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POWER OF A STATUTORY RECEIVER TO BORROW
MONEY FROM THE RECONSTRUCTION FINANCE
CORPORATION AND TO PLEDGE ASSETS
IN HIS POSSESSION

Has a statutory receiver of a state bank the power, upon receiving the sanction of the court, to borrow money from and pledge assets in his possession to the Reconstruction Finance Corporation, and to use the money borrowed to pay preferred creditors and a dividend to depositors?

This question was answered in the negative by the Supreme Court of Utah in a recent case of *Riches v. Hadlock*,¹ the court stating that a bank commissioner "is a mere executive creature of the statute, not of the court, and can exercise only such powers as the statute has given him, and no order of the court applied for can be broader than the statute." The statute² authorized the commissioner, upon taking possession of a state bank, "to collect money due such bank and to do such other acts as are necessary to preserve its assets and business and shall proceed to liquidate the affairs thereof." The court held that the general words "to preserve assets," even by applying the maxim "ejusdem generis," could not be given a meaning to borrow money and pledge assets to pay dividends without doing violence to language and concluded that the bank commission could not borrow the money. The same result was reached by the Supreme Court of Wyoming in *State ex rel. Richmond*,³ in which the identical question was before the court under an identical statute.⁴ The court, after admitting that the bank examiner may borrow money in the exercise of his function to "do such other acts as are necessary to preserve the assets in his custody as in the case where taxes must be paid, liens discharged on property or repairs made to prevent injury or destruction of property, concluded that the proposed conduct of the examiner was in no respect analogous and that he had not the authority contended for.

Washington, North Carolina and Iowa have answered the question in the affirmative. In the case of *In re Liquidation of Cashmere State Bank*,⁵ under a statute⁶ similar to the statutes of Wyoming and Utah, the Washington court conceded that "neither statute nor judicial decision expressly confer authority upon the state supervisor of banking to borrow money and pledge the assets of the insolvent bank in his custody to pay dividends. It must also be conceded that equity receivers do not by virtue of their mere appointment possess such powers." The court held that the supervisor was an executive officer of the state, whose duties were of a public nature and in discharging them he acts for the public interest and stated. "We are induced to place such

¹ 15 Pac. (2nd) 283 (Utah) (1932).

² Utah (laws of 1921, c 23 subsec. 7, as amended by the laws of 1923, c33).

³ 14 Pac. (2nd) 673 (Wyo.) (1932).

⁴ Wyo. Revised Statutes, Sec. 10512.

⁵ 13 Pac. (2nd) 892, 169 Wash. 258 (1932).

⁶ Rem. Comp. Statutes, Sec. 3269.

construction upon the statute as will enable him to administer speedily, adequately and comprehensively the trust imposed upon him," and the court concluded that the statute gave the supervisor the authority to apply to the court for permission to borrow the money of the Reconstruction Finance Corporation, and pledge the assets of the defunct bank. However, the court had another ground upon which to base its decision, namely, that the Washington Constitution⁷ vested in the superior courts of the state, equity jurisdiction, and thus could not be taken from them by statute.

In *Blades v. Hood*⁸ the North Carolina Court, in considering this question under a similar statute,⁹ held that it was not the intention of the legislature to take from courts of equity their inherent power to permit the commissioner of banks to exercise the functions of a chancery receiver in matters not inconsistent with his statutory duties, and concluded that this was a case calling for the exercise of such equitable jurisdiction.

The Iowa court was confronted with the same question in the case of *Andrew v. First Trust & Savings Bank of Sioux City, et al.*¹⁰ The Iowa statute¹¹ provided for the taking of possession of insolvent banks by the superintendent of banks and that he might apply to the proper court for the appointment of himself as receiver, and then provides that "its affairs shall thereafter be under the direction of the court." The court said, "The receiver we have to deal with * * * is a statutory receiver, * * * and his rights and the power of the court over him are derived from statute," and concluded that "its affairs" included the proposed loan and that the court had the power to pass upon and grant or deny the same.

The distinction in these cases would at first glance seem to be merely one of statutory construction. The Utah court was of the opinion that the language of their statute was plain and its meaning so clear that there was no room for construction and necessitated the application of the familiar maxim, "a thing expressed puts an end to construction." However, the Washington court did not think the legislature intended to limit the duties of the office to those mentioned, but should also include those incidental and collateral duties which naturally and properly promote the performance of the principal duties, as constitutions and statutes seldom define with precision the scope of any office. The Wyoming court states, "that the district court has no legal authority to deal with the affairs of an insolvent bank in the hands of the state examiner unless the statute so directs," and continues, "Our attention has been drawn to no statutory provision, either in terms or by necessary implication, directing the district courts to act upon such an application * * *" The court was of the opinion that the legislature, in specifically enumerating the duties

⁷ Washington State Const. Art. 14, Sec. 6.

⁸ 164 S. E. 828, 203 N. C. 56 (1932).

⁹ North Carolina Code of 1931, Sec. 218 (c) subsec. 7.

¹⁰ 244 N. W. 394 (Iowa) (1932)

¹¹ Iowa Code of 1931, Sec. 9238, 9239 and 9242.

of the examiner, had, by implication, excluded all those not mentioned.

The Iowa court, after stating that the receiver with whom they were dealing was a statutory one and his powers and the court's power over him were derived from the statute said. "One of the 'affairs' involved in this receivership is the question of the proposed loan under consideration." It will be noted that the Iowa court probably went farther than any of the other cases had to go or would have had to go, to find an authority given by the statute to borrow the money from the R. F. C. Thus it seems that the statutes and their construction do not constitute a sound ground for the distinction in these cases. It would seem that the basis of the decisions may be placed upon the public policy of the several states.

The Wyoming court was the only one which had before it the contract which the bank examiner intended to submit to R. F. C. for its acceptance. The court, looking at the contract and the R. F. C. Act,¹² pointed out that its effect would be to take the assets of the defunct bank from the bank examiner and place the control of them in the hands of the R. F. C. and by the contract the bank examiner bound himself to the use of diligence in the collection of the pledged securities, whether or not he used the diligence required would be decided by the R. F. C. Then, too, as stated by the examiner in his evidence, the loan was sought upon the theory that in the next few years conditions would improve and the securities and assets could be liquidated at a much better advantage to depositors and creditors than was possible at the present time. The court was of the opinion that this was nothing more than a gamble on future conditions and concluded that if the bank examiner thought it advisable to postpone the liquidation of the assets there was nothing in the statutes to prohibit him

¹²U. S. Code Title 15, Sec. 605. Loans and advances by corporations; allocation; security form; limitation on amount; period of loan; fees and commissions. To aid in financing agriculture, commerce, and industry, including facilitating the exportation of agricultural and other products, the corporation is authorized and empowered to make loans, upon such terms and conditions not inconsistent with this chapter as it may determine, to any bank, savings bank, trust company, credit union, Federal land bank, joint stock land bank, Federal intermediate credit bank, agricultural credit corporation, live stock credit corporation, organized under the laws of any State or of the United States, including loans secured by the assets of any bank that is closed, or in the process of liquidation to aid in the reorganization or liquidation of such banks, upon the application of the receiver or liquidating agent of such bank and any receiver of any national bank is hereby authorized to contract for such loans and to pledge any assets of the bank for securing the same: Provided, That not more than \$200,000,000 shall be used for the relief of banks that are closed or in the process of liquidation.

All loans made under the foregoing provisions shall be fully and adequately secured. The corporation, under such conditions as it shall prescribe, may take over or provide for the administration and liquidation of any collateral accepted by it as security for such loans. * * * * *

Each such loan may be made for a period not exceeding three years, and the corporation may from time to time extend the time of payment of any such loan, through renewal, substitution of new obligations, or otherwise, but the time for such payment shall not be extended beyond five years from the date upon which such loan was made originally, * * * * *

from withholding the liquidation until such time as he thought advisable for the best interests of the depositors.

The Washington court considers the effect the closing of the bank had upon the community which it served, pointing out how the farmers and orchardists of the Cashmere valley were left without means of credit enabling them to buy seeds, plant crops and prune their fruit trees, and indicated the effect this loan, if authorized, will have in relieving the community of its financial stress. Considering that the bank examiner is an executive officer of the state with quasi public duties to be administered in such a manner as to promote the welfare of the public, the court concludes that the statute is sufficiently broad to include the power of the examiner to borrow money and pledge the assets.

Whether or not the public policy of the state should be declared in favor of the authority of the bank examiner to borrow the money of the R. F. C. and pledge the assets of the insolvent bank, must involve the consideration of two questions, namely—first, will such a loan “preserve its assets” and second, will the loan benefit the depositors and creditors? These questions are so closely related that they will be considered together.

It is contended in these cases that such a loan will preserve the assets of the insolvent bank. But the loan in no way protects the assets from loss or destruction, nor does it keep them intact or existent. In fact the loan may waste the assets to the extent of the interest charge on the loan, or cause them to be wasted in the protection of them by the bank examiner while they are pledged to the R. F. C.

Another argument in favor of the loan is that it benefits the depositors and creditors by making available to them the proceeds of the loan which will give them some ready money and also form the basis for credit, and delay the sale of the assets until a time when the market will be more favorable. However, it would seem that the possibility of injury is just as great as is the possibility of benefit, since the period for which the borrowing is made may produce no favorable result. In granting the loan the R. F. C. will undoubtedly take those assets considered most valuable as security for their loan, thus leaving with the receiver the less valuable assets, and these it is his duty to liquidate. This does not seem desirable from a business viewpoint, for having only the poorer assets of the bank they will be difficult to dispose of to the best advantages of the depositors and creditors. Who is to say that the depositors and creditors would rather gamble on future condition than to have the present value of the assets? The present value being at least as much as the proposed loan for which they are to be pledged, thus as much will be done to relieve the financial stress of the community as would be done under the proposed loan, and this is the only reason given for the granting the authority of the bank examiner to borrow the money of the R. F. C.

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