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Bills and Notes--Payments Out of a Particular Fund

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ments (or the corresponding clauses in the state constitutions) do not apply, and that the exclusion of such evidence is an indirect penalty on the law enforcers. *People v. Mayen*, 188 Cal. 237, 205 Pac. 435; *State v. Anderson*, 31 Idaho 514, 174 Pac. 124. As a matter of public policy, Mr. Wigmore suggests that it is not well to coddle the law breakers. AMERICAN BAR ASSOCIATION JOURNAL, Aug. 1922. In *State v. Wills*, *supra*, the court says, "if we err, we would rather err on the side of liberty." The majority of leading cases in the state courts adopting the later doctrine have been on indictments under liquor and "pistol toting" laws. Mr. Wigmore and the majority of the states are to the effect that the adoption of the view of *Weeks v. U. S.*, *supra*, is error.

—R. M. M.

BILLS AND NOTES—PAYMENTS OUT OF A PARTICULAR FUND.—D bought stock in the P Company, of which he was an employee, giving a promissory note, "payable in dividends to be declared by the P company," the note being made to the president of the company. Six years later he gave a renewal note for the unpaid balance of the first note, it being stipulated in the note that "dividends on the said stock are to be used in payment as received." *Held*, Consideration must be shown for the second note, other than the renewal, the first note containing only a conditional promise to pay, while the second was a promise to pay at all events. *Boardman v. Frick*, 120 S. E. 883, (W. Va. 1924.)

The cast represents a clear-cut illustration of how the courts interpret that section of the negotiable instruments law which states that "a promise is unconditional . . . though coupled with an indication of a particular fund out of which reimbursement is to be made . . . but an order to pay out a particular fund is not unconditional." W. VA. CODE, c. 98A, § 3. In the absence of words making clear the intent, it is a question of construction whether the fund in question is referred to as a measure of liability or means of reimbursement. NORTON, BILLS AND NOTES, 4th Ed., 52; *Schmittler v. Simon*, 101 N. Y. 554, 5 N. E. 452; *Union Bank of Bridgewater v. Spies*, 151 Ia. 178, 130 N. W. 928; *Street v. Robertson*, 28 Tex. Civ. App. 222, 66 S. W. 1120. The mere fact that a particular fund is mentioned or referred to in an instrument does not make it payable out of that fund. 1 PARSONS, BILLS AND NOTES, 43. But if the note is payable "out of the rents," or "out of a certain claim," or "out of the dividends," the note is an

equitable assignment *pro tanto* of the funds mentioned. *Fosseyln v. Lacier*, 10 Mod. 294; *Wodren v. Dodge*, 4 Denio (N. Y.) 159, 47 Am. Dec. 247; MOORE, CASES BILLS AND NOTES, 26; 1 AMES, BILLS AND NOTES, 29; *Alger v. Scott*, 54 N. Y. 14. "It is the duty of the drawer plainly to limit payment to a particular fund, if he intends so to limit it." If he omits to do this, or if the words used are obscure, the courts assume that the instrument was intended to be a bill of exchange. NORTON, BILLS AND NOTES, 4th Ed., 56; *Redman v. Adams*, 51 Me. 429; *Spurgin v. McPheeters*, 42 Ind. 527. If the payment is to be "as per our contract," the promise is unconditional. *Riffe v. Gerow*, 29 W. Va. 462. But see *Continental Bank v. Times Publishing Co.*, 42 La. 209, 76 So. 612.

—H. L. S., Jr.