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Banks and Banking -- Interest -- Equity

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This plan was accepted by the representatives of the Press and of the Law School as likely to insure the widest possible distribution of the LAW REVIEW consistent with a subscription plan. The hope was expressed by the committee that, out of the 2,200 members of the State Bar, as many as 1,500 would take advantage of this opportunity. It was agreed that the expense of publication of the LAW REVIEW over and above such a sum as these subscriptions might yield would continue to be borne by the Press.

At the October meeting of the Council this plan was presented and approved, and at the annual meeting of the State Bar the following day it was announced to the membership. As a result, this issue inaugurates a new department under the caption, THE NORTH CAROLINA STATE BAR, edited by Mr. Kemp D. Battle, of Rocky Mount.

The new financing plan will be carried into effect when bills for membership dues are distributed in January, 1937.

The significance of the action of the committees representing the two bar organizations and of the Council as manifesting confidence in the value of the LAW REVIEW is gratefully appreciated by the publisher and by the editors.

NOTES AND COMMENTS

Banks and Banking—Interest—Equity.

In an action on a certified check where the plaintiff was subrogated to the rights of the government¹ the court took judicial notice of the present well-known banking situation, and held that the payment of the legal rate of interest should not be required, since the use of the funds had not been lucrative to the bank or damaging to the plaintiff to that extent. Interest was allowed at the rate of two per cent from the date of demand, that being the prevailing rate upon savings bank deposits.²

In an action for the detention of money or the non-payment of liquidated claims, interest at the statutory rate is usually recoverable from the date of demand,³ or if no formal demand is made, from the institution of the action.⁴ However, in actions on claims against insolvent

¹ 36 Stat. 965 (1911), 44 Stat. 120 (1926), 26 U. S. C. A. 1546 (1935).

² *American Tobacco Co. v. South Carolina Nat. Bank*, 15 F. Supp. 215 (E. D. S. C. 1936).

³ *Anderson v. Pacific Bank*, 112 Cal. 598, 44 Pac. 1063 (1896); *Hackleman v. Moat*, 4 Black. 164 (Ind. 1836); *Thomas v. Wells*, 140 Mass. 517, 5 N. E. 485 (1886); *Cochrane v. Forbes*, 267 Mass. 417, 166 N. E. 752 (1929); *McIlvaine v. Wilkins*, 12 N. H. 474 (1841); *Hyman v. Gray*, 49 N. C. 155 (1856); *Crawford v. The Bank of Wilmington*, 61 N. C. 136 (1867); *Bank of Charlotte v. Hart*, 67 N. C. 264 (1872); *Neal v. Freeman*, 85 N. C. 441 (1881); *McRae v. Malloy*, 87 N. C. 196 (1882); *Porter v. Grimsley*, 98 N. C. 550, 4 S. E. 529 (1887).

⁴ *Kaufman v. Tredway*, 195 U. S. 271, 25 Sup. Ct. 33, 49 L.ed. 190 (1904); *McIlvane v. Wilkins*, 12 N. H. 474 (1841); *Di Crano v. Moore*, 50 App. Div. 361, 64

banks most jurisdictions allow the recovery of interest only if the assets of the bank are more than sufficient to pay the principal of all claims, both preferred and non-preferred.⁵

"In claims of equitable origin for the recovery of funds, the courts seem not to confine themselves invariably to the legal rate in allowing interest as compensation, but to take into consideration the amount which the custodian has earned."⁶ This is particularly true in the case of administrators, executors, and trustees who have acted in good faith but have not entirely fulfilled their duties.⁷ Also, though equity generally follows the law as to the allowance of interest, it may in its discretion allow interest where it is not recoverable at law.⁸

Under its equitable jurisdiction the court in the principal case was fully justified in taking judicial notice of the banking situation, as have other courts in recent years been justified in taking judicial notice of economic conditions.⁹ The result reached is desirable and equitable,

N. Y. Supp. 3 (1900); *Neal v. Freeman*, 85 N. C. 441 (1881); *Porter v. Grimsley*, 98 N. C. 550, 4 S. E. 529 (1887).

⁵ *Green v. Stone*, 205 Ala. 381, 87 So. 862 (1920); *McGowan v. McDonald*, 111 Cal. 57, 43 Pac. 418 (1896); *People v. California Safe Deposit and Trust Co.*, 34 Cal. App. 269, 167 Pac. 181 (1917); *Lamar v. Taylor*, 141 Ga. 227, 80 S. E. 1085 (1914); *Leach v. Sanborn State Bank*, 210 Iowa 613, 231 N. W. 497, 69 A. L. R. 1210 (1930); *People v. American Loan and Trust Co.*, 172 N. Y. 371, 65 N. E. 200 (1902); *People v. Merchants' Trust Co.*, 187 N. Y. 293, 79 N. E. 1004 (1907); *Ex Parte Stockman*, 70 S. C. 31, 48 S. E. 736 (1904); *State v. Park Bank and Trust Co.*, 151 Tenn. 195, 268 S. W. 638, 39 A. L. R. 457 (1925); *Northwest Lumber Co. v. Scandinavian-American Bank*, 132 Wash. 449, 231 Pac. 951 (1925). *Contra: American Nat. Bank v. Williams*, 101 Fed. 943 (C. C. A. 9th, 1900); *American Surety Co. of New York v. Peyton*, 186 Minn. 588, 244 N. W. 74 (1932); *Shaw v. McCord*, 18 S. W. (2d) 200 (Tex. 1929); see (1933) 11 N. C. L. Rev. 155.

⁶ *McCORMICK, DAMAGES* (1935) §52; *Greenish v. Standard Sugar Refinery*, Fed. Cas. No. 5,776 (D. Mass. 1877); *John Agnew Co. v. Board of Education*, 83 N. J. Eq. 49, 89 Atl. 1046 (1914) (includes an excellent discussion of the principles involved); *Backus v. Crane*, 87 N. J. Eq. 229, 100 Atl. 900 (1917).

⁷ *In re Smith's Estate*, 112 Cal. App. 680, 297 Pac. 927 (1931); *Ford v. Wilson*, 85 Atl. 1073 (Del. 1913); *Britton v. Brewster's Estate*, 113 Mich. 561, 71 N. W. 1085 (1897); *In re Grover's Estate*, 233 Mich. 467, 206 N. W. 988 (1926); *Cornet v. Cornet*, 269 Mo. 298, 190 S. W. 333 (1916); *In re Babcock's Estate*, 2 Conn. 82, 9 N. Y. Supp. 554 (1889); *In re Scudder's Estate*, 21 Misc. 179, 47 N. Y. Supp. 101 (1897); *In re Hoyt's Estate*, 44 Misc. 76, 89 N. Y. Supp. 744 (1904); *In re Wiley*, 98 App. Div. 93, 91 N. Y. Supp. 661 (1904); *Ellis v. Kelsey*, 241 N. Y. 374, 150 N. E. 148 (1925); *In re Haigh's Estate*, 133 Misc. 240, 232 N. Y. Supp. 322 (1928); *In re Ayzavian's Estate*, 153 Misc. 467, 275 N. Y. Supp. 123 (1934); *Appeal of Van Dyke*, 183 Pa. 647, 39 Atl. 2 (1898); *In re Hertzler's Estate*, 192 Pa. 548, 43 Atl. 1028 (1899); *Padelford v. Real Estate-Land Title and Trust Co.*, 183 Atl. 442 (Pa. 1936); *In re Listman's Estate*, 57 Utah 471, 197 Pac. 596 (1921).

⁸ *McCowen v. Pew*, 18 Cal. App. 482, 123 Pac. 354 (1912); *Thompson v. Davis*, 297 Ill. 11, 130 N. E. 455 (1921); *Duncan v. Dazey*, 318 Ill. 500, 149 N. E. 495 (1925); *Goldman v. City of Worcester*, 236 Mass. 319, 128 N. E. 410 (1920); *Woerz v. Schumacher*, 161 N. Y. 530, 56 N. E. 72 (1900); *Pryor v. City of Buffalo*, 61 Misc. 162, 113 N. Y. Supp. 249 (1908).

⁹ *United States v. Calistan Packers*, 4 F. Supp. 660 (N. D. Cal. 1933); *United States Nat. Bank and Trust Co. v. Sullivan*, 69 F. (2d) 412 (C. C. A. 7th, 1934);

as it is well known that in most instances in recent years the legal rate has not been realized on funds, and the plaintiff's damages probably did not amount to more than the two per cent allowed. Also as the defendant acted in good faith and had apparent grounds for the refusal of the plaintiff's demand for payment, the bank, its depositors and creditors should not be penalized by having to pay the legal rate of interest as damages.

C. M. IVEY, JR.

Constitutional Law—Bankruptcy—Municipal Corporations.

Congress in 1934, by the Sumners-Wilcox Municipal Debt Readjustment Act,¹ amended the Federal Bankruptcy Act² to permit any municipality or other political subdivision of any state to obtain a voluntary readjustment of its debts through proceedings in the Federal courts. A Texas water improvement district, claiming to be insolvent and unable to meet its debts as they matured, petitioned the United States District Court for a readjustment under the Sumners Act.³ The Texas legislature in the meantime granted political subdivisions the express right to proceed under the Federal law.⁴ The United States Supreme Court held the act invalid as an unconstitutional encroachment upon state sovereignty over the fiscal affairs of local governmental units,⁵ regardless of the express consent of the state.

The majority of the court felt that as the power "to establish uniform Laws on the subject of Bankruptcies" and the power "to lay and collect taxes" were both granted in Article I, section 8 of the Constitu-

Lowden v. Iowa-Des Moines Nat. Bank and Trust Co., 10 F. Supp. 430 (S. D. Iowa 1935); Coral Gables Inc. v. Patterson, 166 So. 40 (Ala. 1936); Reif v. Barrett, 355 Ill. 104, 188 N. E. 889 (1933); Chicago Title and Trust Co. v. Chicago Trust Co., 1 N. E. (2d) 87 (Ill. 1936); Bolivar Tp. Board of Finance of Benton County v. Hawkins, 207 Ind. 171, 191 N. E. 158 (1934); United Shoe Stores Co. v. Burt, 142 So. 370 (La. 1932); Campbell v. City of Boston, 195 N. E. 802 (Mass. 1935); Shonnard v. Elevator Supplies Co., 111 N. J. Eq. 94, 161 Atl. 684 (1932); Williams v. Williams, 12 N. J. Misc. 641, 174 Atl. 423 (1934); Kuhn v. Cermac Realty Co., 148 Misc. 324, 265 N. Y. Supp. 861 (1933); *In re Connelly's Estate*, 151 Misc. 310, 271 N. Y. Supp. 368 (1934); *State ex rel. Zimmerman v. Gibbes*, 171 S. C. 209, 172 S. E. 130 (1933); *Dukes v. Jefferson Standard Life Ins. Co.*, 172 S. C. 502, 174 S. E. 463 (1934).

¹ 48 Stat. 798, 11 U. S. C. A. §§301, 303 (1934).

² 30 Stat. 554 (1898), 11 U. S. C. A. §1 *et seq.* (1927).

³ *In re Cameron County Water Improvement Dist. No. 1*, 9 F. Supp. 103 (D. C. Tex. 1934) (petition denied for lack of jurisdiction). *Contra*: *Cameron County Water Improvement Dist. No. 1 v. Ashton*, 81 F. (2d) 905 (C. C. A. 5th, 1936); *In re East Contra Costa Irrigation Dist.*, 10 F. Supp. 175 (D. C. Cal. 1935); *In re Imperial Irrigation Dist.*, 10 F. Supp. 832 (D. C. Cal. 1935), Note (1936) 34 MICH. L. REV. 731; see *Carteret County v. Sovereign Camp, Woodmen of the World*, 78 F. (2d) 337 (C. C. A. 4th, 1935).

⁴ TEX. LAWS (1935) c. 107.

⁵ *Ashton v. Cameron County Water Improvement Dist. No. 1*, 56 Sup. Ct. 892, 80 L. ed. adv. op. 910 (1936) (5-4 decision).