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Banks and Banking—Branch Banks as Separate Entities

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is not a reversal, the court is met with the statement that it is better to let ninety-nine guilty men go free than to punish one innocent man. Therefore the court is not free to correct this sort of misconduct.

While it is true that counsel should have great latitude in the argument of a case, due to their commendable enthusiasm, (which was probably the cause of the improper remarks in the principal case) and that it probably should not be reversible error even, for the prosecutor to say that he believed the accused was guilty, we believe that there should be censure of the attorney, and reversal, where there is prejudice, in every case where the attorney deliberately makes statements which could not be properly brought in as evidence. But, as we have indicated above, the court is not free always to reverse in such cases. As a cure for this particular sort of misconduct a stronger condemnation by the bar generally is suggested. That the bar, as well as the court, may be responsible for the status of justice, see Reversals in Illinois Criminal Cases and Wigmore's article, Unprogressive Bar, Unprogressive Legislature, Unprogressive Justice.

—Henry K. Higginbotham.

BANKS AND BANKING—BRANCH BANKS AS SEPARATE ENTITIES.

—The plaintiff in the case of Dean v. Eastern Shore Trust Company was a banking corporation operating several branches. The defendant drew a check on branch A which the payee promptly cashed at branch B. But before the instrument could reach branch A to be debited against the defendant he had countermanded payment. The plaintiff was allowed to bring suit on the check itself, the cashing branch being regarded as a separate entity for that purpose.

For most purposes the relation between parent bank and branch is that of principal and agent. They are not usually regarded as separate entities. But it seems that for certain purposes they may be quite distinct. On similar facts the bank has been allowed to maintain an action for money had and received. And

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9 (1929) 42 Harv. L. Rev. 566.
10 (1925) 20 Ill. L. Rev. 271.

1 50 Atl. 797 (Md. 1930).
credit given for a check on another branch has been allowed to be charged back as if the branches were independent. This case goes a step further and says that the branch is separate for the purpose of acquiring the check. In effect the drawee is held to be a holder in due course since suit can only be brought in the name of the parent bank.

How are the courts to regard branch banks? Are they to be strictly principal and agent or are the ordinary risks of loss in such transactions through an agent to be limited by construing the laws of agency and negotiable instruments to fit this class of cases? It must be admitted that such a holding seems to do violence to the theory of bills of exchange. Ordinarily the bill is extinguished when the drawee pays it. It is conceivable that the drawee could be a holder in due course before the instrument is presented for payment or is due but not after. How far separate are they to be regarded? Whenever it is for their benefit? Or shall the courts say that whenever a bank seeks the enlarged operations and profits possible it shall also assume all the risks incident to such a procedure under the usual rules of agency and negotiable instruments? Unfortunately the cases are few and the matter is largely one for future settlement dependent for its ultimate decision on the social desirability of branch banking and protecting such banks from the possibilities of loss in the peculiar nature of their business.

—Robert E. Stealey.

Bills and Notes—Implied Warranty of a Transferor Without Recourse of a Promissory Note.—The payee of a note, secured by a vendor’s lien on land, assigned it without recourse for valuable consideration to another party, who, the court found, looked to the lien as security. Later, the assignor made a release of the lien, reciting that this note had been paid. Failing in suits against the parties primarily liable, the assignee brought suit against the assignor. The court held that a transferor without recourse for valuable consideration of a promissory note, whether past due or not, impliedly warrants, among other things, that he

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6 Branch Banking is forbidden in West Virginia by W. VA. REV. CODE (1930), c. 31, art. 2, § 9.