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Corporations--Prohibition Against Banking (Meserole Securities Co. v. Cosman. 226 A.D. 21 (1st Dept. 1929))

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CORPORATIONS — PROHIBITION AGAINST BANKING. — Plaintiff sues defendants as endorsers of two promissory notes in the sum of $4,400 each, which notes, plaintiff purchased before maturity by paying defendant corporations the sum of $4,000 for each note. The defense is that the notes were void in the hands of plaintiff, a non-banking corporation, because the discounting constituted a violation of the Corporation and Banking Laws of this state. On appeal, *held*, the restriction against the discounting of bills, notes or other evidences of debt applies only when such discounting is a part of the business of banking. The mere purchasing or discounting of promissory notes is not of itself banking. Meserole Securities Co. v. Cosman, 226 App. Div. 21, 234 N. Y. Supp. 260 (1st Dept., 1929).

Section 22 of the Corporation Law provides that no corporation, not subject to banking laws, shall possess the power of discounting bills, notes or other evidences of indebtedness, "or of engaging in any other form of banking." Section 140 of the Banking Law, in substance, provides that no corporation other than a national bank, unless authorized by the laws of the state, shall employ any part of its property for the purpose of receiving deposits, making discounts, or issuing notes or other evidences of debt. It is apparent that these sections were intended to accomplish a common purpose, to prevent the exercise of banking powers by corporations not formed under, or subject to, the banking laws. There was no evidence in the instant case that the plaintiff kept a regular office for deposits. As the prohibition applies only when such discounting is part of the business of banking, it follows that the mere purchase of discounting of one or any number of promissory notes does not of itself constitute banking. The Act prohibiting the carrying on of banking business by individuals or incorporated companies unless specially authorized by law, does not preclude individuals or corporations, if otherwise authorized, from lending their funds upon promissory notes by way of discount or otherwise; the evil intended to guard against is the keeping of an office of deposit for the purpose of carrying on the banking business.[1] The word "discount" as used in the statute denotes the making of a loan by a bank upon a note of its customer, the interest being taken in advance and the remainder credited to the deposit account of the customer.[2] There is a vital distinction between the purchase or discount of commercial paper by a corporation and the discounting of same by a banking institution, crediting the proceeds and paying them out upon order. It is only against the latter transaction that the prohibition applies.[3] In the case at bar, the discounting of the promissory notes was an ordinary purchase; no banking laws were involved as claimed and, hence, no statutory prohibition applied.

D. J. R.

[1] People v. Brewster, 4 Wend. 498 (1830).

[2] 3, Words & Phrases (1st series), p. 2090.

[3] Curtis v. Leavitt, 15 N. Y. 9, 68 (1857); *cf.* New York State Loan & Trust Co. v. Helmer, 77 N. Y. 64 (1879); Pratt v. Short, 79 N. Y. 437, 35 Am. Rep. 531 (1880).