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# Banks--Enforceability of Contract by Bank to Purchase Stock (Dyer v. Broadway Central Bank, 252 N.Y. 430 (1930))

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necessary for a business corporation to exercise all the powers thereby conferred, and that such corporation may infringe upon the prohibition against exercising banking functions by only exercising one of the several prohibited functions.

As the statute stood at the time of the decision, it was difficult to reconcile the views of the majority with the language of the Legislature; but an amendment to the Stock Corporation Law makes it plain that the view of the majority had at least the sanction of the inarticulate legislative intent.<sup>2</sup>

R. L.

**BANKS—ENFORCEABILITY OF CONTRACT BY BANK TO PURCHASE STOCK.**—Plaintiffs are stockbrokers engaged in business in New York City. The defendant is a banking corporation organized under the laws of this state. The plaintiffs purchased certain stocks for the defendant at its request and promised to pay therefor immediately upon delivery. Defendant paid for part of the stocks which had been delivered but refused to pay for the balance, for which this action is brought. On motion, before answer, the complaint was dismissed on the ground that on its face it stated an illegal and void transaction. On appeal, *held*, the dismissal of the complaint was erroneous. Whether a contract by a bank to purchase stocks is enforceable must depend upon the facts and circumstances under which the contract is made and the question cannot be determined upon a motion to dismiss a complaint. *Dyer v. Broadway Central Bank*, 252 N. Y. 430, 169 N. E. 635 (1930).

The question at issue is, may a bank in this state, under any circumstances, order the purchase of common stock from a stock exchange house, rendering itself liable as principal to its brokers for the purchase price. By statute,<sup>1</sup> banks cannot lawfully speculate for themselves and risk capital and deposits in stock gambling. They are confined to the purchase of the particular stocks specified in the statute in an endeavor to make and keep them financially sound. It is, however, common practice for customers to deal directly with

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<sup>2</sup> Sec. 18 (L. 1929, Ch. 326), which now provides that "any stock corporation, domestic or foreign, other than a moneyed corporation, may purchase, acquire, hold and dispose of bonds, notes or choses in action of any person or persons, partnership or corporation, domestic or foreign, and may pledge them to secure the payment of collateral trust bonds or notes, may sell or otherwise negotiate such collateral trust bonds or notes \* \* \*."

<sup>1</sup> In addition to the powers conferred by the General and Stock Corporation Law, Section 106 of the Banking Law (Cons. L., Ch. 2) grants to a bank the power of loaning "money on real or personal security"; also "all such *incidental powers* as shall be necessary to carry on the business of banking." Subdivision 7 of that section grants the power "to receive \* \* \* upon deposit for safe-keeping stocks" and other valuable securities. Section 13, Subdivision 1 of the General Corporation Law (Cons. L., Ch. 23) provides: "A corporation shall not possess or exercise any powers unless given by law, or *necessary to the powers so given.*" (Italics ours.)

their banks in making purchases of stock on the exchange.<sup>2</sup> In passing upon questions involving the banking law, courts have taken cognizance of the rapid development of the banking business and the necessity of extending their functions to meet new conditions.<sup>3</sup> The Federal banking system of the country has accordingly increased its powers to undertake enterprises heretofore prohibited<sup>4</sup> and broadened its scope of activity. A narrow and unreasonable construction of the statute would result in unwisely limiting their usefulness in the transaction of business under modern conditions.<sup>5</sup> In addition, since the statute expressly provides that a bank may receive certificates of stock for safe-keeping and also as collateral on loans, under certain conditions, it may be quite necessary for a bank to replace stock which it has lost or improperly disposed of. To accomplish this, a contract to purchase such stock would be a proper exercise of the "incidental powers" necessary to carry on the business of banking, and would, no doubt, be enforceable. It is important, therefore, that the facts and circumstances giving rise to such a contract be considered before a court can pass upon its legality.

D. J. R.

**BILLS AND NOTES—LIABILITY OF MAKER TO HOLDER FOR VALUE.**—Defendant delivered his check for \$1,000 to a depositor in the plaintiff bank. Delivery was conditional and defendant subsequently stopped payment thereof on the ground that the condition was not fulfilled. The depositor, in the meantime, had deposited the check in the plaintiff bank, the deposit slip which accompanied it bearing the notation that credits entered in accounts of depositors were conditional and would not become final until the items deposited were collected. Prior to the time when plaintiff bank received notice that payment on the \$1,000 check had been stopped, and at a time when the depositor had \$846 to his credit, exclusive of the \$1,000 check, the plaintiff certified and paid a check for \$1,525, made by the depositor, against his account, despite the notice which appeared on its deposit slip. This action is brought to recover the difference between the depositor's original balance and the amount of the certified check. *Held*, plaintiff was a holder for value to the extent of the amount paid before it had notice as to the defect in its depositor's

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<sup>2</sup> *Central National Bank of City of New York v. White*, 139 N. Y. 631, 34 N. E. 1065 (1893); *Le Marchant v. Moore*, 150 N. Y. 209, 215, 44 N. E. 770 (1896).

<sup>3</sup> *American Surety Co. v. Philippine National Bank*, 245 N. Y. 116, 127, 156 N. E. 634 (1927).

<sup>4</sup> *People ex rel. Pratt v. Goldfogle*, 242 N. Y. 277, 295, 151 N. E. 452 (1926); *State of Minnesota v. First National Bank of St. Paul*, 273 U. S. 561, 47 Sup. Ct. Rep. 468 (1927).

<sup>5</sup> *Whiting v. Hudson Trust Co.*, 234 N. Y. 394, 406, 138 N. E. 33 (1923).