to bearer called bank notes. *Words and Phrases,* Vol. 1, 776. Banks are classified as follows: (1) Banks of deposits including savings banks, (2) Banks of discount, being those which loan money on collateral or by means of discount, (3) Banks of circulation which issue bank notes payable to bearer. *Bank v. Collector,* 3 Wall., 485, 18 L. Ed. 207. At common law shareholders in banks as in other corporations were not liable for any debts in excess of the assets. *Toner v. Fulkerson,* 125 Ind. 224; *Shaw v. Boylon,* 16 Ind. 384. In determining whether the corporation is a banking institution the court will look to the articles of incorporation, its declared objects, the character of the business, and the construction placed on its charter powers by the officers. *Hamilton Nat. Bank v. Am. L. & T. Co.,* 66 Nebr. 671, 92 N. E., 189. The result, that the provision covered banks of deposit and discount as well as those of issue, seems both correct and proper under the definations and rules. The connotation of the word "banks" is enough to include the banks of deposit as well as issue, contrary to the contention of the defendant.

The court here held the constitutional provision to be self-executory which is generally so held when there is a manifest intent that the provisions should go into immediate effect and no ancillary legislation is necessary to the enjoyment of the right given, whereas when principles are indicated, without laying down rules by means of which those principles can be given the force of law, the courts have generally considered the provisions as not self-executing. 6 *R. C. L.;* 58 *Cooley Constitutional Limitations,* 122. A popular example is the 15th Amendment of the Federal Constitution for it abolishes all distinctions based on "race, color, or previous condition of servitude" and its further provisions that "Congress shall have power to enforce this article by appropriate legislation" indicates that the rule may not be sufficiently comprehensive to protect the right to suffrage and that legislation may be necessary. The "double liability" clause, although self-executing, does not preclude placing even higher liability on the shareholders. *Foster v. Row,* 120 Mich. 1, 79 N. W. 696.

The court in deciding that the provisions were self-executing and that they applied to banks of deposit as well as issue is a practical interpretation of the Indiana Constitution and follows the decided weight of authority in other states that have very similar provisions. *Brodie v. Pollock*, 110 Nebr. 844, 195 N. W. 457; *Dupey v. Swigert*, 127 Ill. 294, 21 N. E. 622; *Austin v. Campbell*, (Texas) 210 S. W. 277. R. R. D.