

The order clearly being void, the authorities are sufficient to warrant the action of a succeeding judge in setting aside an order of his predecessor.¹¹

M. R. M. '36.

BANKS AND BANKING—SHAREHOLDERS' DOUBLE LIABILITY—LIABILITY OF STOCKHOLDERS IN HOLDING COMPANY.—The federal bank examiner's investigation of a national bank disclosed a substantial quantity of unsound loans. These, with bond depreciation and other losses, entirely eliminated the surplus and undivided profit and impaired the capital. To restore the capital the defendants (a group of the directors of the bank), acting as individuals, decided to form a Missouri business corporation to carry through the following plan: buy 1315 shares of the bank's outstanding stock which were offered at a price of \$80 a share, simultaneously make a contribution to the bank of an amount representing \$30 a share on the newly acquired stock, and then subsequently try to resell those shares for \$110 so that the defendants would not be out of pocket on the transaction. The corporation was formed and the 1315 shares acquired by it, the directors paying into its treasury about half the necessary capital and individually guaranteeing the corporation's note for a loan of the rest. However, the Comptroller of the Currency took charge of the bank before the defendants could cause all the shares to be resold, and, the holding company being unable to pay the assessment on the shares still held by it, the receiver brought a bill in equity against the defendants individually. On appeal from an unreported opinion handed down in the Eastern District of Missouri, the Circuit Court of Appeals affirmed the District Court's judgment against the individuals in proportion to the amount of their holdings of the holding company's stock.¹

Courts have on several occasions pierced a corporate entity or trust relationship to assess the "beneficial owners" of bank stock. But heretofore the situations have always been such as to clearly support a theory of intentional evasion, fraud, agency, or trustee-beneficiary,² or else the holding company stockholders have expressly assumed liability in their stock certificates.³ This latter element was present and was not ignored by the court in the recent Michigan case of *Fors v. Farrell*,⁴ which is similar to

¹¹ *In Re Insull Utility Investment Co.*, (C. C. A. 7 1935) 74 Fed. (2d) 510. *Stenbom v. Brown-Corliss Engine Co.*, (1909) 137 Wis. 564, 119 N. W. 308. *Killian v. State*, (1904) 72 Ark. 137, 78 S. W. 766.

¹ *Metropolitan Holding Company, Inc. v. Snyder* (1935) 79 Fed. (2d) 263.

² *Corker v. Soper* (1931) 53 Fed. (2d) 190; *Barbour v. Thomas* (1933) 7 Fed. Supp. 271; *Simons v. Groesbeck* (1934) 268 Mich. 495, 256 N. W. 496; *Laurent v. Anderson* (1934) 70 Fed. (2d) 819; *O'Keefe v. Pearson* (1934) 73 Fed. (2d) 673; cf. 33 Mich. L. Rev. 273; 48 Harv. L. Rev. 659, l. c. 670-672; 10 N. Carolina L. Rev. 288.

³ *Barbour v. Thomas*, *Simons v. Groesbeck*, *Laurent v. Anderson*, *O'Keefe v. Pearson*, *supra*, note 2.

⁴ (1935) 271 Mich. 358, 260 N. W. 886; cf. (1935) 49 Harv. L. Rev. 149.

the subject case in some important respects. The principle case is unusual in that the individual defendants never held title to the bank stock. This distinguishes it from *Corker v. Soper*,⁵ where the shares were in the name of the defendant as "agent" prior to their transfer to a subsequently formed holding company.

The case falls squarely into a recognized gap in the statutory law.⁶ The actual conflict is between the *policies* of encouraging business by affording personal immunity to corporate shareholders and offering protection to the creditors of national banks. That the court, when presented with the problem, felt it desirable to support the latter policy, is significant. The case suggests an answer to the demand for more comprehensive legislation in regard to holding company liability. For if the judicial process may properly go as far as in this case to effectuate and implement the policy of the National Banking Act, it would seem preferable to permit gaps to be filled by the more flexible, if somewhat less predictable, common law and principles of equity.

While the court's opinion is rather vague as to the breadth of the doctrine enunciated, the conclusion seems to be that a holding company cannot insulate its stockholders against assessment on national bank stock held by it, when the holding company has no other assets. It should be noticed that this proposition goes farther than is necessary for the decision of the case, and, to that extent, must be regarded as dictum. All the court need have decided here is that such insulation is impossible when the bank is, at the time of the formation of the holding company, in an unstable condition and is known to be so by the individuals forming the company. Therefore, it seems likely that the principle will be narrowed somewhat, for it is hardly applicable to the ordinary investment holding company which owns various stocks and does not terminate its existence with the accomplishment of a particular object. In considering this decision it should be kept in mind that the bank shares constituted the holding company's only assets. It has been felt that this is a special situation which justifies a rule declaring the holding company's shareholders personally liable.⁷

W. C. S., JR. '37.

BILLS AND NOTES—NEGOTIABILITY—BONDS OF MASSACHUSETTS TRUST LIMITED TO TRUST FUNDS—At common law the efficacy of the attached seal, and the incorporation of a specific fund for security, destroyed the negotiability of corporate bonds. In both the United States and England corporate bonds went through a long period of struggle for recognition as negotiable instruments, though they are now fully recognized as being

⁵ *Supra*, note 2.

⁶ i. e., the failure of the statutes to provide for the treatment of the double liability feature in the event that national bank stock is held by one of the various types of holding companies.

⁷ 2 U. of Chicago L. Rev. 484, l. c. 485.