

dollars each" for the security of depositors. The defendant subscribed for one hundred shares of the capital stock thus required and paid twenty-five per cent thereof. By resolution of the board, after the assignment, the remaining seventy-five per cent was "called in for liquidation of the indebtedness of the corporation." He refused to pay in obedience to the call, and when suit was brought by the assignee in the name of the bank, to recover the balance due and owing by him on his subscription, his defence was that the bank was indebted to him as a depositor in a much larger sum, and therefore he should not be compelled to pay.

If such a defence were entertained, the effect would be to withdraw from depositors and other creditors of the insolvent bank a portion of the very fund which was specially provided for the common benefit of all alike, and apply it to the sole benefit of the defendant, who, at best, has no better right thereto than other depositors. If every delinquent subscriber to the capital stock could thus pay his subscription, what would become of other depositors and creditors of the insolvent bank? It is not difficult to see what a perversion it would be of the trust fund, and to what gross injustice it would necessarily lead. From the fact that the directors called in the whole of the outstanding subscriptions for the purpose of liquidating the indebtedness of the bank, we have a right to assume that it is all required for that purpose. If defendant's indebtedness to the bank at the date of the assignment had been founded on an ordinary business transaction, such as making or endorsing a note, he might with some show of reason insist on setting up by way of defence a counter-claim as depositor. This would bring him within the principle of *Jordan v. Sharlock*, 3 Norris, 368.

In *Sawyer v. Hoag, Assignee*, 17 Wall. 610, it is held that a stockholder indebted to an insolvent corporation for unpaid shares cannot set off against this trust fund for creditors a debt due him by the corporation; that the fund arising from such unpaid shares must be equally divided among all creditors. That case, it is true, arose under the National Bankrupt Act; but so far as the principle now under consideration is concerned, the right to set-off and rule of distribution, under that act, do not

materially differ from our voluntary assignment law.

The defence set up in this case derives no support from the principle involved in *Fox's Appeal*, 8 Week. Notes, 556. The fund for distribution there included proceeds of outstanding subscriptions to capital stock of the Kutztown Savings Bank, which had been collected by the assignee. The whole fund was insufficient to pay depositors, who claimed that as a preferred class they were entitled to the fund for distribution to the exclusion of other creditors, and if not entitled to the entire fund, they had at least an exclusive right to that portion of it which represented capital, collected by the assignee; but it was held that the depositors as a class had no exclusive right to the whole or any particular portion of the fund.

As the case was presented to the court below, we are of opinion that the plaintiff was entitled to judgment for want of a sufficient affidavit of defence.

It is ordered that the record be remitted to the court below with instructions to enter judgment against the defendant for fifteen hundred dollars with interest from the time the same was due and payable according to the call, unless other legal or equitable cause be shown to said court why such judgment should not be so entered.

PAYMENT UNDER COMPULSION.

SUPREME COURT OF WISCONSIN.

PARCHER V. MARATHON COUNTY.

Where payment is made under compulsion of legal process, accompanied by protest that the demand is illegal and the party paying will take measures to recover it back, it is not a voluntary payment

To constitute compulsion of legal process, actual seizure or threat to seize property by virtue of the process is not necessary; it is sufficient if the officer demands payment by virtue of the process and manifests an intention to enforce collection by seizure and sale of property.

The action was brought to recover back the amount of a tax assessed upon the personal property of the plaintiffs in the year 1877, in the city of Wausau, which the plaintiffs allege they paid by compulsion and under protest. It was admitted on the trial by the defendant county that the tax was illegal. It appears that the treasurer of Wausau demanded the