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## Trusts--Banks and Banking--Special Deposits

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perpetration of crime. However sound this may be, it cannot be seriously contended that the Uniform Extradition Act, as adopted in West Virginia, was intended to reduce our courts to mere ministerial agencies unable to throw safeguards around its citizens.

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TRUSTS—BANKS AND BANKING—SPECIAL DEPOSITS.—In 1931, *P* deposited funds with *D* bank to pay off a deed of trust on lands held by *P*, *D* being also agent for the creditor under the trust deed. No payments were due upon the indebtedness until 1934. *D* accepted the funds, and agreed to apply them as directed, paying interest on the money by way of paying to the creditor interest on the principal debt during the intervening period. In 1933, *D* bank became insolvent, and as the bank had not applied the funds as directed, *P* filed suit against the receiver therefor, seeking to impress the funds in his hands with a trust in his favor in the amount of the deposit. *Held*, that this being a deposit for a specific purpose, *P* was entitled to a preference in the amount of his deposit as the fund had become impressed with a trust. *Henson v. Lamb*.<sup>1</sup>

Although the court refers to the deposit in this case as both a "special deposit" and a "deposit for a specific purpose", there is, strictly speaking, a difference between the two, yet courts have generally disregarded this difference.<sup>2</sup> Apparently no question was raised in the principal case as to whether or not payment to the bank as agent for the creditor was in fact payment to the creditor.

The principal case sheds further light on the subject of preferences upon insolvency of banks in West Virginia.<sup>3</sup> In deciding the case, the court had a choice of adopting either of two views on the subject. The minority of courts and writers deny the existence of a trust relationship on these facts,<sup>4</sup> primarily on the ground that since the fund deposited is not to be kept separate there is no trust

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<sup>1</sup> 199 S. E. 459 (W. Va. 1938).

<sup>2</sup> "A special deposit is where the whole contract is that the thing deposited shall be safely kept, and that identical thing returned to the depositor." 1 MORSE, BANKS & BANKING (6th ed. 1928) § 183. On the other hand, "When money is deposited to pay a specified check drawn or to be drawn, or for any purpose other than mere safe-keeping, or entry on general account, it is a specific deposit, and the title remains in the depositor until the bank pays the person for whom it is intended . . ." *Id.* at § 185. See also Note (1922) 6 MINN. L. REV. 306.

<sup>3</sup> See Comments (1932) 38 W. VA. L. Q. 365; (1937) 43 *id.* 241; (1938) 44 *id.* 408.

<sup>4</sup> MORSE, BANKS & BANKING § 210; SCOTT, CASES ON TRUSTS (2d ed. 1931) 55, wherein is a collection of authorities; *Fallgatter v. Citizens' National Bank*, 11 F. (2d) 383 (D. C. D. Minn. 1926); *Northern Sugar Corp. v. Thomp-*

res.<sup>5</sup> The majority view, however, is that where the deposit is for a specific purpose no general deposit is thereby created, but the bank becomes trustee of the funds for the depositor, thus entitling him to a preference upon insolvency.<sup>6</sup>

*Blummer v. Scandinavian Bank*<sup>7</sup> was similar to the principal case. When it was found that the bank was insolvent and had come into the hands of a receiver before the mortgage therein had been paid as agreed to be done, *P* was there allowed a preference upon the theory that the deposit for a specific purpose created a trust. There, as in other cases, the court said that title to the funds had not passed to the bank. Query, however, whether this statement is sound. Whatever view is adopted as to the relation created between bank and depositor by a deposit for a specific purpose, title to the money deposited passes to the bank. If, as the minority holds, a debtor-creditor relation arises, passage of title is clear. On the other hand, under the majority view that a trust is created, it would seem equally clear that title must pass. Otherwise the bank would be a bailee rather than a trustee.<sup>8</sup>

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son, 13 F. (2d) 829 (C. C. A. 8th, 1926); *Schofield Mfg. Co. v. Cochran*, 119 Ga. 901, 47 S. E. 208 (1904); *Butcher v. Butler*, 134 Mo. App. 61, 114 S. W. 564 (1903).

<sup>5</sup> Note (1922) 6 MINN. L. REV. 306; Comment (1932) 38 W. VA. L. Q. 365; RESTATEMENT, TRUSTS (1935) § 12(h).

<sup>6</sup> *Blummer v. Scandinavian Bank*, 169 Minn. 89, 210 N. W. 865 (1926); *Sawyers v. Conner*, 114 Miss. 363, 75 So. 131 (1917); *Central Bank & Trust Co. v. Ritchie*, 120 Wash. 160, 206 Pac. 926 (1922); SCOTT, CASES ON TRUSTS 55.

<sup>7</sup> 169 Minn. 89, 210 N. W. 865 (1926).

<sup>8</sup> See Note (1922) 6 MINN. L. REV. 306.