

on the issue whether the testator at the time of executing the will was of sound and disposing mind and capable of executing a valid deed or contract, is upon the caveator.

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COMMONWEALTH OF PENNSYLVANIA *v.* STATE  
OF WEST VIRGINIA.

STATE OF OHIO *v.* STATE OF WEST VIRGINIA.

ON REHEARING.

Nos. 15 and 16, Orig., October Term, 1922. Reargued November 20, 1923.—Decided December 3, 1923.

Decree heretofore made in these cases, reaffirmed, after rehearing.

*Mr. John W. Davis* and *Mr. George E. Alter*, Attorney General of the Commonwealth of Pennsylvania, for plaintiffs.

*Mr. Philip P. Steptoe* and *Mr. George M. Hoffheimer* for defendant.

MR. JUSTICE VAN DEVANTER announced the ruling of the Court.

An opinion expressing the views of the Court in these cases was announced at the last term and a decree was entered then. 262 U. S. 553, 623. By the Court's leave, given at that term, a petition for rehearing was filed. The cases had been presented in oral argument three times, but three members of the Court had heard only the last presentation. This, with the importance of the questions involved and the public character of the litigants, led the Court to grant the rehearing. It was had two weeks ago. The cases have been considered again in the light of that presentation, and after this further reflection the Court perceives no ground for disturbing the

opinion heretofore announced or the decree entered thereon.

*Decree reaffirmed.*

The CHIEF Justice did not participate in the consideration of the cases on the rehearing.

MR. JUSTICE HOLMES, MR. JUSTICE McREYNOLDS and MR. JUSTICE BRANDEIS dissent, for the reasons given in their dissenting opinions at the last term.

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HIGHTOWER ET AL. *v.* AMERICAN NATIONAL BANK OF MACON, GEORGIA.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

No. 25. Argued January 25, 1923.—Decided December 3, 1923.

1. A contract between two national banks under which the assets of the one were transferred to the other and the latter assumed the liabilities of the former and advanced money, in excess of the assets, to pay the liabilities and expenses, *construed* as intending, not a sale, but a pledge of the assets, as security for repayment of the money advanced. Pp. 353, 358.
  2. Where a national bank, in financial difficulty, but still in active operation and not thought to be insolvent, to protect the interests of its creditors and shareholders made a contract by authority of its directors with another national bank, whereby the second bank assumed the liabilities of the first, took over its assets as security, and paid the debts by means of the assets and its own funds, acting finally as liquidating agent after the shareholders of the first bank had ratified the contract and ordered liquidation under Rev. Stats., § 5220,—*held*, that the contract was valid; and that the claim of the second bank for money advanced in excess of the assets was not created during the liquidation but was a debt arising under the contract for which the shareholders of the liquidated bank were liable under Rev. Stats., § 5151, as amended. P. 360.
- 276 Fed. 371, affirmed.

APPEAL from a decree of the Circuit Court of Appeals, which affirmed a decree of the District Court awarding