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meaning of the insurance policy must be something more than a limited or special custody and must be of a permanent nature, coupled with an interest in the property.[4] Other courts hold that since the word possession is capable of two constructions,[5] there is no delivery of possession because an ambiguous provision of an insurance policy is to be most strongly construed against the insurer.[6]

It is suggested that the construction in both cases is grounded in the concept that the courts will attempt wherever possible to prevent a forfeiture of the policy.[7] Despite the probable intent of the insurance company that a delivery for the purpose of custody should constitute a delivery of possession, it would appear from this and similar decisions that more apt and definite language must be used to except such a risk from the insurance policy.

PRIVATE CORPORATIONS — BANKS AND BANKING — PLEDGE OF BANK ASSETS HELD *Ultra Vires.* — Receiver of insolvent state bank contracted with national bank whereby national bank's assets were pledged to secure the state bank receiver's deposit. *Held,* that national banks have no power to pledge their assets to secure a private deposit. *Harrell v. Lawhead.*[1]

Although courts generally have held that a bank has the power to pledge its assets to secure public deposits,[2] rarely indeed has a court permitted a bank to pledge its assets to secure private deposits.[3] The decisions[4] and statutes[5] upholding a bank's right to

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[4] *Supra* n. 3.

[5] In National Safe Deposit Co. v. Stead, 232 U. S. 58, 34 S. Ct. 209 (1914), Mr. Justice Lamar said, "There is no word more ambiguous in its meaning than possession." Also see Tripp v. United States Fire Ins. Co. of N. Y., *supra* n. 3.

[6] Samson v. United States Fidelity & Guaranty Co., 131 Kans. 59, 289 Pac. 427 (1930); Tripp v. United States Ins. Co. of N. Y., *supra* n. 3; Security Ins. Co. v. Sellers-Sammons-Signor Motor Co., *supra* n. 3.

[7] Security Ins. Co. v. Sellers-Sammons-Signor Motor Co., *supra* n. 3.

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[1] 13 F. Supp. 298 (1936).

[2] 12 U. S. C. A. § 90; 4 MICHIE, BANKS AND BANKING (1931) § 19, at 22; Snider v. Fulton, 44 Ohio App. 238, 184 N. E. 839 (1932). Note, 87 A. L. R. 1456 (1933). *Contra,* Divide County v. Baird, 55 N. D. 45, 212 N. W. 236 (1927); Commercial Bank & Trust Co. v. Citizens' Trust & Guaranty Co., 153 Ky. 566, 156 S. W. 160 (1913).

[3] Leonard Co-op. Creamery Ass'n v. First State Bank, 168 Minn. 28, 209 N. W. 631 (1926); Peurifoy v. Westminster Loan & Tr. Co., 148 S. C. 100, 145 S. E. 706 (1928).

[4] Baltimore & O. R. Co. v. Smith, 56 F. (2d) 799 (1932); State Bank of Brockport v. Stone, 261 N. Y. 175, 184 N. E. 750, 87 A. L. R. 1449 (1933).

[5] W. VA. REV. CODE (1931) c. 31, art. 4, § 7; amended W. VA. REV. SUPP. (1933) c. 31, art. 4, § 7, 12 U. S. C. A. § 90.

secure public depositors apparently are justified on the ground of a special public policy of protection for public funds analogous to the sovereign's right to priority.[6] Pledging of assets for private deposits has generally been held invalid, however, because courts pursue a policy of equal treatment of depositors.[7] Two recent Supreme Court decisions[8] in accord with the instant case hold that a bank is not estopped to deny the validity of a pledge even though executed, on the theory that no rights arise on an *ultra vires* contract.[9] The result reached under the so-called New York rule[10] requires a tender of the deposit in order to recover the pledge on the ground that one is bound to perform at least to the extent of the performance received, even though the contract is *ultra vires*.[11]

Under the federal view,[12] the party who has performed cannot require performance of the other party to the *ultra vires* contract, but he may sue in quasi-contract for benefits conferred. The recent federal decisions[13] deny the secured private depositor a recovery in quasi-contract, because of the strong public policy. This conclusion might also rest on the ground that the court is holding the pledge alone to be *ultra vires*, and allowing the deposit itself to stand. The only benefit conferred, consequently, is the deposit, and the depositor is left with only his right of parity with other depositors.

It is submitted that the result in the instant case is eminently correct, for the securing of private deposits cannot reasonably be considered an implied power of a bank in the light of sound banking practice.[14] Thus the doctrine of *ultra vires*, as administered by federal courts in West Virginia, is neither decadent nor discarded; rather, indeed, it continues to be a living force.[15]

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[6] Note (1931) 79 U. OF PA. L. REV. 608.

[7] Note (1930) 65 A. L. R. 1398.

[8] Texas & Pac. Ry. Co. v. Pottorff, 291 U. S. 245, 54 S. Ct. 416 (1934); Awotin v. Atlas Exchange Bank, 295 U. S. 209, 55 S. Ct. 674 (1935).

[9] For a general discussion of *ultra vires* in West Virginia see Note (1932) 39 W. VA. L. Q. 64. Also see Colson, *Doctrine of Ultra Vires in United States Supreme Court Decisions* (1936) 42 W. VA. L. Q. 179.

[10] Bath Gas Light Co. v. Claffy, 151 N. Y. 24, 45 N. E. 390 (1896).

[11] State Bank of Brockport v. Stone, *supra* n. 4.

[12] Central Transportation Co. v. Pullman's Car Co., 139 U. S. 24, 11 S. Ct. 478 (1890); Stevens, *A Proposal as to Codification and Restatement of the Ultra Vires Doctrine* (1927) 36 YALE L. J. 297.

[13] Texas & Pac. Ry. Co. v. Pottorff; Awotin v. Exchange Nat. Bank, both *supra* n. 8.

[14] Note (1933) 31 MICH. L. REV. 1154; Note (1933) 18 CORN. L. Q. 577.

[15] It is likely that the West Virginia Supreme Court would follow the federal rule.