2/21/02

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

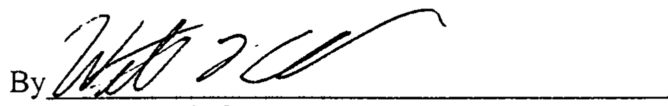
JAMES A. KNAUER as the Court Appointed Receiver for HEARTLAND FINANCIAL SERVICES, INC., and JMS INVESTMENT GROUP, LLC, Plaintiff, v. JONATHON ROBERTS FINANCIAL GROUP, INC., ALLIANCE CAPITAL MANAGEMENT CORP., ANDOVER SECURITIES INC., FSC SECURITIES CORPORATION, and FFP SECURITIES, INC., Defendants.	) CAUSE NO.: IP 01-1168-C-K/T

FSC SECURITIES CORPORATION'S PROVISION OF OUT-OF-STATE AUTHORITIES

Attached are FSC Securities Corporation's out-of-state authorities which it has cited in its Reply Brief.

Respectfully submitted,

KIGHTLINGER & GRAY



By ______________________
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was mailed this 21 day of February, 2002 to:

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lish such a procedure based on 5% or any other percentage of ownership lower than 10%. A corporation with fewer than 100 shareholders may not establish a procedure based on any percentage of ownership lower than 50%.

(c) Subsection (c) permits adoption of a change-of-control procedure either in original articles of incorporation or bylaws, by amending the articles or by amending the bylaws. Subdivision (3) makes clear that the last of these options is available notwithstanding the fact that the BCL or the corporation's articles of incorporation might otherwise require a shareholder vote for the adoption or implementation of all or any portion of the procedure. Thus, the directors may establish by bylaw amendment a change-of-control procedure that includes, for example, mandatory redemption provisions, even though such provisions might normally require shareholder approval for adoption.

The fact that subsection (c) vests potentially broad authority in a board of directors to adopt change-of-control procedures does not mean, however, that any exercise of that authority will necessarily be proper. Directors' decisions in this area, like any other, remain subject to the standards of conduct set forth in IC 23-1-35. Nor does subsection (c) change the "business judgment" rule used by the courts in evaluating challenges to director action (just as IC 23-1-35's standards of conduct do not, as the RMA Official Comments reveal, *see* MODEL BUSINESS CORP. ACT ANN. § 8.30 (3d ed. 1985), try to codify or address the "business judgment" rule). Also, certain corporations may be subject to Securities and Exchange Commission or stock exchange rules that may also limit either the permissibility of, or the method of adoption for, particular kinds of change-of-control procedures, notwithstanding that such procedures are authorized under this section as a matter of State law.

Valparaiso University Law Review. The Indiana Experiment in Corporate Law: A Critique, 24 Val. U.L. Rev. 185 (1990).

23-1-22-5. Challenge of corporate action. — (a) Except as provided in subsection (b), the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

(b) A corporation's power to act may be challenged:

(1) In a proceeding by a shareholder against the corporation to enjoin the act;

(2) In a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation; or

(3) In a proceeding by the attorney general under IC 23-1-47-1.

(c) In a shareholder's proceeding under subsection (b)(1) to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss (other than anticipated profits) suffered by the corporation or another party because of enjoining the unauthorized act. [P.L.149-1986, § 6.]

INDIANA COMMENT

This section eliminates the GCA's grant of authority to the Attorney General, under IC 23-1-10-4, to bring a proceeding to enjoin a corporation from transacting unauthorized business.

Cited: Goebel v. Blocks & Marbles Brand Toys, Inc., 568 N.E.2d 552 (Ind. App. 1991).

SECTION.
23-1-23-1. Requiremen
23-1-23-2. Reservation

23-1-23-1. Requ

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of fictitious names.

Everett A. Corten and J. Francis Shirley, both of San Francisco, for respondents.

PER CURIAM.

The petitioner seeks by this proceeding in review to annul an order of the respondent Industrial Accident Commission which directs the petitioner to pay the sum of $178.50 to the respondent Arthur Fibush, M. D.

In August, 1929, Margaret Kassebaum was injured in the course of her employment with the petitioner by a counter door dropping on her neck. The petitioner, self-insured, provided medical treatment and paid to Mrs. Kassebaum the sum of $1,632.-94 in sickness and accident benefits. This sum, it is stated, equaled the highest rating to which she would have been entitled if all issues had been decided in her favor in a proceeding before the commission. She was treated for the injury by a member of the petitioner's medical staff until December, 1930, at which time she was discharged as cured. She later engaged Dr. Bill as her physician. He treated her until November 14, 1932, when she employed the respondent Fibush, who thereafter administered treatments.

On November 25, 1932, Mrs. Kassebaum applied to the commission for additional compensation and medical treatment. The application was resisted by the petitioner on the ground that it had paid to her the full amount to which she was entitled, and that her subsequent treatment by Dr. Fibush was not by its authorization nor for an ailment resulting from the industrial injury. At the suggestion of the referee of the commission the matter was brought to a compromise by which the petitioner agreed to pay $800 to Mrs. Kassebaum. The compromise agreement was filed with the commission on October 4, 1933. Three days later Dr. Fibush filed with the commission a notice of lien for $261.10 "for medical treatment furnished to the employee subsequent to her injury of August, 1929," and against any compensation payable to Mrs. Kassebaum. A copy of the notice of lien was received by the petitioner on October 9th, on which day the commission filed its order approving the compromise agreement. Notwithstanding its receipt of notice of the filing of the lien the petitioner paid the stipulated sum of $800, with certain deductions not here involved, directly to Mrs. Kassebaum as provided in the compromise agreement. This payment was so made by the petitioner on the advice of its counsel, who concluded that the finding and order of the commission precluded payment otherwise than in accordance with the order. The finding of the commission was that the medical attention furnished by Dr. Fibush to Mrs. Kassebaum was procured by her at her own expense and request and that the petitioner herein was not liable to her for the same. The commission further found that the medical services furnished by Dr. Fibush were not to cure or relieve an industrial injury, and that such services "were not needed or required to cure or relieve from an industrial injury." It appeared in evidence that the disability from which Mrs. Kassebaum was suffering and for which she was treated by Dr. Fibush was a spinal abnormality having nothing to do with and not affected by the industrial injury.

After the payment of the $800 to its employee by the petitioner the commission held further hearings as to the claim of lien pressed by Dr. Fibush and decided that it could not allow the lien as and for medical services rendered to the employee, but that it would allow a lien as and for living expenses. The commission accordingly ordered the petitioner to pay directly to Dr. Fibush the amount claimed in his notice of lien. It is this order which is sought to be annulled.

The correctness of the conclusion of the commission depends upon the proper construction of the pertinent provisions of the Workmen's Compensation Act. Section 24 (a), St. 1917, p. 851, as amended by St. 1929, p. 323, provides that compensation awarded an applicant shall be paid directly to him and none other, unless otherwise ordered by the commission, and that such compensation shall not be subject to be taken for the debts of the party entitled to the compensation except as in the section provided. Subdivision (b) of section 24 provides that the commission "may fix and determine and allow as a lien against any amount to be paid as compensation," certain enumerated items, the second of which is "the reasonable expense incurred by or on behalf of the injured employee, as defined in subsection (a) of section nine hereof." Section 9 (a), St. 1917, p. 836, as amended by St. 1929, p. 420, provides that liability for compensation shall include such medical treatment "as may reasonably be required to cure and relieve from the effects of the injury." The third subdivision of section 24 (b) authorizes a lien on the compensation awarded for "the reasonable value of the living expenses of an injured employee * * * subsequent to the injury."

It appears beyond question that Dr. Fibush was not entitled to a lien on the compensation awarded as and for medical services pursuant to subdivision 2 of section 24 (b), for the reason that such services were rendered by him for a nonindustrial disability, and the statute authorizes a lien for medical attention only "to cure and relieve from the effects of the injury." The question is whether the cost of medical aid may be treated as "living expenses" within the meaning of the act, and a lien therefor be allowed.

It is insisted by the respondent that the term "living expenses" includes payment for medical treatment. Although no authority or precedent on the subject is presented by counsel or discovered, it is assumed, at least, that under some circumstances and as a general proposition living expenses might include payment for medical treatment. It must, however, be concluded that under our statute medical aid was not so included. The two subjects are specifically and separately treated. The act allows a lien for the reasonable value of medical services rendered, but not without restriction. The limitation is, as stated, that such medical treatment must tend to cure and relieve from the industrial injury, which is not the case here, and the commission so found. It would be improper to hold that the cost of certain medical treatment, specifically found by the commission to be excluded as such from the pertinent lien provisions of the statute, could nevertheless be the subject of a lien under the general term "living expenses." Obviously it was never so intended by the legislature and the language of the statute excludes such a construction. When the commission assumed to accord vitality to the asserted lien it was acting in excess of its jurisdiction and its order attempting to do so must be annulled.

The authorities cited by the petitioner are not helpful. None involves the factual situation here presented. The result rests upon a construction of the statute with no persuasive argument in favor of an opposite conclusion.

The order is annulled.

CAMERER v. CALIFORNIA SAVINGS COMMERCIAL BANK OF SAN DIEGO et al.

L. A. 13905.

Supreme Court of California.

July 31, 1935.

1. Evidence ⇨5(2)

Supreme Court may take judicial no that in fall of 1929 a phenomenal crash oc red in stock market, which marked onse long period of economic depression and st ily declining property values.

2. Banks and banking ⇨76

In owner's action to recover bearer bo intrusted to president of insolvent bank v used bonds to deceive bank examiners fraudulent showing of assets, evidence I insufficient to charge owner with construct notice of president's fraudulent scheme owner was not estopped to reclaim bonds, r withstanding bank's depositors and credit would thereby suffer loss.

3. Banks and banking ⇨76

Insolvent bank purchasing bearer bo with knowledge that owner had merely trusted bonds to its president who used p ceeds to effect a fraudulent showing of ass was not a purchaser in good faith of s bonds so as to preclude owner from recov ing bonds or value thereof from receiver charge of liquidation of bank.

4. Banks and banking ⇨77(3)

Liquidating receiver represents intere of depositors and creditors.

5. Receivers ⇨69

Receiver takes insolvent's property s ject to all liens, defenses, and equities which it is subject in insolvent's hands, a receiver administers on behalf of creditors greater title or estate than debtor possess

6. Receivers ⇨167

Although insolvent debtor cannot aside transfer in fraud of his creditors, as is in pari delicto, receiver acting for cre tors may attack such transfer.

7. Receivers ⇨67

Although unrecorded conveyance or mo gage is valid as against grantor or mortg gor, his receiver prevails over holder und unrecorded instrument under statutes provi ing that unrecorded transfers are void as creditors.

8. Receivers ⇨69

Although receiver, in exceptional circu stances, is accorded rights denied to ins

vent, receiver does not have status of bona fide purchaser for value.

9. Banks and banking ⟹76

Owner of bearer bonds permitting bank president to have access to deposit box solely to clip coupons of such bonds *held* not estopped to reclaim bonds fraudulently sold by president to insolvent bank, since access alone will not give rise to an estoppel.

10. Estoppel ⟹99

Estoppel based on intrustment, but without fraudulent connivance, should not be enforced beyond extent necessary to make good loss suffered through acts which form basis of estoppel.

11. Banks and banking ⟹77(4)

Even if owner of bonds wrongfully sold to insolvent bank was estopped to reclaim bonds, receiver of bank would not be entitled to retain possession thereof in absence of showing of amount of damages bank's depositors and creditors would suffer should owner prevail.

In Bank.

Appeal from Superior Court, San Diego County; L. N. Turrentine, Judge.

Action by Clyde B. Camerer against the California Savings & Commercial Bank of San Diego and Edward Rainey, as Superintendent of Banks and trustee in charge of the liquidation of the California Savings & Commercial Bank. From the judgment, the defendants appeal.

Affirmed.

Prior opinion, 38 P.(2d) 837.

Elbert W. Davis and J. H. Hoffman, both of San Francisco, Gray, Cary, Ames & Driscoll, of San Diego, and Sullivan, Roche, Johnson & Barry, of San Francisco, for appellants.

Whelan & Whelan and Stearns, Luce & Forward, all of San Diego, for respondent.

PER CURIAM.

This case was transferred to this court upon plaintiff's petition for hearing after decision by the District Court of Appeal, Fourth District, reversing a judgment for plaintiff. Although we are of the view that the judgment for plaintiff must be affirmed, we hereby adopt as part of our opinion the statement of facts and certain conclusions based thereon, as they appear in the decision of the appellate court.

Respondent instituted this action against appellants, and others, to recover possession of $45,500 par value of bonds and other securities, or their value, if possession could not be had. Other relief was sought which it is not necessary that we consider here. Judgment was rendered against Edward Rainey, as superintendent of banks, for the recovery of the securities in his possession of the par value of $44,500, or their market value in the sum of $39,385, in case redelivery could not be made. The case against the California Savings & Commercial Bank of San Diego was ordered dismissed. We will hereafter refer to the California Savings & Commercial Bank of San Diego as the bank.

I. I. Irwin was a banker with an experience of more than eighteen years in the city of San Diego. Respondent was a medical officer in the United States Navy, a friend and acquaintance of Irwin and a depositor in the financial institutions with which he was connected.

Irwin organized the California Savings & Commercial Bank of San Diego and became its president. He owned 4,112 out of a total issue of 5,000 shares of its capital stock. He dictated the policies of the bank except during the last few months of its existence as a going concern. About the time of its organization he persuaded respondent to transfer his account to the bank and to purchase 50 shares of its capital stock.

The California Safe Deposit Company of San Diego conducted a safe deposit business in the basement beneath the bank. While it had a separate corporate entity, it was a subsidiary of the bank and was controlled by it. On November 5, 1927, respondent rented a safe deposit box in which he kept his valuable papers. According to the signature card and rental agreement, C. B. Camerer, Mrs. C. B. Camerer, his wife, and I. I. Irwin were authorized to open the box. Respondent was frequently away from San Diego for considerable periods of time on duty with ships, at sea, or at hospitals in other localities. During such times Irwin, with the knowledge and consent of respondent, opened the safe deposit box, clipped and collected the coupons, and performed other services for him.

The bank continuously lost money from the time it opened until it was closed. Either quarterly, or semiannually, Irwin placed in the profit and loss account of the bank sufficient money to cover the loss of the period succeeding his prior payment so that no loss would appear on the books.

Irwin began using respondent's bonds in the fall of 1927, and continued using them in 1928 and 1929 whenever the bank needed money to make up its deficit. In all but one of these transactions he described his actions as follows:

"A. Well, as far as my memory serves me, at each quarter the bank needed money to pay the deficit, and when that occurred I took these bonds and sold them to the bank and deposited this money to my account and gave the bank a check to pay on the profit-and-loss account. Later on, when I had money in my account, I took the bonds back, and later on I put them back again. That is my recollection of it.

"Q. Did some of the other officers of the bank know the nature of these transactions? A. I suppose so. * * *

"A. Those bonds were turned over to the official who had charge of the bonds, and he made out the statement and credited the amount to my account and charged the bonds to the bank's bond account. That's my recollection.

"Q. During this period that you were speaking of, the bank was not making any profits, but, on the contrary, was losing money? A. Yes.

"Q. And needed the money at the end of each quarter to pay its running expenses? A. Yes.

"Q. And these bonds were simply manipulated in that way so that the bank would have money? A. Yes. * * *

"Q. Into which of the bank's accounts was that put? A. It was charged to my account and credited, as far as I know, to the profit-and-loss account of the bank.

"Q. Was the same thing done in regard to money ostensibly raised by the other negotiations with these bonds that you say were similarly sold to the bank? A. As far as I remember.

"Q. All went into the profit-and-loss account of the bank and it was needed for the running expense of the bank? A. Yes, sir."

Respondent at no time prior to the closing of the bank in July, 1930, had any knowledge that Irwin had sold any of his bonds or securities or used them as a pledge to secure payment of a promissory note to the bank, and prior to November 21, 1929, did not know that Irwin had removed any of the securities from the safe deposit box.

The "sales" of respondent's securities to the bank were made by Irwin upon his express understanding with the other officials that they were to be kept sep from other securities owned by the l that the bank would not sell them; Irwin would repurchase them whe could; that the coupons would be cli and delivered to Mr. Irwin. Irwin r chased all of the securities "sold" tc bank prior to September, 1929, and turned them to the Camerer safe de box.

In the latter part of September, 1929 win needed over $20,000 to make gooc losses of the bank. He removed secur of the par value of $22,500 from the deposit box of respondent and "sold" t to the bank, at their market value, with instructions we have outlined. T were never repurchased by Irwin, but, the exception of one one thousand dc bond which matured and was delivere Irwin, remained in the possession of bank and were taken over by the supe tendent of banks when he closed it.

In the latter part of November, 1 respondent made an unexpected and h ried return to San Diego. Irwin cont ed him and explained that he wanted rent the use of some of the securities. explained to Camerer that the bank ways of making profits from the securi in addition to their regular interest. C erer consented and gave Irwin the secu ties he desired which were the same o which Irwin had "sold" to the bank September, 1929. They were all in Ca erer's safe deposit box, though how, wh or by whom they were taken from the ba safe and returned to the Camerer safe posit box is not explained. Irwin ga Camerer the following receipt and agr ment:

California Savings & Commercial Ban
of San Diego
San Diego, Cal., Nov. 21, 1929
Bonds borrowed
from C. B. Camerer
by I. I. Irwin
As follows:

$9,500—Bryant Building Inc.	6½
$3,000—Midland Counties Land Co.	7
$3,000—Otis Steel Co.	6
$5,000—Pickwick Corporation	7
$2,000—Utilities L & P Corp.	5½

$22,500—par value (Twenty Two Thou sand Five Hundred Dollars)—

As security for the return of said Bonds I hereby deposit with C. B. Camerer

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Certificate No. /~~200~~ for two hundred (200) shares of the capital stock of the California Savings & Commercial Bank of San Diego to be redelivered to me upon the return by me to C. B. Camerer of the above Bonds.

¼% (one quarter of one per cent.) Premium as hire to be paid by I. I. Irwin to C. B. Camerer of $56/25 (Fifty six 25/100 Dollars) for each three months or less

November 21, 1929
I. I. Irwin.

On December 31, 1929, the bank again needed funds to make up its deficit. Irwin had one of his employees execute a promissory note to the bank in the sum of $23,000, and pledged $23,000 par value of respondent's securities for the payment of this note. The money was deposited to the credit of the employee, transferred to Irwin's account, then transferred to the profit and loss account of the bank. These securities are now in the possession of the superintendent of banks.

On January 8, 1930, Irwin telephoned the residence of respondent. Respondent was not at home and Irwin explained to Mrs. Camerer that he could use more securities under the same arrangement as before. She communicated with her husband who consented to the transaction. She went to the bank, opened the safe deposit box, where the exact securities which Irwin desired to use were reposing, delivered them to Irwin, and took a receipt in substantially the same form as the one dated November 21, 1929. The securities were the identical ones pledged to the bank to secure the note of December 31, 1929. How they were returned to the safe deposit box does not appear unless an explanation is offered in the testimony of Irwin that they might have been delivered to the bank after the date of the note.

The trial court found that the bank was insolvent on July 23, 1930; that it had been taken over by the superintendent of banks on that day, together with the Camerer securities of the par value of $44,500; that these securities have remained in the possession of the superintendent of banks; that Irwin, in September and December, 1929, had neither right nor authority to sell, transfer, pledge, or convey any interest in the securities to the bank and that the purported sale and pledge were made without the knowledge or consent of Camerer; that the money derived from the "sale" and pledge of the securities went into the funds and assets of the bank; that the receipt given by Irwin to Camerer on November 21, 1929, was given after the purported "sale" to the bank of the same securities described in the receipt; that the same was true of the receipt dated January 8, 1930, for the securities pledged to the bank on December 31, 1929; that Camerer had no notice or knowledge of the sale or pledge of his securities until after the bank was closed on July 23, 1930; that all, or most of the securities so sold or pledged to the bank, were purchased by Camerer through the bank and this fact was known to the assistant cashier of the bank at the time of the purported "sale" and pledge; that the two receipts for the securities dated November 21, 1929, and January 8, 1930, and signed by Irwin individually were executed by him for and on behalf of and for the benefit of the bank; that all the interest coupons were detached from the securities while in the possession of the bank, delivered to Irwin or the agent of Camerer, and deposited in Camerer's personal account in the bank; that all of the "sales" of the Camerer securities to the bank, and their pledge, between the fall of the year 1927 and January 9, 1930, were made by Irwin wrongfully, without any authority, and for the purpose of showing fictitious assets of the bank in order to deceive the superintendent of banks; that the bank had notice and knowledge through its officers that Irwin did not have title to the securities at the time of their "sales" and pledge; that the bank received the benefit of the unlawful sale and pledge of the securities to it.

All of the foregoing findings are supported by ample evidence or by reasonable inferences to be drawn from it.

The trial court made the following finding: "That in the transactions above referred to the said plaintiff acted in all respects as an ordinary, prudent person would act, having full confidence at all times in the integrity and honesty of the said defendant Irwin as president of the said California Savings & Commercial Bank of San Diego, * * * plaintiff was not negligent in accepting the receipts above referred to or in permitting the said California Savings & Commercial Bank of San Diego to borrow the said bonds and securities as represented by said receipts

above referred to, and the said plaintiff was not negligent in any of the acts done or taken by him, and was not negligent in the omission of any acts whatsoever." This finding is seriously assailed by appellants.

It will shorten this opinion to state frankly that if the bank were not an insolvent institution with its assets in the possession of the superintendent of banks, but were a going concern, we would unhesitatingly affirm a judgment which would require the return to Camerer of the securities which had been taken from him by the dishonest acts of the president of the bank. We are unimpressed with the argument that the receipts signed by Irwin on November 21, 1929, and January 8, 1930, gave Irwin authority to sell or pledge the securities. The "sale" occurred in September, 1929, two months before the first receipt was executed, and the pledge on December 31, 1929, a number of days before the second receipt was signed and delivered to Camerer. He had no knowledge of a prior conversion of his securities. That a person cannot ratify the unauthorized act of another of which he had no knowledge is too elemental to need support of authority. We are equally unimpressed with the argument that the bank and its officers, other than Irwin, neither had, nor should have had, notice of the fraudulent character of the several transactions in which Irwin purported to "sell" and pledge the securities. A large part, if not all of the securities, had been purchased for Camerer by the bank. The bank was not to dispose of any of them, but was to hold them for repurchase by Irwin. They were not to be placed among the securities owned by the bank, but were kept separate until a bank examiner ordered the practice discontinued a short time before the bank was closed. The coupons were clipped and delivered to Irwin, he giving his check to the bank for their face value. The coupons, or most of them, were deposited to Camerer's personal account. The "sales" were known to be "wash sales." The signor of the note was known to be a "dummy" and at least two officers of the bank objected to making the loan. All the transactions with the securities were made for the purpose of concealing the losses of the bank and deceiving the superintendent of banks as to its actual condition. Surely these and other facts which must have been known to the responsible officers of the bank should have caused them to inquire the good faith of the transactions.

The District Court of Appeal, afte nouncing the above conclusions, which we are in accord, proceeded to that the facts presented called for th plication of the principle that where of two innocent persons must suffe who by his conduct has made possibl perpetration of the wrong should bea loss. In the theory of the appellate c Camerer, by intrusting possession of bonds, which were payable to beare Irwin or to the bank, under the hiring ceipts described above, enabled Irwi deceive the bank examiners by a fra lent showing of assets, which was refle in the statements of the bank's condi published periodically in the press, as quired by law. As a result thereof, bank was held out to the public and t depositors and creditors as a sound ins tion and kept open beyond the date w it otherwise would have been ord closed. If the bank had been closed at earlier date, new deposits would not h been made, and existing depositors creditors would have received a la liquidating dividend than they will now ceive. The District Court of Appeal pressly recognized in the portion of opinion above quoted that the bank did occupy the status of a holder in good fa of the bonds. But the appellate court of the view that the defendant superinte ent of banks, representing the credit and depositors, could assert rights and fenses not available to the bank, and t in his capacity of receiver he was entit to retain the bonds as assets for distri tion to depositors and creditors. It was examine this conclusion that we grant plaintiff Camerer's petition for transfer this court.

[1] Plaintiff Camerer contends th there is no evidence that the bank e aminer, and, through him, the deposito and creditors were deceived by the manip lation of Camerer's securities, and no ev dence that the bank would have been clos at an earlier date had the said securiti not appeared as assets of the bank, n evidence that if the bank had been clos at an earlier date, the depositors and cred tors would have received a large dividen The substance of these contentions is th it is not shown that the depositors an creditors have in any way been prejudice