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Banks and Banking—Contracts of Infants—Distinction Between Loan and Deposit

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The decisions quoted and cited above clearly establish the proposition that in Missouri the General Assembly may enact statutes regulating the legal profession, as it does other professions and businesses. The enactment of such statutes is not an encroachment upon the inherent power of the Supreme Court to define and regulate the practice of law. The two powers, judicial and legislative, exist concurrently so long as the legislative power does not destroy or frustrate the judicial power.¹⁵

A. K. S.

BANKS AND BANKING—CONTRACTS OF INFANTS—DISTINCTION BETWEEN LOAN AND DEPOSIT.—[Missouri].—Plaintiff, a minor, placed \$900 with defendant bank on time deposit, receiving a time certificate of deposit payable six or twelve months after date, bearing interest. Thereafter defendant bank became insolvent, and plaintiff, having reached the age of twenty-one, filed claim for the \$900. Her claim was classified as a common claim. Plaintiff filed a bill in equity disaffirming the contract and praying that she be given a prior lien on the assets of the bank. *Held*, that disaffirmance of the contract rendered it void *ab initio*, and that plaintiff was entitled to a prior lien.¹ The reason given for the decision was that the transaction was not a deposit, but a loan to the bank, and was therefore voidable at her option, either during minority or within a reasonable time after attaining majority. The court indicates that had the transaction been a "deposit," the result might have been different, citing *Phillips v. Trust Company*.²

In the *Phillips* case plaintiff was a St. Louis school child, who, with many other children, had placed money with defendant trust company in a savings account, evidenced by a pass book. When the company became insolvent, plaintiff brought suit to establish the balance due him as a preferred claim against the company's assets. The court held that although disaffirmance of a minor's contract renders it void *ab initio*, yet where the contract is beneficial to the minor, he cannot disaffirm—an exception to the general rule of disaffirmance.³ Plaintiff attempted to establish a trust, but the statute upon which he relied was construed to mean that a minor may deposit his money in a savings account and withdraw it as though he were of full age.⁴ A similar statute applies to a bank like that in the instant

15. *Clark v. Austin*; *Same v. Coon*; *Same v. Hull*, 101 S. W. (2d) 977 (Mo. 1937).

1. *Stinson v. Bank of Queen City*, 101 S. W. (2d) 537 (Mo. App. 1937).

2. 85 S. W. (2d) 923 (Mo. App. 1935).

3. *Pinnell v. St. Louis San Francisco R. Co.*, 263 S. W. 182, 41 A. L. R. 1092 (Mo. 1924); *Smalley v. Central Trust and Savings Co.*, 72 Ind. App. 296, 125 N. E. 789 (1920); *Robinson v. Coulter*, 90 Tenn. 705, 18 S. W. 250, 25 Am. St. Rep. 708 (1891); *Aborn v. Janis*, 113 N. Y. Supp. 309, 62 Misc. Rep. 95 (1907).

4. *Phillips v. Trust Co.*, 85 S. W. (2d) 923, 927 (Mo. App. 1935). The statute, R. S. Mo. 1929, sec. 5465, provides: "When any deposit shall be made by or in the name of any minor, the same shall be held for the exclusive right and benefit of such minor, and free from the control or lien

case, although it was not mentioned in the opinion.⁵ It seems that the court in the instant case placed a strict construction upon the word "deposit" in the statute, and since a line of Missouri cases holds a time deposit to be a "loan,"⁶ it felt that a "loan" was not within this statute. The net result is that an infant may not disaffirm his contract where he has made a savings deposit, under the *Phillips* case, but he may disaffirm it where he has made a time deposit, under the *Stinson* case.

The exact difference between a deposit and a loan has not been definitively stated.⁷ The question therefore arises why, on principle, different results should be reached in these two cases. A time deposit is generally said to constitute a loan of money to the bank,⁸ and the certificate issued is in the nature of a promissory note of the bank,⁹ and may or may not be negotiable.¹⁰ This money is not paid back until the certificate matures.¹¹

of all other persons, except creditors, and shall be paid, together with the interest thereon, to the person in whose name the deposit shall have been made, and the receipt or acquittance of such minor shall be a valid and sufficient release and discharge for such deposit or any part thereof to the trust company."

5. R. S. Mo. 1929, sec. 5400 (banks of deposit and discount); R. S. Mo. 1929, sec. 5502 (savings banks).

6. *Cantley v. Little River Drainage District*, 318 Mo. 1120, 2 S. W. (2d) 607 (1928); *Farmers and Traders Bank of Auxvasse v. Harrison*, 321 Mo. 815, 12 S. W. (2d) 755 (1928); *Round Prairie Bank of Fillmore v. Downey*, 64 S. W. (2d) 701 (Mo. App. 1933); *Contra, Southern Surety Co. v. Ruark*, 97 Okla. 268, 223 Pac. 622 (1924) (certificate of deposit treated as deposit and not as loan); *McCormick v. Hopkins*, 287 Ill. 66, 122 N. E. 151 (1919) (a time certificate of deposit on which interest is paid by a bank, although constituting a negotiable promissory note, held not a loan but a deposit).

7. In *Murray v. First Trust and Savings Bank*, 201 Iowa 1325, 207 N. W. 781, 783 (1926), it is said: "The definite distinction between a loan and a deposit has never been formulated. All attempted definitions recognize the close relation between the two and the difficulty of laying down any specific rule of distinction, applicable alike to all cases. A tentative or proximate definition has been put forward, and has frequently received judicial approval, as far as it goes. This is that a deposit is always subject to withdrawal upon the demand of the depositor, whereas a loan is subject to call only on and after its maturity date. The deficiency of this definition is that it takes no account of time deposits, nor of call or demand loans. . . . Regardless of specific definition, the courts are agreed that there is a distinction between a deposit and a loan. Whether in a given case a transaction is to be deemed a loan or a deposit is a question to be decided upon the facts of that case."

8. *Cantley v. Little River Drainage District*, 318 Mo. 1120, 2 S. W. (2d) 607 (1928).

9. 1 Morse, *Banks and Banking* (6th ed. 1928) sec. 297.

10. *Idem*, sec. 299. It must contain words of negotiability in order to be negotiable.

11. A typical certificate of deposit is set forth in *Southern Surety Co. v. Ruark*, 97 Okl. 268, 223 Pac. 622 (1924): "Certificate of Deposit. Not subject to check. The Picher National Bank, Picher, Okl. No. 127. 3/10/1920. James Ruark has deposited in this bank \$1000.00, one thousand dollars, payable to the order of himself in current funds on the return of this certificate properly indorsed 6 months after date with interest at 4 percent per annum. W. B. Smith, Cashier. No interest after 6 months. Int. \$13.33."

A savings deposit may be withdrawn at will.¹² A time deposit creates the relation of debtor-creditor between bank and customer;¹³ so also does a savings deposit.¹⁴ Moreover, under banking practice, time deposit funds and savings deposit funds are not separated, but are mingled with the general funds of the bank.¹⁵ The chief difference between the two transactions lies in the time at which the respective funds may be withdrawn. The instant case, however, indicates that there is another difference, namely, a benefit to the infant by the savings deposit. But why is the infant benefited in the one case more than in the other? In both transactions he is provided with a safe place for his money and is paid interest on that money. If, as is thought, the benefits are substantially the same in both cases, then the only difference lies in the time of payment. To seize upon this technical distinction seems arbitrary, since the policy of protecting infants from disadvantageous contracts would seem to be no stronger in the case of the time deposit than in the case of the savings deposit.

There is one factor which may have influenced the court in making this distinction. In the *Stinson* case only one infant was seeking a preference, and that in the amount of \$900. The *Phillips* case, however, was a test case, and had the plaintiff there been allowed a preference, many other school children would also have been preferred, and the preferred claims would have totalled over \$80,000. If this factor is important, it remains to be seen what will happen when the next possible situation arises, namely, where a single minor, as in the *Stinson* case, attempts to establish a preference where he has a *savings* deposit, as in the *Phillips* case.

J. L. F.

LANDLORD AND TENANT—DEPRESSION AS CONSIDERATION FOR REDUCING RENT—[Texas]—Is an economic depression sufficient consideration for an agreement reducing the rent payable under a contract of lease? This is answered affirmatively by a Texas Court of Appeals in the recent case of *Liebreich v. Tyler State Bank & Trust Co.*¹ The plaintiff had leased property to the defendant in 1931 for five years. Because of financial hardship in 1933, the defendant requested a reduction of rental price, and the plaintiff assented. At expiration of the five-year term, the plaintiff sued for the original contract price, alleging lack of consideration for the modification agreement. In declaring economic depression a good consideration, the

12. The contract may require 30 days notice of the withdrawal.

13. *State v. Corning State Savings Bank*, 136 Iowa 79, 113 N. W. 500 (1907).

14. 1 Morse, *Banks and Banking* (6th ed. 1928) sec. 289; Kantor Bros. v. Wile, 158 N. Y. Supp. 115, 93 Misc. Rep. 438 (1916).

15. Inquiry at representative banks discloses that although the funds are kept separate as bookkeeping items, yet they are both considered liabilities of the bank and are not separated for investment purposes.

1. 100 S. W. (2d) 152 (Tex. 1936).