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Banks—Loaning Money as Agent Ultra Vires

Comment on Recent Decisions

BANKS—LOANING MONEY AS AGENT ULTRA VIRES.—The case of *Porter v. Sullivan et al.* (Tex. Civ. App. 1929) 19 S. W. (2d) 372, holds that the act of the vice-president of a bank in investing the money of a customer is *ultra vires* and that the bank has no liability for the loss resulting from the investment. The reasons advanced for the position of the court in this case are, first, that the knowledge of an official loaning the customer's money will not be imputed to the bank where the officer did not act within the scope of its powers, and second, that the knowledge of the scope of the bank's powers and authority of its officers will be chargeable to persons permitting the vice-president to lend their money.

The plaintiff in the case had dealt with the bank before in the same manner through the president who had loaned his money for him. The vice-president assumed to perform the same task after the president's death and the plaintiff agreed. The vice-president, however, loaned the money on security that he knew to be of no value, and the plaintiff sustained a loss. At the basis of the court's argument is the assumption that the only function of the modern bank is to loan money and that if it gives advice and acts as an agent in the loaning of money for others, then it is working against its own interest. Thus the court finds that the vice-president here acted contrary to the interests of the bank.

Corporate powers are of two kinds—those specifically given by the charter, and those implied from the terms of the charter. "Implied powers are those that are reasonably necessary according to the usual methods of that particular business and are not limited to those things indispensably necessary to the business, providing the benefits to be derived from the contract are sufficiently direct and immediate. What is the usual and customary method of operating a business is essentially a question of fact, for such custom and usage change with time." *Kasch v. Farmers' Gin Co.* (Tex. Com. App. 1928) 3 S. W. (2d) 72; *Coppard v. Farmers' & Merchants' State Bank* (Tex. Civ. App. 1916) 184 S. W. 551.

The scope of implied powers is affected by the existing business methods and customs. Competition compels a bank to give advice such as was offered by the vice-president in this case. The court here assumed that the giving of advice on loans or negotiating loans for customers was outside the scope of its powers and proceeded to what appeared to be a logical conclusion. But this assumption has no sound foundation either in the practices and necessities of banking or in the authorities. The lending of money on deposit for a customer is within the range of the legitimate business of a bank, unless prohibited by its charter. *Bobb v. Savings Bank of Louisville et al.* (1884) 23 Ky. Law Rep. 817, 64 S. W. 494. There was nothing in the facts of this case to indicate that the charter of the defendant prohibited such loans.

It is well settled that if money is left with a bank to be loaned, the bank is an agent and not a debtor of the depositor, but if the bank lends the money in good faith and exercises due care, it is not liable to the customer in the event of a pecuniary loss. *Squires v. Monmouth First National Bank* (1895) 59 Ill. App. 134; *Chapman v. First National Bank* (1914) 72 Ore. 492, 143 Pac. 630. Those cases adhere to the view that the loaning of money for customers is a function of a bank and hold that a bank is liable where its officers have been negligent in giving the services or have perpetrated deliberate frauds. The case here, however, did not hold the bank for the act of the officer in loaning the money of the customer even though there was negligence or fraud.

However, there are a number of cases which hold that the scope of powers of a bank does not extend to the loaning of a customer's money and thus if an officer does so the bank will not be liable. *City National Bank of Fort Worth v. Martin* (1880) 70 Tex. 643, S. W. 507. Assuming the validity of such a view, many courts hold a corporation liable even where the act of the corporation was admittedly *ultra vires*. This question arises most often in the cases where torts have been committed by the officers or agents of a corporation, and the corporation seeks to relieve itself of liability on the grounds that it was not authorized by its charter to perform the act in the course of which the tort was committed. But logically the doctrine of *ultra vires* should have no application as a defense to an action for a wrong of which the corporation is guilty. Natural persons are responsible for their torts and so corporations should be responsible for their torts committed by officers or agents through whom they must act. It is better general policy to place a strong duty on the corporation to keep within its chartered powers than to allow it to escape without liability merely because the wrongful act is outside the scope of those powers. It would seem to be very unjust not to allow a person injured by the intentional or negligent act of the officers or agents of a corporation a remedy merely because the act was *ultra vires*. *Zinc Carbonate Co. v. First National Bank* (1899) 103 Wis. 125, 79 N. W. 229; *National Bank v. Graham* (1879) 100 U. S. 699; *First National Bank of Decatur v. Henry* (1906) 159 Ala. 367, 49 So. 97; *Nims v. Mount Hermon Boys' School* (1893) 160 Mass. 177, 35 N. E. 776. However, there is a clear conflict of authority on this question, many courts holding that if a tort is committed by an officer or an agent of the corporation in the course of an activity beyond the scope of its corporate powers, the defense of *ultra vires* is open to the corporation. *Gunn v. Central R. R. et al.* (1885) 74 Ga. 509; *Bathe v. Decatur Agricultural Society* (1887) 73 Iowa 11, 34 N. W. 484.

The principal case stresses the point that knowledge of the agent is not imputed to the corporation. But, this point has no application, for if the act was *ultra vires*, knowledge is immaterial and knowledge on the part of the corporation is not considered where the corporation is held, whether the act is *ultra vires* or not. A corporation can act only through its officer. The court, therefore, cannot logically place its decision on the basis that the knowledge of the officer was not to be imputed to the corporation.

M. E. S., '31.