

# Further Concerning the Double Liability of Bank Stockholders. Stockholders of People's Banking Co. V. Sterling (Ghingher V. Bachtell)

Follow this and additional works at: <http://digitalcommons.law.umaryland.edu/mlr>



Part of the [Bankruptcy Law Commons](#)

---

### Recommended Citation

*Further Concerning the Double Liability of Bank Stockholders. Stockholders of People's Banking Co. V. Sterling (Ghingher V. Bachtell)*, 1 Md. L. Rev. 270 (1937)

Available at: <http://digitalcommons.law.umaryland.edu/mlr/vol1/iss3/9>

This Casenotes and Comments is brought to you for free and open access by the Academic Journals at DigitalCommons@UM Carey Law. It has been accepted for inclusion in Maryland Law Review by an authorized administrator of DigitalCommons@UM Carey Law. For more information, please contact [smccarty@law.umaryland.edu](mailto:smccarty@law.umaryland.edu).

FURTHER CONCERNING THE DOUBLE LIABILITY  
OF BANK STOCKHOLDERS. *STOCKHOLDERS  
OF PEOPLE'S BANKING CO. V. STERLING  
(GHINGHER V. BACHTELL)*<sup>1</sup>

In a case<sup>2</sup> previously noted in the REVIEW<sup>3</sup> the Court of Appeals of Maryland reversed the trial court and held it proper to assess "double liability" against bank stockholders for debts of the bank incurred prior to their becoming owners of the stock. The stockholders appealed to the Supreme Court of the United States alleging that the applicable statute, as interpreted by the Maryland Court, im-

---

<sup>1</sup> 57 S. Ct. 386 (1937). The companion case of *Stockholders of Hagerstown Bank and Trust Co. v. Sterling* was decided in the same opinion.

<sup>2</sup> *Ghingher v. Bachtell*, 169 Md. 678, 182 Atl. 558 (*sub nom.* *Ghingher v. Stockholders of People's Banking Co.*) (1936). The companion case in the Maryland Court of Appeals was *Ghingher v. Kausler*, 169 Md. 696, 182 Atl. 566 (*sub nom.* *Ghingher v. Stockholders of Hagerstown Bank and Trust Co.*) (1936).

<sup>3</sup> *Note, Double Liability of a bank stockholder for a debt of the bank incurred before his ownership of the stock* (1936) 1 Md. L. Rev. 95.

paired the obligation of contracts previously made and was, therefore, unconstitutional. *Held*: Affirmed. The provision of the Maryland Constitution was of itself effective to impose double liability on bank stockholders but it did not take from the legislature (or in the absence of any statute, from the courts) the power to provide statutory remedies or means of enforcing the constitutional provision. The previous statutory method of enforcement provided did not exhaust the power of the legislature over the matter. The later Maryland statutes proceeded under do not impair the obligations of any contract with the stockholders despite the fact that the statutes in force at the time they became stockholders permitted only an action by the creditors, against only those stockholders who were such when the debt was created, and subject to set-off and counterclaim, whereas the subsequently enacted statutes permitted an action by the receiver, against all stockholders regardless of when they became such, and without offsets and counterclaims. It was pointed out that it would not impair the contract for the State Court to give a new meaning to the previously existing provision of the State constitution, so long as the new meaning was the product of the independent judgment of the Court and not adopted because the later statute required it. It was further pointed out that the statute in force at the time the stockholders became such provided that it should be subject to repeal or alteration and that even if the statutes should be unconstitutional the burden would be on the stockholders to show (which they had not done) that any of the debts sought to be enforced existed before the later statute took effect. It was also pointed out that all the stockholders in the second case acquired their shares after the enactment of the latest statute regulating the double liability.

The Court pointed out that the enumerated changes in the laws governing the enforcement of the double liability did not impair the obligations of contracts, first, because the changes were directed toward the implementing remedies, and, second, because of the reserved power of alteration or repeal. It was pointed out that the first remedy provided (suit by creditor against stockholder) proved to be unworkable and that subsequently the Maryland Legislature provided another remedy which was less unwieldy and confusing (collection by the receiver for the benefit of the assets of the closed bank). This was merely the substitution of another remedy for the same substantive liability.

The Court pointed out, for that matter, that the reserved power of alteration or repeal would have even permitted a subsequent enlargement of the substantive liability of the stockholders. It was also pointed out that the double liability provision of the Maryland Constitution was a minimum, and not a maximum, liability and did not prevent the legislature from setting up a more onerous form of liability of its own force.

The Court distinguished a case much relied on by the appellants by pointing out that in that case *creditors* were complaining of the *destruction* of a cause of action, whereas in the principal case the debtors were complaining. It was pointed out that there was not even any proof that any creditors would be damaged by the changes and it was further suggested that, in the ordinary course of business (under the "first in, first out" rule) it was highly improbable that there remained any creditors of the banks whose deposits were made prior to the statutory changes of 1910 and not yet withdrawn.

It is interesting to note that the opinion in the case in the Court of Appeals of Maryland dealt more with the question whether the "double liability" could be assessed for a debt incurred before the stockholder acquired his stock while that in the Supreme Court of the United States devoted itself to the matter of the constitutionality of the change of the method of enforcing the double liability. Almost all of the stockholders in one case, and all in the other, became such after the latest change was made in 1910. Apparently those who had become stockholders after 1910 were relying on the point that the whole statute was unconstitutional because of the effect it had on those who were already stockholders when it was passed. As the Court pointed out, a ruling against those who became stockholders before 1910 was all the more one against those who became so subsequently.