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THE BANKING CLAUSES IN THE CONSTITUTION
OF IOWA

The casual reader of section nine of Article VIII of the Iowa constitution is prone to think that it makes the not unusual provision for double liability of bank stockholders. He therefore learns with some surprise that the liability may be considerably more extensive. The present measure of liability seems to depend upon a somewhat involved history in which, by a tortuous course of reasoning the application of the constitutional provision was restricted so as to apply only to banks having the power to issue paper notes to circulate as money.\(^1\) The immediate consequence of this interpretation was to relieve the stockholders of banks of discount and deposit of double liability. The remote consequence of thus holding that the constitution was silent as to the measure of liability of stockholders of the latter banks was to leave the legislature free to impose upon them liability for assessments to repair the capital\(^2\) as well as double liability,\(^3\) \(i.e.,\) liability to provide in the interest of creditors a sum equal to, and in addition to, the amount of their respective shares. The recent banking situation in Iowa seems to suggest that this history be examined in detail.

**Bank Clauses in the Constitution of 1844**

The people of Iowa had some unfortunate experiences with banks in the early days, and this experience was reflected in the provisions of the Constitutions of 1844, 1846, and 1857.

Article IX of the Constitution of 1844 dealt with "Incorporations," all kinds evidently being governed by the same provisions. Section 2 of article IX declared that "The personal and real property of the individual members of all corporations hereafter created shall, at all times, be liable for the debts due by any such corporation." Section 3 provided that "The Legislature shall create no bank or banking institution, or corporation with banking privileges in this State, unless the charter with all its provisions,

\(^1\) Allen v. Clayton, 63 Iowa 11, 18 N. W. 663 (1884).

\(^2\) See Iowa Code 1927, §9246.

\(^3\) Idem, §9251.
shall be submitted to a vote of the people at a general election for State officers, and receive a majority of the votes of the qualified electors of this State, cast for and against it." The seventh section prohibited the state from becoming a stockholder in any bank or other corporation.

It is very evident from these three sections that it was the intention of the constitutional convention to forbid the general assembly or any state officer authorized by the general assembly to issue articles of incorporation to any bank. Second, the state was not in any way to become a stockholder in any kind of a corporation, and, third, the liability of stockholders was "for the debts due by any such corporation."

The Constitution of 1844 was never adopted by the people, but its provisions may be taken as giving some indication of the attitude of the people at that time toward banks.

**Prohibition of Banks in the Constitution of 1846**

The Constitution of Iowa of 1846, under which Iowa was admitted into the Union, was adopted at a time when the rush for land in the fertile prairies of Iowa was at its height. Banking was on an unstable basis and there was much of the "wild cat" and "red dog" currency extant.

The Constitution of 1846 expressed the lack of public confidence in banks by the declaration in article IX that "no corporate body shall hereafter be created, renewed, or extended, with the privilege of making, issuing, or putting in circulation, any bill, check, ticket, certificate, promissory note, or other paper, or the paper of any bank, to circulate as money. The General Assembly of this State shall prohibit, by law, any person or persons, association, company or corporation, from exercising the privileges of banking, or creating paper to circulate as money."

In commenting upon this provision The Iowa Capital Reporter⁴ said:

"The old draft permitted the establishment of banks, under certain prescribed restrictions which all experience has shown to be wholly inadequate to secure the public interest. In the present compact entered into by the Delegates of the people, it is stipulated that no such institutions shall be established in the State. The wisdom of this provision is very conclusively proved, by the fact that its absence in the constitutions of many of the old states has

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been found to be a grievous defect, from which the public interest has vitally suffered, and that those whose constitutions have recently been framed have seen the absolute necessity of adopting it, and have adopted it accordingly. Though it has met, and probably will yet meet, with some opposition, we are satisfied that it will meet the hearty approval of more than three fourths of the people of Iowa."

**Bank Clauses of the Constitution of 1857**

The prohibition of banks under the Constitution of 1846 did not work out as its framers had anticipated. The state was overrun with the doubtful currency of banks of other states. The prohibition of all banks in the state of Iowa was one of the chief reasons for the short life of the Constitution of 1846 and the adoption of the present Constitution of Iowa (1857). The debates of the constitutional convention of 1857 were printed in full and thus we can gain a fairly accurate idea of what was in the minds of the framers of that instrument. The members of the convention assembled, conscious of the fact that the people were anxious to have the restrictions on banking repealed. Their problem therefore was that of providing adequate regulations and safeguards.

Much of the time of the convention was devoted to the question of banks, and the provisions relating to them were formulated with great care, which provisions as finally adopted were included in article VIII on corporations. The clause in this article which has

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**How created.** "Section 1. No corporation shall be created by special laws; but the General Assembly shall provide, by general laws, for the organization of all corporations hereafter to be created, except as hereinafter provided."

Property taxable. "Sec. 2. The property of all corporations for pecuniary profit, shall be subject to taxation, the same as that of individuals."

State not to be a stockholder. "Sec. 3. The State shall not become a stockholder in any corporation, nor shall it assume or pay the debt or liability of any corporation, unless incurred in time of war for the benefit of the State."

Municipal corporation. "Sec. 4. No political or municipal corporation shall become a stockholder in any banking corporation, directly or indirectly."

Act creating banking associations. "Sec. 5. No act of the General Assembly, authorizing or creating corporations or associations with banking powers, nor amendments thereto, shall take effect, or in any manner be in force, until the same shall have been submitted, separately, to the people, at a general or special election, as provided by law, to be held not less than three months after the passage of the act, and shall have been approved by a majority of all the electors voting for and against it at such election."

State bank. "Sec. 6. Subject to the provisions of the foregoing section,
been of most interest to stockholders in insolvent banks is section 9, defining the extent of the stockholder’s liability, and it is not surprising that this section has recently been invoked to protect stockholders against what seemed illegal and excessive assessments.

**Allen v. Clayton**

The leading case interpreting this section seems to be *Allen v. Clayton,* and on this case the state banking department has relied for its authority in ordering assessments on bank stocks in excess of provisions of section 9 of article VIII.

The case of *Allen v. Clayton* was a suit in equity decided by the Supreme Court of Iowa in 1884, Judge Seevers rendering the

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Specie basis. “Sec. 7. If a State Bank be established, it shall be founded on an actual specie basis, and the branches shall be mutually responsible for each other’s liabilities upon all notes, bills and other issues intended for circulation as money.”

General banking law. “Sec. 8. If a general Banking law shall be enacted, it shall provide for the registry and countersigning, by an officer of State, of all bills, or paper credit designed to circulate as money, and require security to the full amount thereof, to be deposited with the State Treasurer, in United States stocks, or in interest paying stocks of States in good credit and standing, to be rated at ten per cent. below their average value in the city of New York, for the thirty days next preceding their deposit; and in case of depreciation of any portion of such stocks, to the amount of ten per cent. on the dollar, the bank or banks owning said stocks shall be required to make up said deficiency by depositing additional stocks; and said law shall also provide for the recording of the names of all stockholders in such corporations, the amount of stock held by each, the time of any transfer, and to whom.”

Stockholders responsible. “Sec. 9. Every stockholder in a banking corporation or institution shall be individually responsible and liable to its creditors, over and above the amount of stock by him or her held, to an amount equal to his or her respective shares so held, for all its liabilities accruing while he or she remains such stockholder.”

Bill-holders preferred. “Sec. 10. In case of the insolvency of any banking institution, the bill holders shall have a preference over its other creditors.”

Suspension of specie payments. “Sec. 11. The suspension of specie payments by banking institutions shall never be permitted or sanctioned.”

Amendment or repeal of charters; exclusive privileges. “Sec. 12. Subject to the provisions of this article, the General Assembly shall have power to amend or repeal all laws for the organization or creation of corporations, or granting of special or exclusive privileges or immunities, by a vote of two-thirds of each branch of the General Assembly; and no exclusive privileges, except as in this article provided, shall ever be granted.”

*Supra* n. 1.
opinion of the court. The question at issue was whether banking corporations organized for discount and deposit only could exempt the private property of stockholders from liability for the corporate debts. The lower court held that the constitutional provision for double liability applied, but this decision was reversed on appeal.

It is the purpose of this paper to show that Judge Seevers based his decision, in part, on the intent of the framers of the Constitution of 1857, and that his contentions and conclusions can not be substantiated by the historical evidence in the journals of the constitutional convention of 1857.

Quoting sections 1 and 2 of article VIII of the Constitution of 1846, the court said, "Under the foregoing provisions, corporations having the power to issue bills to circulate as money were absolutely prohibited, but corporations having the banking powers of discount and deposit could lawfully exist," and it bases this statement on the fact that the first general assembly passed a general corporation law. The reasoning of the court, however, is not convincing. It is true that the legislature did pass a general incorporation law, but in as much as the constitution had definitely forbidden corporations with banking privileges, there is nothing in this law that specifically concerns banks. Indeed, commenting on this act, one writer has said that: "It may be inferred from the number of private institutions which sprang up during the decade after 1846 that prospective bankers were either unable to see any advantage in incorporation or else were very doubtful as to the possibility of incorporation." The fact that no banks were organized is even more convincing. Yet Judge Seevers declares that under the general corporation act of 1847 banks "of discount and deposit could lawfully exist."

The language of the Constitution of 1846 itself seems to make a distinction between corporations exercising the privileges of banking and those issuing paper notes. This part of the Constitution of 1846 reads: "The General Assembly of this state shall prohibit, by law, any person or persons, association, company or corporation, from exercising the privileges of banking, or creating paper to circulate as money." It is just as reasonable to assume that they

7 Ibid. at 13, 18 N. W. at 664.
8 1st G. A. 1846, c. 81.
9 Howard H. Preston, History of Banking in Iowa, 48.
10 Iowa Const. 1846, art. IX, sec. 1.
had both kinds of banking in mind as that they had different types of legal persons against whom the prohibition was directed. Furthermore the general assembly did not supplement the prohibitory clause of the constitution by statute until the adoption of the Code of 1851.

The Functions of the Early Banks

In order that we may better understand the attitude of the pioneers on the subject of banks, let us for a moment note their attitude toward the subject in the constitutional conventions of 1844 and 1846. In the convention of 1844, Hon. Stephen Hempstead declared he was opposed to banks of discount and circulation. He said that the system of banking then generally practiced was a combination of several functions, that is to say, the loaning of money, receiving of money on deposit, discounting notes and bills of exchange, and manufacturing paper money for circulation, and that, for the exercise of these privileges, companies of private individuals were incorporated by the legislatures of the different states and territories. He objected mostly to banks of circulation and discount, saying that banks of deposit could do no great harm, as the legitimate object of their establishment was only for the safe keeping and transfer of coins and bullion. Banks of discount, said Mr. Hempstead, live and fatten upon the distress and misfortunes of their fellow men. Thus we see that Mr. Hempstead had raised his voice against banks of discount in 1844, but Judge Seevers, in the decision in Allen v. Clayton, appears to be of the opinion that banks of issue were the only ones against which the constitution makers were drafting restrictions.

The Constitution of 1844 did not prohibit banks and it was rejected by the people. The Constitution of 1846 did prohibit them and was adopted. It may be admitted that banks of issue were the chief evil which the constitution makers had in mind, but there is ample evidence that there was a general hostility toward all banking institutions. It is probably true that in those days the issuance of notes to circulate as money was considered as the chief source of profit in banking. With regard to this point Dr. Preston says:

"It is difficult to determine accurately the real purpose of the authors of the clause of the Constitution [1846] prohibiting the creation of corporations with banking privileges. Unquestionably the main purpose was to prevent banks of issue, but whether or not

11 Cf. Shambaugh, op. cit., 197.
the framers of the Constitution intended to strike at banks of discount and deposit is not as certain. The function of note issue occupied the chief place in the public thought concerning banks. It was as note-issuing institutions that they played the greatest part in the economic life of the community; and so in those days it was regarded as virtually equivalent to a prohibition against banking to prohibit the issuing of circulation of any kind.\textsuperscript{12}

Iowa was not alone in attempting to check the evils of "wild cat" currency. Florida, Texas, Arkansas, Illinois, Wisconsin, Minnesota, Oregon, California, and the District of Columbia all made banking illegal. In view of the subsequent findings of Dr. Preston quoted above, Judge Seevers' statement that "no complaint was made, and it was not supposed, that the Constitution of 1846 restricted or prohibited the establishment of banks of discount and deposit" is not convincing. In the debates in the constitutional convention of both 1844 and 1846 a distinction between banks of issue and banks of deposit and discount was made, and no exception in favor of banks of discount or deposit was made in the Constitution of 1846.

Dr. Preston also points out that according to a resolution of the Democratic convention held in Iowa City, September 24, 1846, "it appears that the people wished to prohibit all forms of banking. Referring to the vote on the Constitution which had been taken on August 3rd preceding, the platform makers held that this 'is a decisive indication of public sentiment against all banking institutions of whatsoever name, nature, or description.' "\textsuperscript{18} Such contemporary evidence as the foregoing must be considered more convincing than the unsupported statement of Judge Seevers.

It may well be asked why Judge Seevers scarcely mentioned the "general banking" act of 1858. This act authorized the creation of banks with power to issue notes to circulate as money under the restrictions imposed by section 8 of article VIII of the constitution. These banks were also banks "of discount, deposit and circulation."\textsuperscript{14} Dr. Preston points out that no banks were ever organized under this act.

Judge Seevers emphasizes the fact that the state bank was a bank of issue. That was no doubt true, but its branches were authorized in addition to issuing notes "to loan money, buy, sell and discount

\textsuperscript{12} History of Banking in Iowa, 46.
\textsuperscript{18} Ibid. 47.
\textsuperscript{14} Iowa Laws 1858, c. 114, §7.
bills of exchange, notes, and all other written evidences of debt . . . to receive deposits; buy and sell gold and silver coin and bullion; collect and pay over money, and transact all other business properly appertaining to banking, subject, however, to the provision and restriction of this Act.”

It is thus very evident that in the early days of Iowa and in fact in most states prior to the establishment of the National Banking Act in 1863, banking business included the three functions of issue, discount and deposit, and it is reasonable to suppose that the framers of the constitution had all three functions in mind.

Judge Seevers argues that “the bill-holder, as a matter of fact, is compelled to accept the circulating medium in use as money, and the depositor is a free agent, who can deposit his money in a bank or not, as he chooses, and . . . as the privilege of issuing bills to circulate as money is an exercise of sovereign power which belongs to the state, the same reasons for interference on the part of the state to protect the bill-holder do not exist as to the depositor.”

This may, indeed, be looked upon as a problem separate from the liability of the stockholder. The Constitution of 1857 provides: “In case of the insolvency of any banking institution, the bill holders shall have a preference over its other creditors.” This section occasioned a long debate, in which it was conceded that the bill holder having been made a preferred creditor, depositors and other creditors would take what was left in cases of insolvency. Judge Seevers probably got his idea that the depositor put his money in a bank at his own risk from the speech of Mr. Wilson in the constitutional convention of 1857. But because a preference was given to bill holders is no evidence that the stockholders’ liability applied only to banks of issue. We shall later show that the rule of construction which was followed was faulty and based upon inadequate study of the subject-matter. When banks of issue ceased to exist and there were no more bill holders to protect, the legislature made the depositors preferred creditors.

Justice Weaver in State v. Corning State Savings Bank said:

“Anything which tends to strengthen public confidence in the banks and assures the depositors of the safety of their money is a matter of general public benefit, while anything which engenders

15 Iowa Laws 1858, c. 87, §28.
16 Allen v. Clayton, supra n. 1, at 18, 18 N. W. at 666.
17 Constitution of Iowa (1857), art. VIII, sec. 10.
distrust or alarm and causes a withholding or withdrawal of deposits is a public injury. It is therefore entirely fitting that in authorizing the organization of banks the law should at once provide for the protection of depositors, and for the protection of public interests, by giving preference to the claims of those without whose co-operation modern banking would be impossible."

Judge Seevers' interpretation of section 9 of article VIII of the constitution is exceedingly narrow. A banking corporation with only powers of discount and deposit is as much a banking corporation as one with power to issue notes, and it seems clear that the members of the Convention of 1846 understood both kinds of banks. Moreover the declaration of the democratic party in 1846 indicates that they had all kinds of banks in mind. The reason why the wording of section 9 is entitled to have a broader meaning than the terms used in sections 5, 10, and 11 is because, as pointed out above, the bank of issue was the chief evil aimed at in those sections. The common law gave the stockholder a limited liability and this limited liability is universally recognized, but to give protection to depositors most states have followed the plan of double liability for banking corporations, and the constitution makers recognized that general tendency.

Judge Seevers' statement that "no such claim" of liability had ever been made is unfounded. The case of Stewart v. Lay involved the liability of a stockholder in an insolvent bank, and will be referred to later.

**JUDGE McCLAIN ON THE STOCKHOLDER'S LIABILITY CLAUSE**

In 1907 Judge McClain said, in Elson v. Wright, "The double liability of stockholders in banks is provided for in section 9 of article 8 of the State Constitution, but the method of enforcing such liability is left to be determined by statute." Certainly it can not be contended that there were any banks of issue in Iowa in 1907. The recognition of section 9 by Judge Beck in 1877 and again by Judge McClain in 1907 as fixing and limiting the liability of a stockholder in a bank ought to outweigh the narrow interpretation of Judge Seevers in 1884. Moreover in 1907, Judge McClain, one of the ablest and most thorough students of the constitution ever on the Supreme Court of Iowa, delivered an address at the Semi-

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19 127 Iowa 198, 204, 103 N. W. 97, 99 (1905).
20 45 Iowa 604 (1877).
21 134 Iowa 634, 636, 112 N. W. 105, 106 (1907).
Centennial Celebration of the Constitution of Iowa in which, reviewing the provisions of article VIII of the Constitution of 1844, he said:

"The State was suffering from a depreciated paper currency, issued by banks in various States, many of which had proven to be irresponsible. But it was thought sufficient at that time to prohibit the incorporation of any bank or banking institution unless the charter thereof, with all its provisions, should be submitted to a vote of the people at a general election. The convention which framed the Constitution of 1846, took more radical measures as against the supposed evils of banking, and entirely prohibited the creation of any corporation or the extension of the charter of any existing corporation having the privilege of making, issuing, or putting in circulation any kind of paper to circulate as money. The prohibition extended further to the creation of any corporations with banking privileges. In that convention there had been strong opposition to this method of regulation by extermination, and an agitation had almost at once been started toward a change by which there might be banks in the State subject to legitimate regulation, for it was pointed out that with the inability of the legislature to provide for a safe currency, the people were helpless as against the flood of depreciated or unsafe currency brought in from other States.

"As already indicated, this agitation, growing in strength from year to year, was the practical occasion for the calling of the convention of 1857. In that convention the whole subject was threshed over, the antagonism to banks, whether of issue or deposit, was fully aired, and the necessity of some form of banking for communities rapidly developing in population and wealth was on the other hand strongly insisted upon. Without going into the merits of the debate pro and con, the ultimate result was the provision in Article VIII for the creation of corporations or associations with banking powers on submission of the question to popular vote, and the approval thereof by a majority of the electors voting for and against the proposition. There are also stringent provisions for the security of the circulation, and the depositors in the banks which should thus be created. Under the authority thus given, the legislature at its next session provided for the incorporation of a State Bank with branches, and this legislation was approved by the voters at the next election. At the same time general banking was authorized. A justification of these more liberal provisions for the banking business is to be found in the institutions thus authorized. The State Bank continued solvent and its notes redeemable until it was forced out of business by the enactment of the national banking law; and the incorporated banks authorized by State law have been subject to such rigid regulation and supervision that they have,
with rare exceptions, conducted their business with entire safety to their depositors."22

In the above quotation it is very evident that Judge McClain did not give the words "banking privileges" the narrow interpretation that Judge Seevers did. He also recognized that a bank might be one of both issue and deposit and that there was the necessity of protecting not only the bill-holders but the depositors as well. Dr. Preston's statement above is quite in harmony with that of Judge McClain.


Judge Seevers partly attempted to justify his interpretation of the provision of article VIII by the debates in the Constitutional Convention of 1857. In this connection he said: "It may be said with safety that banks of discount and deposit, as distinguished from those issuing bills to circulate as money, are not mentioned in the debates, or, if so, our attention has not been called thereto, while there are numerous references made to banks of issue."23 Judge McClain, however, found references to banks of discount and deposit. The debates of the constitutional convention of 1857 contain a stenographic report of the entire debates on every subject coming before the convention and they fill two volumes with a total of 1066 pages of closely printed matter in small type, set in double columns, which makes reading difficult. These circumstances may account for Judge Seevers' failure to find the relevant passages. Conceding that the convention was chiefly concerned with remedying the evils arising from banks of issue, there is nevertheless specific evidence that banks of discount and deposit were given consideration in the convention.

In the first place it should be borne in mind that article VIII relates to corporations and not to banks exclusively. It is therefore more reasonable to assume that when the framers of the constitution mentioned banks, banking corporations or banking institutions they had a general class in mind and not a particular kind of bank, except as the particular kind was especially mentioned.

Section 4 of article VIII is a direct prohibition of any "political or municipal corporation" "becoming a stock-holder in any bank-


23 Allen v. Clayton, supra n. 1 at 20, 18 N. W. at 667.
ing corporation, directly or indirectly." Could it not also then be claimed that this prohibited cities, counties, etc., only from taking stock in banks of issue? Judge Seevers saw the dilemma into which his logic was leading him when he said:

"it is insisted that banks of discount and deposit, as well as those issuing bills to circulate as money, are there referred to; and, as the same words—'banking corporations'—are used in both sections four and nine, that the same construction must be placed on the same words in both sections. But this does not necessarily follow. The argument is entitled to great consideration, but is not controlling. The same reason exists for prohibiting a municipal corporation from becoming a stockholder in one kind of a bank as in another." 24

In this case he failed to follow his "fundamental rule," to which he said there was "no exception." To arrive at the meaning of the words "banking corporations" one must construe it with the preceding and the following sections which have reference to the same subject matter. He realized that it would be contrary to public policy for cities and towns to be stockholders in any kind of a bank, and apparently he was willing, if necessary, to apply the prohibition in section 4 to any kind of a banking corporation.

This being so, his assertion that banks of discount and deposit as distinguished from banks of issue were not considered in the convention is contradicted by his own argument. He passed over section 4 hurriedly and, without even answering the argument, made the admission that "the same reason exists for prohibiting a municipal corporation from becoming a stockholder in one kind of a bank as in another."

Fortunately there is ample evidence in the debates of the convention as to what the intent of section 4 was. Let it be remembered that although under the constitution of 1846 banks were prohibited, nevertheless numerous private banks (unincorporated) existed. Mr. Hall, in the convention, said:

"The gentleman from Jefferson (Mr. Wilson) speaks entirely without information, when he says that the city of Burlington has gone into banking. We have simply done this: we have borrowed twenty-five thousand dollars in gold, which we have distributed among the three banking institutions in that town. Orders have been issued, but never so much as they have of this gold. Those orders have been taken and used among our citizens as currency.

24 Ibid. at 18, 18 N. W. at 666.
These banks hold this specie and pay six per cent. to the city as long as they have this gold in their possession."

Mr. Wilson replied:

"The city of Burlington is anxious to have the use of twenty-five thousand dollars. She borrows it in gold, and must pay some interest, for men do not lend their money without receiving some interest upon it. The city of Burlington, instead of circulating that gold, deposits it in three banks there, and they pay her for it at the rate of six per cent. interest. Then the city of Burlington issues her paper, and the banks of Burlington are in partnership with that city, to send this paper all over the country."

This was under the Constitution of 1846, which prohibited banks, i. e., organized under authority of law, but private banks were numerous.

If many cities were doing what it was admitted that Burlington was doing, is it any wonder that the constitution makers forbade municipal corporations becoming stockholders in "any banking corporation, directly or indirectly"? If a city council in order to bolster up an insolvent bank took stock in the bank in lieu of some of its deposits, it is safe to say that such action would be contested and that section 4 of article VIII would be invoked and sustained by the court.

There was much debate in the convention on the subject of county and city indebtedness, and there was a wide difference of opinion among the members: some wished to prohibit counties and cities from taking stock in railroads or becoming indebted for any internal improvements; others wished to authorize them specifically to do so. There was in fact more debate over the proposition to forbid municipal corporations the right to take stock in railroads and other corporations for internal improvements than there was concerning their right to take stock in banks.

On February 7th, 1857, Mr. Hall, a delegate from Des Moines county, offered a substitute for section 4 of the report of the committee on incorporations, which read:

"Counties, cities, towns, and all other political and municipal corporations, are prohibited from taking stock, or in any manner becoming interested in any bank or banking institution, authorized by the laws of this State."

25 1 Debates of the Constitutional Convention 1857, 357.
26 Ibid. at 358.
27 Ibid. at 303.
Note how carefully the subject of this substitute was defined. The report as finally adopted also distinguished between banks and banking corporations. Mr. Hall was a lawyer and one of the leaders in the convention. Had he had banks of issue only in mind, there is every reason to believe that he would have said so.

In a lengthy debate on the relative merits of different banking systems Mr. Ells called attention to the high rates of interest then prevailing and said, "Now, sir, it is not at all marvelous that wealthy gentlemen, like the gentleman from Des Moines, (Mr. Hall) who have money to loan should prefer banks of deposit and exchange to banks of issue." Yet Judge Seevers said in his opinion, "It may be said with safety that banks of discount and deposit as distinguished from those issuing bills to circulate as money, are not mentioned in the debates."

Mr. Clarke of Henry County said, "Some are afraid of banks of any kind and will not trust them at all." He evidently had in mind other kinds of banks than banks of issue.

**The Stockholder's Liability Clause**

The stockholder's liability clause was a subject of much discussion, and it is submitted that it was intended to cover all kinds of banks. The subject came before the convention for consideration on the report of the committee on incorporations, and the discussion extended over several days, each section being considered separately in the committee of the whole.

The original report contained a section fixing the liability of stockholders in general banking corporations and another fixing the liability of stockholders in a state bank if organized. This latter section read: "If such a State Bank be established, the branches shall be mutually responsible for each others liabilities upon all paper credit issued as money, and the liabilities of stockholders shall be the same as those of banks organized under a general law—all of which shall be provided for by law."

In connection with the discussion on this section, Mr. Clarke of Henry County said:

"I look upon the whole banking system as a great evil; but I

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look upon it as a necessary one, demanded by the necessities of the people."\textsuperscript{31}

Again, he argued:

"If we provide here for a perfectly safe banking system under a general banking law, and make each stockholder individually liable, we would thereby provide in every bank, the best kind of a saving institution. Every bank organized under this law would be a savings bank, in which the gentleman, if he happens to be a trustee for any of these 'widows and orphans,' can most safely deposit their funds upon interest, and thus relieve himself of that grievous burden. As wonderful as it may seem, the system we propose here will afford an opportunity for the safe investment of all the funds that may be left by deceased persons for their widows and orphans. They can be deposited in these institutions, and they will be the safest institutions that can be provided, and interest will be allowed upon these deposits.

"Does not the gentleman know that this is the system in vogue here now? Does not the gentleman from Jasper (Mr. Skiff) allow interest after a certain time upon all deposits made with him? Is this not the best system? If you adopt a system in which the bankers would rather issue their own notes for circulation, and not use the money deposited with them, a system in which the negotiability of the stocks is more important than the bills, they would say, we cannot allow you interest upon your deposits, but you can invest your money in our stocks."\textsuperscript{32}

Note that in this speech Mr. Clarke spoke of savings banks, and his argument for a stockholder's liability was to make banks safe for depositors. Evidence such as this ought to be sufficient to show that Judge Seevers' opinion concerning the intent of the constitutional convention was not based upon a careful study of the debates.

But if more evidence is desired, the most convincing proof that the stockholder's liability clause was not intended to apply only to banks of issue is found in the debates of February 26, 1857, when the convention made final disposition of the provisions of article VIII on incorporations.

The committee on incorporations early submitted a report on article VIII, consisting of 19 sections that were considered in the committee of the whole, amended, and then passed on by the convention. Thus a motion was made and carried by a majority of one to refer the whole article to a select committee of five. This committee reported a revised article VIII omitting eleven sections

\textsuperscript{31} Ibid. at 364.

\textsuperscript{32} Ibid. at 369.
which had been previously agreed to. The presentation of this report stirred up much feeling, and it was voted to reject the report of the select committee. The next day a motion to reconsider the vote by which the report of the special committee was rejected, was adopted. One of the sections omitted by the special committee was the section on stockholder's liability. The advocates of various restrictions then began to offer amendments. Mr. Parvin moved to add the following section:

"Every stockholder in a banking corporation or institution shall be individually responsible and liable to its creditors, over and above the amount of stock by him or her held, to an amount equal to his or her respective shares so held, for all of its liabilities."\(^2\)

Mr. Emerson moved to amend the section offered by Mr. Parvin so as to read:

"The officers and stockholders of every corporation or association for banking purposes, issuing bank notes or paper to circulate as money, shall be individually liable during the time of their being officers or stockholders of such corporation or association."\(^3\)

This amendment of Mr. Emerson was defeated by a vote of 10 to 24. Mr. Parvin consented to the addition of the words "accruing while he or she remains such stockholder" to his amendment, and in that form it was adopted by the convention and appears in that form as section 9 of article VIII in the constitution. Could anything be more convincing? The convention had before it directly the proposition to limit the liability of stockholders to banks of issue and rejected it by a 2 to 1 vote for the more general phraseology which appears in section 9. Yet Judge Seevers dismisses this evidence with the statement that this simply showed that "the Convention was unwilling to make the officers and stockholders liable to the extent contemplated by the proposition referred to, and thought that section nine, as it now stands, as it has been construed by us, was as far as it was necessary or proper to go."\(^4\)

Putting these two propositions in comparative columns and in the light of the evidence already presented, most of which Judge Seevers either ignored or failed to find, it seems very evident that there was more than a difference of the extent of liability involved in the two sections. The phrase "banking corporation or institu-

\(^2\) Ibid. at 785.
\(^3\) Ibid. at 786.
\(^4\) Allen v. Clayton, supra n. 1, at 21, 18 N. W. at 667.
tion” as found in section 9 is the general class to which the section applied, while “corporations or associations for banking purposes, issuing bank notes or paper credit to circulate as money” are a special kind of banking corporation.

Mr. Parvin's amendment adopted by the convention and as it appears in sec. 9 of Art. VIII:

"Every stockholder in a banking corporation or institution shall be individually responsible and liable to its creditors over and above the amount of stock by him or her held to an amount equal to his or her respective shares so held, for all its liabilities accruing while he or she remains such stockholder."

Mr. Emerson's amendment which was voted down:

"The officers and stockholders of every corporation or association for banking purposes, issuing bank notes or paper credit to circulate as money shall be individually liable during the time of their being officers or stockholders of such corporation or association."

A careful reading of the debates will convince one that article VIII was intended to apply to all corporations, as its title indicates, with special provisions for a state banking system. Section 1 declares that "no corporation shall be created by special laws; . . . except as hereinafter provided." The exception refers, as the debates show, to section 6, which authorizes the general assembly to create by special act a state bank with branches, but "subject to the provisions of the foregoing section." That is, section 5 which provided for a popular referendum on the subject. Sections 7 and 8 are both conditional clauses, each starting with the conjunctive "if." Section 9 is general as to banks, but does not apply to other corporations. It is significant that sections 10 and 11 refer only to banking institutions and do not mention banking corporations, for many members of the convention were not sure as to what the status of a state bank would be, and whether the state could organize a state bank and not be a stockholder or have an interest in it. It was even urged that the state guarantee the bill holders.

In section 12 the general assembly is given power "subject to the provisions of this article," "to amend or repeal all laws for the organization or creation of corporations, or granting of special or exclusive privileges or immunities." This language is general as to all corporations, but "subject to the provisions of this article." What are the provisions of this article (article VIII) which the

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38 2 ibid. at 1023.
legislature cannot alter? None other than the provisions of the preceding eleven sections.

Nor should the importance of section 12 of article VIII be overlooked. Provisions of this nature were generally inserted in state constitutions as the result of the decision of the United States Supreme Court in the Dartmouth College Case which held that a corporation charter was a contract. In Iowa the reservation of the right of the state to alter, amend or repeal corporate rights is based upon section 12 of article VIII. Among the numerous decisions interpreting this section may be noted St. John v. Building and Loan Association. This case involved the right of the legislature to make changes in the law under which building and loan associations were operating. In the decision of the court which was given by Judge Deemer, it was said:

"It is the general rule that no act of the General Assembly can vary or destroy the obligations of a contract; but there is also a general provision to the effect that 'every franchise obtained, used, or enjoyed by such corporation (corporations for pecuniary profit) may be regulated, withheld, or be subject to conditions imposed upon the enjoyment thereof whenever the General Assembly shall deem necessary for the public good.' And there is a general rule in the constitution permitting the amendment or repeal of all laws for the organization or creation of corporations. Article 8, section 12."\(^{37}\)

Again, in First National Bank v. City of Council Bluffs, it was contended

"that no valid assessment [for taxation] can be made upon the shareholders of shares of stock in savings and state banks and commercial banks and other money capital, for the reason that Chapter 63 of the Acts of the Thirty-fourth General Assembly . . . is void, in that it was not passed by a two-thirds vote of each branch of the general assembly. . . This contention is based on Section 12 of Article 8 of the Constitution."

The court held that

"the legislature violated no provision of Section 12 of Article 8 of the Constitution. It cannot be said that the changing of the method of assessment granted to these institutions any 'exclusive privileges or immunities,' requiring a two-thirds vote."\(^{39}\)

Judge Seevers made no comment on the provisions of section 12

\(^{37}\) Cf. Horack, Organization and Control of Industrial Corporations.

\(^{38}\) 136 Iowa 448, 453, 113 N. W. 863, 865 (1907).

\(^{39}\) 182 Iowa 107, 119–121, 161 N. W. 706, 710 (1917).
of article VIII, yet it is readily seen that although separated by
eight preceding sections it is applicable to all the kinds of corpora-
tions contemplated in sections 1, 2 and 3. This being so, what be-
comes of Judge Seevers’ logic that a different interpretation could
not be given to the words “banking corporations” in section 9 than
to “corporations having the power to issue bills to circulate as
money”? If the first and last sections of article VIII relate to all
kinds of corporations, according to his own method of reasoning it
is hardly justifiable to hold that all the sections between related to
the same kind of banks, i.e., banks of issue. Moreover section 12
made all of the other sections in article VIII subject to its provi-
sions. It seems evident that section 9 was just as much intended to
apply to all kinds of banking corporations as sections 1 and 12 were
intended to apply to all kinds of corporations.

Judge Seevers’ “fundamental rule” of construction to which he
says “there is no exception, unless the words to be construed have
such a clear and precise meaning that there is and can be but a
single conclusion as to what is meant” does not apply to section 9
when studied in the light of the historical evidence here presented.
Moreover it will be noted that the judge said, “sections 5, 6, 7, 8,
10 and 11 have exclusive reference to banks of issue.” Why did he
omit section 4, which provided that “no political or municipal cor-
poration shall become a stockholder in any banking corporation,
directly or indirectly”? Should the conclusion of Judge Seevers
be adopted that “To arrive at the meaning of the words ‘banking
corporations’ in section nine, that the sections preceding and follow-
ing it, which have reference to the same subject matter, must be
read and considered,” section 4 must follow the same rule of con-
struction.

Clearly the judge is correct in saying that the subject matter
“must be read and considered” and our contention is that he
failed to read article VIII and its several sections in the light of the
historical evidence in the debates of the constitutional convention.
The subject of corporations takes up about one-sixth of the two
volumes of the debates, and every word and phrase of every section
was most carefully weighed and considered. In all this evidence it
is plain that the major interest of the convention was the ade-
quate regulation of banks of issue, but the evidence is also conclusive that
it did not omit or neglect to consider all kinds of banking corpo-
ration. Moreover of the thirty-six members of the convention four-
teen were listed as lawyers, two as bankers, twelve as farmers and
the rest mostly as business men. The committee which drafted the article on incorporations consisted of three lawyers, one real estate dealer and one farmer-engineer. It is safe to say that these men understood the meaning of words and that, when they used the words, bank, banking corporation and banking institution, they did not have only one type of bank in mind.

In speaking of the personnel of the constitutional convention of 1857 at the semi-centennial celebration, Judge McClain said:

"Nearly all of them had had previous experience in public life, and were in general well fitted to discuss and mature the provisions which were to be given a place in the permanent charter of our State government; and the instrument which they prepared is inferior in its scope and details to none of those adopted by the States formed out of the Northwest Territory, which had furnished the material to be drawn upon for improvements or additions in revising the Constitution of 1846."40

RECENT INTERPRETATION OF THE STOCKHOLDERS' LIABILITY CLAUSE

In the litigation arising out of the numerous recent bank failures in Iowa it is a matter of regret that the supreme court has been governed by the doctrine of stare decisis in considering stockholders' liability. In a recent case the court said:

"This appeal presents but one question for decision: Is a stockholder of a bank, who, in response to a resolution of its board of directors, has paid a 50 per cent. assessment prior to the closing of the bank in order to make good the impairment of its capital, entitled to a credit therefor on a 100 per cent. assessment subsequently sought to be levied by the receiver of the bank in conformity to statutory provisions?"41

Quoting section 9251, Code of 1924, which defines the stockholder's liability, the court said:

"This statute is similar to a provision of the Constitution of Iowa. Article 8, §9. The constitutional provision, however, applies only to banks of issue. Allen v. Clayton, 63 Iowa 11, 18 N. W. 663. ... The statutory provision applies only to banks of discount or deposit, and this suggests the reason for the enactment of the statute. Acts of the 18th G. A. c 208 §1. ..."42

40 Proceedings of the Fiftieth Anniversary of the Constitution of Iowa, 1907, 168.


42 Ibid. The case of Andrew v. City Commercial Savings Bank, 217 N. W. 431
The writer cannot agree with this statement. It was enacted like many other acts to supplement constitutional provisions, just as the legislature declared that the articles of incorporation of corporations organized for pecuniary profit are subject to alteration, amendment or repeal at any time by the legislature, but it could hardly be argued that this was done because section 12 of article VIII was not applicable. The court could have found a much better reason for the enactment of chapter 208 of the Acts of the Eighteenth General Assembly in the legislative history of the banking laws of Iowa.

**The Liability Clause in the Statutes**

Chapter 114 of the Acts of the Seventh General Assembly 1858 provided for a general banking law for the state of Iowa. This act created banks of issue, and defined the rights and powers of such banking corporations. The capital stock could not be less than $50,000 and had to be paid in cash, and no part of the "paid in" stock could be withdrawn. In no place was it definitely stated that the shares which were to be $100 each should be paid in full at the time of purchase.

These banks (of issue) had power to carry on a general banking business by discounting bills, notes and other evidence of debt by receiving deposits, etc. (section 10).

The stockholders were made "individually and severally liable to the creditors of the corporation of which they are stockholders or share holders over and above the amount of stock by them held to an amount equal to their respective shares so held, for all its liabilities accruing while they remained stock holders . . . The personal liability, in this section provided for, is over and above the stock owned by stock holders and *any amount paid there on.*" (Section 30.)

Remember that these banks were authorized to issue paper to circulate as money, yet the legislature in fixing the liability of stockholders in such corporations reënacted in almost identical words the provisions of section 9 of article VIII of the constitution.

(Iowa, 1928) seems to be of interest in this discussion because the state banking department urged the provisions of art. VIII, sec. 9 of the Constitution in attempting to hold certain persons liable for stock which they held as trustees. The supreme court, however, reaffirmed the decision in Allen v. Clayton, supra, that the constitutional provision applies only to banks of issue.

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43 Iowa Code 1927, §8376.
This was not because they thought that the constitutional provision did not apply, but because they wished to supplement it to take care of situations where the stock of banks had not been paid for in full. This contention is supported on the following grounds:

First. Section 7 required that in organizing a bank it must show a paid-up capital of $50,000 in cash.

Second. Section 39 required quarterly statements from the bank, which statements had to show "the amount of capital stock of the corporation paid in, and invested according to law."

Third. It is a common feature of the general law of corporations that a certain amount of the capital stock or some lump sum shall have been paid in before the corporation is authorized to transact business, and in case of insolvency the stockholder is liable only for the unpaid part of his holdings.

Fourth. The law of 1858 specified distinctly recognized this practice, for it provided in section 21 that "At least fifty per cent of the capital stock of each branch (bank) shall be paid in gold and silver as aforesaid in installments each of at least ten per cent on the whole amount of capital subscribed, as frequently as once in every four successive months, from the time of commencing business until the whole amount of such capital shall be paid up, provided, that the directors may postpone the payments . . . when satisfied that the public interest does not require them to be paid as frequently as above provided for." It was then provided that if any stockholder failed to pay his installment the branch bank could sell the stock at public auction but not for less than the amount unpaid thereon, the excess, if any, being refunded to the delinquent stockholder.

The provisions of these two acts of the Seventh General Assembly remained the banking law of Iowa up to the Code of 1873.

The Code of 1873 contained a chapter on corporations for pecuniary benefit under which banks were organized, but very little was said about the banking business as such. Chapter 9, section 1570, provided that all associations incorporated for the purpose of transacting a banking business should make a quarterly statement showing: "1. The amount of capital stock actually paid in, and then remaining as the capital of such association." Nowhere did the Code of 1873 specifically state that the shares of stock must be paid in full.

*Iowa Laws 1858, c. 87.*
In 1874 the Fifteenth General Assembly passed an act for the organization and management of savings banks denying this class of banks the right "to issue bank notes to circulate as money," although the practice had been given up by the state banks after the creation of the national banks. The amount of deposits which these banks could receive was determined by the amount of their "paid up capital." But it provided for the first time in the banking laws of Iowa that "no certificate representing shares of stocks shall be issued (nor shall such stock be considered as acquired) until the whole sum of money which such certificate purports to represent shall have been paid into the corporation." Having made provision for the payment of the stock in full the stockholders were made liable "over and above the amount of stock by them held, to an amount equal to their respective shares so held... while they remained stockholders." Provision was made for all other types of banks to reorganize under this act if they desired, but it did not "discharge the original bank, its directors or stockholders from any liability to its depositors or any other persons" until legally released. Thus it seems evident that in case of stockholders formerly liable for an amount equal to the face value of their stock and any amount paid thereon, if the bank reorganized under the savings bank law which required payment of the stock in full, they were now subject only to the liability "over and above the amount of stock by them held, to an amount equal to their respective shares so held... ."

In 1880 two important acts were passed by the Eighteenth General Assembly. One, chapter 153, made receiving deposits when insolvent a felony, and the other, chapter 208, amended chapter 1 of title IX of the Code of 1873 (which was on "corporations for pecuniary profit") under which banks other than savings banks seem to have been incorporated. To chapter 1 of title IX the Eighteenth General Assembly added a provision holding stockholders in corporations organized "for the purpose of transacting a banking business, buying or selling exchange, receiving deposits of money or discounting notes" individually and severally liable to the creditors of such association or corporation... "over and above the amount of stock by them held therein, to an amount equal to their respective shares... for all its liabilities accruing while they remained such stockholders... ." Section 3 of the
act is evidently a construction clause. It provides: "That the personal liability in this chapter provided for is over and above the stock owned by the stockholder in such corporations and any amount paid thereon." The reason for the readoption of the expression "any amount paid thereon" is quickly seen by reading chapter 1 of title IX on corporations for pecuniary profit. In the Code of 1873, such a corporation was empowered "to exempt the private property of its members from liability for corporate debts, except as . . . otherwise declared." The act further provided that the articles of incorporation should state "The amount of capital stock authorized, and the times and conditions on which it is to be paid in," and "whether private property is to be exempt from corporate debts." Only a failure to comply substantially with the legal requirements as to organization and publicity rendered the individual property of stockholders liable for the corporate debts.

Section 1077 provided that "a statement of the amount of capital stock subscribed, the amount of capital actually paid in, and the amount of the indebtedness in a general way must also be kept posted . . ." Moreover, by section 1078 the books of the company were required to show the original stockholders, their respective interests, the amount paid on their shares and all transfers. Again section 1082 provided that "neither anything in this chapter contained, nor any provision in the articles of incorporation, shall exempt the stockholders from individual liability to the amount of the unpaid installments on the stock owned by them, or transferred by them for the purpose of defrauding creditors, and execution against the company may, to that extent, be levied upon the private property of any such individual." Provision was made, however, to levy on the private property of stockholders when no corporate property could be found. It seems evident therefore that the act of the Eighteenth General Assembly recited above was enacted for the purpose of fixing and limiting the liability of stockholders to an amount "over and above the amount of stock by them held therein, to an amount equal to their respective shares," and in case they had not fully paid for their stock they were in addition liable for "any amount paid thereon."

46 Iowa Code 1873, §1059.
47 Ibid. §1062.
JUDICIAL COMMENTS ON THE CONSTITUTIONAL PROVISION

In the case of Stewart v. Lay, noted above, the plaintiff was the receiver of an insolvent bank in which the defendant owned fifty shares of stock representing the sum of five thousand dollars. He had paid down, however, only ten per cent, or five hundred dollars, in the aggregate. The receiver sought to recover from him an assessment of ninety per cent on the unpaid stock subscription and in addition one hundred per cent upon the face value of the stock. The plaintiff demurred to a part of the defendant's answer and was sustained by the lower court. The appeal came to the Supreme Court of Iowa on the demurrer and the judgment of the lower court was affirmed.

The supreme court, therefore, did not have to face the direct issue of the stockholder's liability, and the comments of Judge Beck in the case may therefore be regarded as dicta. They are, however, interesting as showing his attitude toward the constitutional provisions relating to stockholder's liability. In his opinion he said:

"It will be remembered that the liability sought to be enforced in this count is covered by Article 8, §9, of the Constitution."

In another place he said:

"It surely cannot be the law that one stockholder cannot be required to contribute to the payment of the debts of the corporation beyond a proportional sum collected from another. If this were so, the circumstance of one insolvent stockholder would defeat the provision of the law and the Constitution for the benefit of creditors of the incorporation."

And again he said:

"The fraudulent acts of the receiver and officers of the incorporation can be no defense to the action. If this were so, this too would defeat the constitutional provision for the benefit of creditors."

In the case of Williams v. Lewis Investment Company the court recognized that chapter 114 of the acts of the Seventh General Assembly "is an act authorizing general banking in the state of Iowa," and it is clearly apparent from the language of section 10 itself that the legislature was describing what it meant by the term

48 Stewart v. Lay, supra n. 20.
49 Ibid. at 613.
50 Ibid.
'business of banking' as is used in the act.'\textsuperscript{51} The court then said that section 1614 of the Code of 1860 (section 30 of chapter 114 of the Seventh General Assembly) 'provided, also, for the double liability of stockholders in corporations organized under that act,' in almost the identical language used in chapter 208 of the Acts of the Eighteenth General Assembly, and presumably to comply with the requirements of section 9 of article 8 of the new constitution.'\textsuperscript{52} The court, however, recognized that it had previously been held that the constitutional provisions applied only to banks of issue\textsuperscript{53} and the court also held that up to the passage of chapter 208 of the acts of the Eighteenth General Assembly 'no statutory law existed fixing the double liability of stockholders in banks organized under the general incorporation laws of the state, and it might well be doubted whether the constitution was broad enough to apply to such banks.'\textsuperscript{54} Evidently the court was not altogether sure about it, but the court did not have to decide it in this case.

**The Code Provisions**

The Code of 1897 brought together the bank laws of the state and also added certain important provisions. Among these was a requirement that shares were to be fully paid up, which provision before applied only to the savings banks. The provision of section 3 of chapter 208 of the Eighteenth General Assembly making the liability of the stockholder extend to 'any amount paid thereon,' however, was incorporated. Was this provision retained in order to cover the cases where bank stock had not been fully paid prior to the adoption of the Code of 1897; or may we infer that its effect was in fact nullified by the new provision requiring stock in all banks to be paid in full? The Code of 1924 made no change in the liability of the stockholders as it appears in the Code of 1897, and the inclusion of the words 'any amount paid thereon' must be considered as dead timber, in as much as the code requires the shares of both state and savings banks to be paid for in full.

**Conclusion**

It therefore appears to the writer that the apparent desire of Judge Seevers to circumvent the constitutional provision relating

\textsuperscript{51} 110 Iowa 635, 638, 82 N. W. 332, 333 (1900).
\textsuperscript{52} Ibid. at 638, 82 N. W. at 333.
\textsuperscript{53} Allen v. Clayton, infra n. 1.
\textsuperscript{54} 110 Iowa 635, 640, 82 N. W. 332, 334 (1900).
to bank stockholders' liability is responsible today for an unwarranted burden upon such stockholders.

The legislative department, accepting Judge Seevers' declaration that the constitutional provision applied only to banks of issue, left the way open for any additional burdens upon stockholders that the general assembly saw fit to impose. Thus in recent years assessments to replace impaired capital have been required at the discretion of the superintendent of banking. The theory that such assessments, though ordered by the state banking department, are nevertheless voluntary assessments must be looked upon as a legal fiction. They are, as a matter of fact, about as voluntary as the gifts made by a cashier to a bank bandit—the individual may refuse to comply if he is ready to take the consequences of refusal.\(^{65}\)

A study of the debates of the constitutional convention clearly shows (1) that the intent of the framers of the constitution was to make the provisions of section 9 of article VIII apply to all kinds of banks, and (2) that the legislative intent as reflected in the banking laws of this state has been, until recently at least, to give the stockholder a double liability and nothing more, and, as the supreme court said in *Williams v. Lewis Investment Company*, in doing so they had in mind the provisions of section 9 of article VIII of the Constitution of Iowa.

Had Judge Seevers given the debates of the constitutional conventions a thorough reading he could scarcely have come to a conclusion other than that expressed in the judicial opinions of Judges McClain and Beek here given, namely, that section 9 of article VIII was intended to be and is the provision which fixes and limits the liability of a stockholder in every kind of a banking corporation in the state of Iowa. Thus we can see how the conclusion of Judge Seevers, whether biased or arrived at by faulty logic and inaccurate data, is today responsible for unwarranted burdens upon bank stockholders in the state of Iowa.

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\(^{65}\) Cf. Iowa Code 1927, §§9248 and 9248 al.