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## Banks and Banking -- Deposit for Specific Purpose as Preferred Claim

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Although the case goes far in allowing compensation, it may perhaps be justified on the ground that the employer apparently undertook to see that plaintiff was present at the trial.

W. J. ADAMS, JR.

### Banks and Banking—Deposit for Specific Purpose as Preferred Claim.

A bank received a deposit under an escrow agreement to be paid to a third party subject to an arbitration. The bank having failed pending the arbitration proceeding, it was held that the sum was a deposit for a specific purpose, creating a trust relationship, and the beneficiaries were entitled to a preferred claim to the funds in the hands of the receiver.<sup>1</sup>

Bank deposits may be classified as either general, special, or deposits for a specific purpose.<sup>2</sup> The ordinary deposit is general, creating a debtor-creditor relationship between the depositor and the bank.<sup>3</sup> Upon failure of a bank containing such deposits, the general depositor is not entitled to any preference over the creditors of the bank, but shares *pro rata* with them.<sup>4</sup> A special or segregated deposit arises where it is agreed that the thing deposited shall be safely kept,

vulsion); *Hemmingway v. Atlas Plywood Corp.*, 2 N. C. I. C. 269 (1931) (plaintiff caught pneumonia while working in hole).

Where the cause of accident was entirely unrelated to the employment: *Honeycutt v. Vann Motor Co.*, 1 N. C. I. C. 510 (1930) (plaintiff injured while trying to skate); *Canter v. Surry County Board of Education*, 1 N. C. I. C. 414 (1930) (school janitor injured on premises by shotgun he was carrying for purpose of killing squirrel); *Plyler v. Indian Trail School*, 2 N. C. I. C. 343 (1931) (teacher made sick by food furnished at teacherage where she boarded); *Vann v. Goldston School Board of Education*, 2 N. C. I. C. 361 (1931) (decedent was school teacher; became sick at school and sent to principal for aromatic spirits of ammonia; was sent poison ammonia, which she drank); *Bodenheimer v. Ragan Knitting Co.*, 3 N. C. I. C. 95 (1931) (plaintiff bitten while at work by mad dog, owner unknown).

<sup>1</sup>*Parker v. Central Bank and Trust Co. of Asheville*, 202 N. C. 230, 162 S. E. 564 (1932).

<sup>2</sup>*Corporation Commission of N. C. v. Merchants' Bank & Trust Co.*, 193 N. C. 696, 138 S. E. 24 (1927); 1 BOLLES, *MODERN LAW OF BANKING* (1907) 432.

<sup>3</sup>*Corporation Commission of N. C. v. Merchants' Bank & Trust Co.*, 194 N. C. 125, 138 S. E. 530, 57 A. L. R. 382 (1927); *Northwest Lumber Co. v. Scandinavian-American Bank*, 130 Wash. 38, 225 Pac. 825 (1924); 1 BOLLES, *op. cit. supra* note 2. In the absence of an agreement to the contrary, a deposit is presumed to be general. *Washington Shoe Mfg. Co. v. Duke*, 126 Wash. 510, 218 Pac. 232, 37 A. L. R. 611 (1923); *Lawrence v. Lincoln County Trust Co.*, 125 Me. 150, 131 Atl. 863 (1926).

<sup>4</sup>*McClain v. Wallace*, 103 Ind. 562, 5 N. E. 911 (1885); *Schmelling v. State*, 57 Neb. 562, 78 N. W. 279 (1899); *Bank of Blackwell v. Dean*, 9 Okla. 626, 60 Pac. 226 (1900).

and that identical thing returned to the depositor.<sup>5</sup> Here the relationship is one of bailor and bailee, rather than one of debtor and creditor, the depositor retaining title to the specific *res* deposited, which he can reclaim, or if mingled with other funds, can recover as a preferred claim.<sup>6</sup> A deposit for a specific purpose is where money or property is delivered to the bank to be applied to a designated object.<sup>7</sup> Here the deposit becomes impressed with a trust, and in case the bank fails the depositor is entitled to priority in payment.<sup>8</sup> Many courts have tended to confuse specific deposits with special deposits,<sup>9</sup> and although the result reached is the same, it seems better that they be distinctly classified.

In order to create a deposit for a specific purpose both the depositor and the bank must understand that the money is to be used for that purpose and no other.<sup>10</sup> The intention of the depositor must be clearly expressed, and in determining that intention the previous course of dealing of the parties may be important.<sup>11</sup> Generally, deposits to meet payments on a mortgage,<sup>12</sup> or note,<sup>13</sup> or to meet des-

<sup>5</sup> Corporation Commission of N. C. v. Merchants' Bank & Trust Co., *supra* note 2; 1 MORSE, BANKS & BANKING (6th ed. 1928) §183.

<sup>6</sup> Fogg v. Tyler, 109 Me. 109, 82 Atl. 1008, 39 L. R. A. (N. S.) 847 (1912); Leach v. Capper, 202 Iowa 887, 211 N. W. 532 (1926).

<sup>7</sup> Corporation Commission of N. C. v. Merchants' Bank & Trust Co., *supra* note 2; 1 MORSE, *op. cit. supra* note 5, §185.

<sup>8</sup> Bergstresser v. Lodewick, 59 N. Y. Supp. 630 (1899); Sawyer v. Conner, 114 Miss. 363, 75 So. 131 (1917); Central Bank & Trust Co. v. Ritchie, 120 Wash. 160, 206 Pac. 926 (1922); Williams v. Bennett, 158 Ga. 488, 123 S. E. 683 (1924); Corporation Commission of N. C. v. Merchants' Bank & Trust Co., *supra* note 3.

<sup>9</sup> Moreland v. Brown, 86 Fed. 257 (C. C. A. 9th, 1898); Decatur First Nat. Bank v. Henry, 159 Ala. 367, 49 So. 97 (1905); People v. City Bank of Rochester, 96 N. Y. 32 (1884); Craig v. Bank of Granby, 210 Mo. App. 334, 238 S. W. 507 (1922).

<sup>10</sup> Northern Sugar Corp. v. Thompson, 13 F. (2d) 829 (C. C. A. 8th, 1926); Craig v. Bank of Granby, *supra* note 9; Fralick v. Coer D'aline Bank & Trust Co., 36 Idaho 108, 210 Pac. 586 (1922); Central Coal & Coke Co. v. State Bank of Bevier, 44 S. W. (2d) 188 (Mo. 1931).

<sup>11</sup> *Supra* note 10. However, it seems that departmental accounts of corporations, or household expense accounts, would not be classified as specific, as these are more in the nature of book-keeping devices than deposits for specifically designated objects. See Northern Sugar Corporation v. Thompson, *supra* note 10, at 832.

<sup>12</sup> Blummer v. Scandinavian-Am. State Bank of Badger, 169 Minn. 194, 210 N. W. 865 (1926).

<sup>13</sup> Bergstresser v. Lodewick; Central Bank & Trust Co. v. Ritchie, both *supra* note 8.

ignated outstanding checks,<sup>14</sup> or to further some particular project<sup>15</sup> have been held to be for a specific purpose.

However, in order for the deposit to be allowed as a preferred claim, the depositor must not only prove that a trust relationship existed, but must show that the fund came into the receiver's hands.<sup>16</sup> It is not enough to show that the book assets of the bank were increased, or that the money received by the bank was used in reducing its indebtedness.<sup>17</sup> It must be shown that the funds which came into the hands of the receiver were augmented by the particular deposit.<sup>18</sup> However, where trust funds have been wrongfully mingled with other assets of the bank, the familiar "first in, first out" rule does not apply, but there is a presumption that the fund was retained in custody, and came into the receiver's hands.<sup>19</sup>

The allowance or disallowance of a deposit as a trust fund has occasioned considerable difficulty. It has been uniformly held that a general deposit of trust funds by a trustee rightfully made will not constitute a trust deposit.<sup>20</sup> If the trust funds are wrongfully de-

<sup>14</sup> *Corporation Commission of N. C. v. Merchants' Bank & Trust Co.*, *supra* note 3; *Southern Exchange Bank v. Pope*, 152 Ga. 162, 108 S. E. 551 (1921); *Morton v. Woolery*, 48 N. D. 1132, 189 N. W. 232, 24 A. L. R. 1107 (1922).

<sup>15</sup> *Sawyer v. Conner*; *Williams v. Bennett*, both *supra* note 8; *Secret v. Ladd*, 112 Kan. 23, 209 Pac. 824 (1922); *First Nat. Bank of Ranger v. Price*, 262 S. W. 797 (Tex. 1924).

<sup>16</sup> *Empire State Surety Co. v. Carroll County*, 194 Fed. 593 (C. C. A. 8th, 1912); *Poisson v. Williams*, 15 F. (2d) 582 (E. D. N. C. 1926); *Commissioners v. Wilkinson*, 119 Mich. 655, 78 N. W. 893 (1894); *Homer v. Hanover State Bank*, 114 Kan. 123, 216 Pac. 822 (1923); *Chetoga State Bank v. Farmers and Merchants' State Bank*, 114 Kan. 463, 218 Pac. 1000 (1923); Note (1923) 26 A. L. R. 3

<sup>17</sup> *First Nat. Bank of Ventura v. Williams*, 15 F. (2d) 585 (E. D. N. C. 1926); *Daughtry v. International Bank of Commerce*, 18 N. M. 119, 134 Pac. 220 (1913); *Empire State Surety Co. v. Carroll County*; *Homer v. Hanover State Bank*, both *supra* note 16.

<sup>18</sup> *Supra* note 16.

<sup>19</sup> *Central Nat. Bank v. Conn. Mutual Life Ins. Co.*, 104 U. S. 54, 26 L. ed. 693 (1881); *Poisson v. Williams*, *supra* note 16; *Sherwood v. Central Mich. Savings Bank*, 103 Mich. 109, 61 N. W. 352 (1894).

<sup>20</sup> *Wetherell v. O'Brien*, 140 Ill. 146, 29 N. E. 904, 33 Am. St. Rep. 221 (1892); *Officer v. Officer*, 120 Iowa 389, 90 N. W. 947, 98 Am. St. Rep. 365 (1903); *Thompson v. Orchard State Bank*, 76 Colo. 20, 227 Pac. 827, 37 A. L. R. 115 (1924); Note (1924) 37 A. L. R. 120.

So, where the bank as fiduciary deposits money in its own commercial department, no preference is given. *First & Citizens' Nat. Bank v. Corp. Comm. of N. C.*, 201 N. C. 381, 160 S. E. 360 (1931); *Commonwealth v. Tradesmen's Trust Co.*, 250 Pa. 378, 95 Atl. 577 (1915); *Wainwright Trust Co. v. Dulin*, 67 Ind. App. 476, 119 N. E. 387 (1918); Notes (1928) 56 A. L. R. 806; (1930) 16 VA. L. REV. 392, 396; (1930) 44 HARV. L. REV. 281. In New England the practice seems to be to carry such fiduciary deposits in another bank (Letter Jan. 8, 1932 from Old Colony Trust Co., Boston) and such practice may also be required by law. MASS. GEN. LAWS (1921) c. 172, §54. Statutes may also

posited and the bank has knowledge of the trust character of the funds, the bank will be held to have taken the property in trust.<sup>21</sup> Many courts have adopted the view that the state has a preference, by virtue of its prerogative rights derived from the common law, to public funds deposited in a bank.<sup>22</sup> Other courts, perhaps the minority, hold that no such prerogative right exists, and the state is not entitled to a preference in the absence of a statute.<sup>23</sup> This prerogative right has been generally held not to apply to counties and other political subdivisions.<sup>24</sup> Where public funds are wrongfully received by a bank not authorized to accept public money, the bank is held to be a trustee *ex maleficio*, and the owner is entitled to a preference.<sup>25</sup> So, if a bank receives deposits when it is hopelessly insolvent within the knowledge of its officers, the bank is deemed to be a trustee *ex maleficio*.<sup>26</sup>

give a preference expressly or by judicial interpretation. *Glidden v. Gutelius*, 96 Fla. 834, 119 So. 140 (1928); *In re American Savings Bank of Marengo*, 210 Iowa 568, 231 N. W. 311 (1930); *Myers v. Matusek*, 98 Fla. 1126, 125 So. 360 (1929). The North Carolina Commissioner of Banks now requires security to be set aside for such deposits. Rule No. 4, (1931) 10 TAR HEEL BANKER 46. However, no constant exact check can be kept as compared with the amount of trust funds. See also 12 U. S. C. A., §248 (k) (1927).

<sup>21</sup>*In re Knapp*, 101 Iowa 488, 70 N. W. 626 (1897); *Reeves v. Pierce*, 64 Kan. 502, 67 Pac. 1108 (1902); *State v. American State Bank*, 108 Neb. 111, 187 N. W. 762 (1922). The reason assigned is that since the trustee has no authority to deposit the money, its character when deposited, is preserved in the interest of the *cestui que trust*.

<sup>22</sup>*In re Carnegie Trust Co.*, 206 N. Y. 390, 99 N. E. 1096 (1912); *Woodyard v. Sayre*, 90 W. Va. 295, 110 S. E. 689 (1922); *U. S. Fidelity & Guaranty Co. v. Bramwell*, 108 Ore. 26, 217 Pac. 332, 32 A. L. R. 829 (1923); *Maryland Casualty Co. v. McConnell*, 148 Tenn. 656, 257 S. W. 410 (1924). The state having succeeded under the common law to certain of the prerogatives belonging to the king, it is entitled to a preference over general creditors of a closed bank.

<sup>23</sup>*State v. Lowdermill*, 23 Ariz. 574, 205 Pac. 915 (1922); *Hammons v. U. S. Fidelity & Guaranty Co.*, 30 Ariz. 480, 248 Pac. 1086 (1926); *Maryland Casualty Co. v. Rainwater*, 173 Ark. 103, 291 S. W. 1003 (1927); *N. C. Corp. Comm. v. Citizens' Bank & Trust Co.*, 193 N. C. 513, 137 S. E. 587, 51 A. L. R. 1350 (1927).

<sup>24</sup>*Aetna Casualty & Surety Co. v. Bramwell*, 12 F. (2d) 307 (D. Ore. 1926); *Calhoun County v. Matthews*, 99 W. Va. 483, 129 S. E. 399 (1925); *Glynn County v. Brunswick Terminal Co.*, 101 Ga. 244, 28 S. E. 604 (1897); *U. S. Fidelity & Guaranty Co. v. Rainey*, 120 Tenn. 357, 113 S. W. 397 (1908). Counties being merely subdivisions of the state, are not sovereign, and have no sovereign rights of preference. But see *Denver v. Stenger*, 295 F. 809 (C. C. A. 8th, 1924).

<sup>25</sup>*Allen v. U. S.*, 285 F. 678 (C. C. A. 1st, 1923); *Grand Forks County v. Baird*, 54 N. D. 315, 209 N. W. 782 (1926); *Lunenburg County v. Prince Edward-Lunenburg County Bank*, 138 Va. 33, 121 S. E. 903 (1924); *Jarvis v. Hammons*, 32 Ariz. 444, 259 Pac. 886 (1927). The act of a bank not a public depository in receiving the deposit is fraudulent, and the depositor may rescind the transaction and recover his deposit.

<sup>26</sup>*St. Louis & San Francisco Ry. Co. v. Johnston*, 133 U. S. 566, 10 Sup. Ct. 390, 33 L. ed. 683 (1890); *Richardson v. New Orleans Debenture Co.*, 102 F.

The deposit in the instant case falls clearly within the classification of a deposit for a specific purpose. Such deposits under escrow agreements have generally been held to be specific.<sup>27</sup> The intention in such cases seems clear that the ordinary debtor-creditor relationship is not contemplated. Thus, it seems right that the depositor should be preferred above the general creditors of the bank.

ROBERT A. HOVIS.

### Bribery—Scope of Official Duties Under Bribery Statute.

Defendant, clerk of the city council, was convicted of bribery under an indictment alleging that he exerted his influence upon members of the council to procure the passage of resolutions settling a claim against the city and that he stamped, transmitted and certified these resolutions. The question presented was whether or not defendant's lobbying of the councilmen was within the scope of his official duties.<sup>1</sup> *Held*, the indictment sufficiently related to the clerk's official duties and his conviction was proper.<sup>2</sup>

At common law, bribery consisted in the receiving or offering of any undue reward by or to any person in a public office to influence his behavior in office.<sup>3</sup> Modern statutory definitions<sup>4</sup> of the offense<sup>5</sup>

780 (C. C. A. 5th, 1900); *Willoughby v. Weinberger*, 15 Okla. 226, 79 Pac. 777 (1905); *Orme v. Baker*, 74 Ohio St. 337, 78 N. E. 439, 113 Am. St. Rep. 968 (1906).

There is a split of authority concerning the allowance of a preference where the failed bank has issued a draft covering money on deposit. *Morecock v. Hood*, 202 N. C. 321, 162 S. E. 730 (1932) (no preference allowed); *Bryon v. Coconut Grove Bank and Trust Co.*, 132 So. 481 (Fla. 1931) (preference allowed). The better view seems to be not to allow a preference. Note (1932) 26 ILL. L. REV. 63.

As to whether the proceeds of a check or other paper deposited with a bank for collection constitutes a trust fund in the hands of a bank which has failed, see Bogert, *Failed Banks, Collection Items, and Trust Preference* (1931) 29 MICH. L. REV. 545; Turner, *Bank Collections—The Direct Routing Practice* (1929) 39 YALE L. J. 468.

<sup>27</sup> *Hudspeth v. Union & Savings Bank*, 196 Iowa 706, 195 N. W. 378, 31 A. L. R. 466 (1923); *Schulz v. Bank of Harrisonville*, 246 S. W. 614 (Mo. 1923); *Mothersead v. Lewis*, 117 Okla. 167, 245 Pac. 550 (1925); *Lusk Development and Improvement Co. v. Günter*, 32 Wyo. 294, 232 Pac. 518 (1925); *Blythe v. Kujawa*, 175 Minn. 88, 220 N. W. 168 (1928).

<sup>1</sup> As to defendant clerk's prescribed duties, see *Taylor v. State*, 161 S. E. 793, 794 (Ga. 1932).

<sup>2</sup> *Taylor v. State*, *supra* note 1.

<sup>3</sup> *State v. Farris*, 229 S. W. 1100 (Mo. App. 1921); *People v. Coffey*, 161 Cal. 433, 119 Pac. 901 (1911); *State v. Pritchard*, 107 N. C. 921, 12 S. E. 50 (1890); 3 WHARTON, CRIMINAL LAW (11th ed. 1912) 2352.

<sup>4</sup> For a general discussion, see 9 C. J. 406.

<sup>5</sup> As to the North Carolina statute, see N. C. CODE ANN. (Michie, 1931) §4372.