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## Banks and Banking--The Transfer of Funds From One Bank to Another as Creating a Loan or Deposit

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## RECENT CASE COMMENTS

BANKS AND BANKING — THE TRANSFER OF FUNDS FROM ONE BANK TO ANOTHER AS CREATING A LOAN OR DEPOSIT. — *X*, commissioner of banking, who was formerly president and moving force of defendant bank, approached *Y*, president of plaintiff bank, with reference to a deposit by *Z*, receiver of receivership funds, explaining that defendant bank had a good deposit from *Z* and that he, as commissioner of banking, would be relieved of criticism if part of this were in another bank. *X* then proposed that if plaintiff would transfer about \$40,000.00 to the defendant, *Z* would deposit an equal amount of receivership money with the plaintiff. The receivership account and the amount deposited by the plaintiff were not to be reduced until both sums were repaid. Shortly thereafter two checks drawn on the defendant and signed by *Z* totaling almost \$40,000.00 were received by plaintiff. The checks were shown on plaintiff's books as a deposit by *Z*, and defendant was charged with a like amount on the general ledger under "cash due from banks", not under "loans and discounts". The defendant bank carried the transaction as an individual deposit to the credit of the plaintiff, and it appeared as such among defendant's periodic reports. *Z* made additional deposits with plaintiff and later made some withdrawals upon an understanding that the account would be restored to the original level. Plaintiff once requested *Z* to restore the deposit to that level, and some months later, at the request of the plaintiff, defendant made a delivery of collateral notes which were returned after execution of a bond for collection and renewal for the benefit of the plaintiff. Defendant bank failed, and this suit is for the purpose of realizing on the collateral on the theory that the transaction was a loan. *Held*, by an evenly divided court, that the transaction was a loan, and that the plaintiff was entitled to the security. *Commercial Banking and Trust Co. v. Doddridge County Bank*.<sup>1</sup>

By statute, a domestic banking institution is expressly granted the right to borrow money and pledge its assets to secure the loan; and as a necessary incident to its banking business may lawfully become a depositor in another bank.<sup>2</sup> By becoming a depositor, however, the bank is entitled to no preference. Nevertheless, a close analysis must be made in order to determine whether a given

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<sup>1</sup> 194 S. E. 619 (W. Va. 1937).

<sup>2</sup> W. VA. REV. CODE (Michie, 1937) c. 31, art. 4, § 9.

transaction constitutes a loan or a deposit. It has often been said that bank borrowings and bank deposits are alike only in that the relationship of debtor and creditor results from each.<sup>3</sup> But upon close inspection it is immediately perceived that the differences between the two transactions are not readily apparent. One distinction which has been suggested and which has received frequent judicial approval is that a deposit is always subject to withdrawal upon demand of the depositor, whereas a loan is subject to call only on or after its maturity date. This definition fails because it does not take into account "call loans" and "time deposits".<sup>4</sup> Somewhat similar is the definition that a loan to a bank implies a definite time of repayment, whereas a deposit may be retained until repayment is demanded, though, of course, the depositor may demand payment at any time.<sup>5</sup>

A definition satisfactory to the layman and comprehensive of all situations is not to be hoped for. It is said, however, that a loan is primarily for the benefit of the bank, while a deposit is for the benefit of the depositor.<sup>7</sup> While a deposit may benefit the depositary, that is not the motivating element of the transaction.<sup>8</sup> In particular cases the fact that the bank solicited the transfer of funds may be evidence of a loan,<sup>9</sup> but cannot alone be operative since it is a general practice of banks to solicit deposits.<sup>10</sup> Nor will the effect of the agreement of the two banks that the funds are not to be reduced or withdrawn below a certain level control, for it has been held that an agreement by a bank depositor limiting his power to withdraw or assign the deposit does not forfeit his status as a depositor.<sup>11</sup> This is the essential element of the "time deposit".<sup>12</sup> But what the parties call the transaction is of little controlling effect.<sup>13</sup> Here there was no such benefit received by

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<sup>3</sup> *Farmer's, etc. State Bank v. Con. School Dist. No. 3*, 174 Minn. 286, 219 N. W. 163, 65 A. L. R. 1307 (1928).

<sup>4</sup> *Murray v. First Trust & Sav. Bank*, 201 Iowa 1325, 207 N. W. 781 (1926).

<sup>5</sup> 1 MICHIE, BANKS AND BANKING (1931) § 43.

<sup>6</sup> *Hunt v. Hopley*, 120 Iowa 695, 95 N. W. 205 (1903).

<sup>7</sup> *Schumacher v. Eastern Bank & Trust Co.*, 52 F. (2d) 925 (C. C. A. 4th, 1931).

<sup>8</sup> *Allibone v. Ames*, 9 S. D. 74, 68 N. W. 165, 33 L. R. A. 585 (1896).

<sup>9</sup> *American State Bank v. Wilson*, 110 Kan. 520, 204 Pac. 709 (1922).

<sup>10</sup> *State v. Wayne County Bank*, 112 Neb. 792, 201 N. W. 907 (1924).

<sup>11</sup> *Andrew v. Delaware Co. State Bank*, 216 Iowa 739, 249 N. W. 768 (1933).

<sup>12</sup> There is a question as to whether a time certificate of deposit is not a loan. Authorities holding it to be a loan may be found in (1914) 50 L. R. A. (N. S.) 274.

<sup>13</sup> *Law's Estate*, 144 Pa. 499, 22 Atl. 831, 14 L. R. A. 103 (1891).

the defendant bank as would have accrued to it had the parties themselves treated the transaction as a loan. Loans are usually made for a fixed period; compensation in the way of a discount or interest charge is provided for, and generally the transaction is evidenced by a note and carried on the books as a loan and so published in reports for the benefit of the public. None of these elements is present here. Deposits are often induced by financial statements of a bank, and to allow secret pledging is to allow the bank to procure patrons by misrepresentation — a palpable fraud.<sup>14</sup> The trend of modern banking legislation is clearly to protect the depositor, and to construe away that legislative policy by application of hypertechnical distinctions would not seem to be sound judgment.

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CONSTITUTIONAL LAW — CONFLICT OF LAWS — USE OF INTERPLEADER TO AVOID DOUBLE INHERITANCE TAXATION. — Tax commissioners of both Massachusetts and California claimed that one Hunt, deceased, was domiciled in their respective jurisdictions, and sought to levy inheritance taxes upon the estate. Hunt's executor filed a bill of interpleader under the Federal Interpleader Act of 1936.<sup>1</sup> Defendants appealed from a district court decree enjoining any other proceedings to collect the taxes,<sup>2</sup> and to review a judgment of the circuit court of appeals vacating the decree below,<sup>3</sup> plaintiff brought *certiorari*.<sup>4</sup> *Held*, that this suit was, in effect, a suit against the states of Massachusetts and California, and was therefore forbidden by the Eleventh Amendment.<sup>5</sup> Judgment affirmed. *Worcester County Trust Co. v. Riley*.<sup>6</sup>

“A question of domicile as between the state of the forum and another state is determined by the law of the forum.”<sup>7</sup> This seemingly innocuous rule of law has of late proved somewhat of a bug-

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<sup>14</sup> Cataldo, *The Right of a Bank to Pledge Its Assets as Security for a Public or Private Deposit* (1931) 79 U. OF PA. L. REV. 608, at 615.

<sup>1</sup> 49 STAT. 1096, 28 U. S. C. A. § 41 (26) (1936).

<sup>2</sup> *Worcester County Trust Co. v. Long*, 14 F. Supp. 754 (D. C. Mass. 1936).

<sup>3</sup> *Riley v. Worcester County Trust Co.*, 89 F. (2d) 59 (C. C. A. 1st, 1937).

<sup>4</sup> 299 U. S. 567, 57 S. Ct. 29, 81 L. Ed. 99 (1937).

<sup>5</sup> “The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.”

<sup>6</sup> 58 S. Ct. 185, 82 L. Ed. 192 (1937).

<sup>7</sup> RESTATEMENT, CONFLICT OF LAWS (1934) § 10 (1).