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Banks and Banking-Deposits Bearing Interest, Trust or Debt

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RECENT CASE NOTES

BANKS AND BANKING—DEPOSITS BEARING INTEREST—TRUST OR DEBT—

The Delta Delta Delta sorority, at Bloomington, Indiana, wishing to erect a chapter house entered into agreement with the City Trust Company and others for the purpose of financing the enterprise. The City Trust Company was to be the depository for the money used and the agreement stated that the money should be divided into two funds to be used for purposes stated. One, a construction fund, was to "be deposited with the Trust Company in trust on special deposit" and should draw two percent (2%) per annum. The other fund was designated as a sinking fund to "be held by the Trust Company in trust on special deposit" and should draw "interest at the rate of three percent (3%) per annum." November 17, 1930, the City Trust Company was adjudged insolvent and at that time there was in the two funds in question \$8,043.18. There was a petition filed asking that this amount be declared a preferred claim. Held, by the terms of agreement there was a special deposit but petitioner was not entitled to a preferred claim as there was not a sufficient tracing of the funds as required by law in such cases. Judgment for petitioner reversed.¹

The result of this decision is clearly in accord with the settled law in Indiana as to tracing trust funds² and the court could have assumed there was a special deposit and reached the same result but the actual holding that there was a special deposit of the two funds is open to question. The effect of the provision to pay interest was held not to change the relationship which the parties expressed an intention to create and such view is not without authority³ but there are cases which reject this view and reach an opposite result.

Deposits in a bank are either general or special.⁴ A special or specific deposit⁵ is one where the bank merely assumes charge or custody of the property without authority to use it, the depositor being entitled to receive back the identical thing deposited in which case the title remains with the depositor, and, if the subject be money, under the earlier view, the bank has no right to mingle it with other funds.⁶ However, the later decisions

¹ *Rottger v. Delta Delta Delta Realty Corporation*, Appellate Court of Indiana, Feb. 17, 1933, 184 N. E. 412.

² *Rottger v. First Merchants' National Bank of Lafayette*, Jan. 31, 1933, 184 N. E. 267.

³ *Duncan v. Anderson* (1926), 120 Okla. 194, 250 Pac. 1018.

⁴ *McLain v. Wallace*, Rec. (1885), 103 Ind. 562, 5 N. E. 911; *McEwen v. Davis* (1872), 39 Ind. 109; *Lamb, Rec., v. Morris* (1888), 118 Ind. 174, 4 L. R. A. 111, 20 N. E. 746.

⁵ *Miller v. Anderson* (1928 Iowa), 221 N. W. 543.

⁶ *Fogg v. Tyler* (1912), 109 Me. 109, 82 Atl. 1008, Ann. Cas. 1913E 41, 39 L. R. A. (N. S.) 847; *Morgan v. State* (1924), 162 Ark. 34, 257 S. W. 364; *Franklin Sav. & Trust Co. v. Clark* (1925), 283 Pa. 212, 129 Atl. 56; *Iowa Mut. Liability Ins. Co. v. De La Hunt* (1923), 197 Iowa 227, 196 N. W. 17; *Sawyer v. Conner* (1917), 75 So. 131, 114 Miss. 363, L. R. A. 1918A 61, Ann. Cas. 1918B 388.

modify this view in accordance with the modern banking needs and allow a commingling but hold that a change in form does not change its ownership. A general deposit is one in which the bank is given custody of the money deposited with the intention expressed or implied that the bank is not required to return the identical money, but only its equivalent; the legal title to the money in such cases passing to the bank.⁷ In a general deposit the relationship between the bank and the depositor is debtor and creditor.⁸

In the principal case it can hardly be presumed that the depositor intended that the identical money would be returned to it. By complying with the law of tracing trust funds it might have claimed the deposit, if a special one, as a fund but this was not attempted. The words used in the agreement describing the deposit would make it a special one but the agreement is to be read as a whole and the description to the deposit as given by the parties is not conclusive.⁹ The obligation to pay interest upon deposited money imports naturally that the money may be used to earn money from which the interest may be paid.¹⁰ There would be little expediency in paying interest on money that could not be used. "The parties cannot give a court of equity cognizance of the obligations which are thus created by using language that sounds in equity. Why, if that were true, you could make all promissory notes enforceable in equity by simply putting at the conclusion a clause that the borrower constituted himself the trustee of the lender, and agreed that the loan should be regarded as a deposit, and agreed that it should be considered that there was a trust."¹¹ Under this reasoning the consequence of the agreement to pay interest would seem to make the relationship between the parties that of debtor and creditor.¹² There are many cases which hold there is a special deposit when money is put in the bank to pay a certain debt to become due in the future, but among these cases there has been none found other than those previously mentioned which have any reference to the paying of interest.¹³ J. D. W.

⁷ *Re Mutual Bldg. Fund Soc.* (1876), 2 Hughes 374, Fed. Cas. No. 9,976; *Dearborn v. Washington Sav. Bank* (1895), 13 Wash. 345, 42 Pac. 1107; *Officer v. Officer* (1903), 120 Iowa 389, 94 N. W. 947, 98 Am. St. Rep. 365; *Retan v. Union Trust Co.* (1903), 134 Mich. 1, 95 N. W. 1006; *State ex rel. Coleman v. Dickerson* (1905), 71 Kan. 769, 81 Pac. 497; *Butcher v. Butler* (1903), 134 Mo. App. 61, 114 S. W. 564; *Warren v. Nix* (1911), 97 Ark. 374, 135 S. W. 896. *Contra*, *Stults, Rec. v. Gordon, Admr.* (1929), 89 Ind. App. 611, 167 N. E. 564, 5 Ind. L. J. 216.

⁸ *Fletcher v. Sharpe* (1886), 108 Ind. 276, 9 N. E. 142; *Beard v. Peoples Sav. Bank* (1912), 53 Ind. App. 185, 101 N. E. 325; *Barger v. Stults, Rec.* (1930), 92 Ind. App. 37, 172 N. E. 549; *Lawrence v. Lincoln County Trust Co.* (1926), 125 Me. 150, 131 Atl. 863.

⁹ *Olinger v. Sanders* (1931), 92 Ind. App. 358, 174 N. E. 513; *University City v. Schall* (1918), 275 Mo. 667, 205 S. W. 631; *Carr v. State* (1894), 104 Ala. 43, 16 So. 155; *Mutual Accident Assoc. v. Jacobs* (1892), 141 Ill. 261, 31 N. E. 414, 16 L. R. A. 516, 33 Am. St. Rep. 302.

¹⁰ *Old Colony Trust Co. v. Puritan Motors Corp.* (1923), 244 Mass. 259, 138 N. E. 321.

¹¹ *Tucker v. Linn* (1904 N. J. Ch.), 57 Atl. 1017; *Pittsburgh Nat. Bank v. McMurray* (1881), 98 Pa. 538.

¹² *Ruffin v. Orange County Comrs.* (1873), 69 N. C. 493; *Pethybridge v. First State Bank* (1926), 75 Mont. 173, 243 Pac. 569; *Mo. Mut. Assoc. v. Holland Banking Co.* (1927 Mo. App.), 290 S. W. 100; *Shaw v. Davidson* (1929 Tex. Civ. App.), 19 S. W. (2nd) 789.

¹³ *Hudspeth v. Union Trust & Sav. Bank* (1923), 196 Iowa 706, 195 N. W. 378, 31 A. L. R. 466; *Brogan v. Kreipe, Rec.* (1924), 116 Kan. 506, 227 Pac. 261, 37