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## NOTES

### PRIORITY OF RIGHTS TO CUSTOMER'S BANK ACCOUNT BETWEEN DEPOSITEE BANK AND ATTACHING CREDITOR

There appears in the Legal Intelligencer Advance Reports of June 23, 1933<sup>1</sup> the Pennsylvania Superior Court decision in the matter of *Valiant Company v. Pleasonton, and Pennsylvania Company for Insurance on Lives and Granting Annuities, garnishee*.

The opinion of Judge Stadtfeld filed January 25, 1933 recites the facts in that case, which are briefly summarized as follows:

The bank held demand notes of Pleasonton, the amounts of which exceeded a deposit by Pleasonton at the bank. Valiant Company, having obtained a judgment against Pleasonton in a sum exceeding the amount of the deposit, caused an attachment execution to be issued against Pleasonton which was served upon the bank as garnishee. Interrogatories were filed and the bank answered, admitting the deposit but setting up the demand notes as a set-off.

The Lower Court, Common Pleas No. 5 of Philadelphia, in an opinion by Judge Lamberton, held that since there was no evidence of a demand having been made for payment of the notes of Pleasonton held by the bank, they were unmatured debts due it and as such could not be set-off against Pleasonton's deposit with the bank.

The Appellate Court did not agree with that reasoning and stated that an obligation to pay on demand is absolute and present; that the only element not fixed with certainty by a demand note is the time of payment and that that is at the option of the creditor. The cases of *Cook v. Carpenter*,<sup>2</sup> and *Bank of Canton v. Innes*,<sup>3</sup> were cited.

The opinion of the Superior Court on this point is logical, convincing and supported by a line of well-reasoned

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<sup>1</sup>108 Pa. Super. Ct. 197; judgment affirmed without opinion by the Supreme Court, May 22nd, 1933 (311 Pa. 587).

<sup>2</sup>212 Pa. 165.

<sup>3</sup>66 Pa. Super. Ct. 425.

decisions. It makes a clear distinction between time and demand obligations and clearly recognizes the principle that an unmatured debt cannot be set-off against a matured one.<sup>4</sup> Had the Appellate Court's opinion been perorated with the conclusion above set forth, the ultimate disposition of the case as affecting the parties litigant, would have been diametrically opposite but the principle of law thereafter expounded would not have come to light to haunt and confound the student and disrupt the age-old theory of the relationship between bank and depositor.

The Appellate Court predicated its final disposition of the case upon the theory that an appropriation of the deposit by the bank, on account of the obligation of the depositor to it, was necessary in order that the bank might establish its right to the fund and cited as authorities for the proposition the cases of *Schiff v. Schindler*,<sup>5</sup> *Blum Bros. v. Girard National Bank*,<sup>6</sup> and *Corn Exchange National Bank v. Locher*.<sup>7</sup>

The decision in each of those cases was against the bank for insufficient answers but was controlled by the fact that the obligations of the several depositors to the banks had not matured on the dates when the rights to set-offs ceased by reason of receiverships. Receivers were held to have retained all the rights of the depositors, for whom they were appointed, which existed on the dates of their respective appointments. It cannot be disputed that a depositor has the right, in the absence of an agreement to the contrary, to withdraw his deposit from a bank which holds his unmatured obligations. This is in line with the view of the Superior Court above set forth, but is no authority for the conclusion that a bank *must appropriate* a deposit and apply it on account of a matured obligation of a depositor before being served with an attachment by one of his other creditors.

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<sup>4</sup>See *Kurtz v. County National Bank*, 288 Pa. 472.

<sup>5</sup>98 Pa. Super. Ct. 207.

<sup>6</sup>248 Pa. 148.

<sup>7</sup>151 Fed. 764.

As between depositor and bank the relation of debtor and creditor exists.<sup>8</sup> When a deposit is made in a bank, the amount thereof is loaned to the bank, it becomes the money of the bank and the depositor receives therefor a promise from the bank to pay back the deposit in whole or in part on demand. In this respect the bank is in no different position than an individual who owes another money payable on demand. In the latter case the creditor individual can set-off against the sum any matured obligation of that debtor to him *at any time that payment from him is demanded*.<sup>9</sup> He is not required to do the useless thing of changing the money he owes from one pocket to another before the demand is made. Set-off is his plea *when demand is made*.<sup>10</sup> This applies whether the demand is by the debtor or someone in his shoes,—his creditor whose attachment is after all only a demand.<sup>11</sup>

But the Superior Court says the attaching creditor in the present case acquires a lien on the deposit before the bank appropriates. It does not. It acquires a lien only on what the depositor had, the promise of the bank to pay what it owed the depositor less its right of set-off. It could, as in the case of an individual, be pleaded when demand was made. The attaching creditor could not obtain a lien on the bank's money but only the right of the depositor to the sum the bank owed him over and above his matured obligations to the bank.

Confusion has resulted from the fact that banks have numerous depositors and borrowers and consequently a

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<sup>8</sup> C. J. 1181; *People's Bank of Wilkes-Barre v. LeGrand*, 103 Pa. 309; *Franklin Savings Bank & Trust Co. v. Clark*, 283 Pa. 212.

<sup>9</sup>The right of set-off can be waived by the depositor who will be subsequently estopped from asserting it against one injured thereby. *Franklin Savings Bank & Trust Co. v. Clark*, 283 Pa. 212.

<sup>10</sup>*Himes v. Barritz*, 8 Watts 39, Justice Sergeant says at Page 43: "It never was supposed that if one man sues another, the defendant is obliged to set-off the debt due to him from the plaintiff, and that if he did not choose to do it, his demand could be considered in any respect impaired, or his right to recover it affected."

<sup>11</sup>*LaBarre v. Doney*, 53 Pa. Super. Ct. 435.

complicated system of debit and credit accounting whereby the account of each creditor and debtor is separately identified. Shorn of its nugatory ramifications the problem is quite as simple as the theory of set-off itself. "The keeping back of something that is due because there is an equitable reason to withhold it."<sup>12</sup>

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### THE STATUS OF REPRODUCTION COST AS A METHOD OF VALUATION FOR RATE- MAKING PURPOSES

The recent decision of the United States Supreme Court in *Los Angeles Gas and Electric Corp. v. Railroad Commission*,<sup>1</sup> has provoked the present inquiry into the history of constitutional rate-making and more particularly into the status of reproduction cost as a method of valuation for rate-making purposes. A purely analytic discussion of the matter, in view of the many factors involved in the cases, would require a more exhaustive treatment than may be here attempted. The approach is therefore historical.<sup>2</sup>

The panic of 1893 and resultant low price levels made reproduction cost as a measure of value very attractive to consumer representatives. They early urged its advantages upon the courts and commissions,<sup>3</sup> and in at least one

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<sup>12</sup>*Michigan Yacht Co. v. Busch*, 143 Fed. 929.

<sup>1</sup>77 L. ed. (Adv. 820) (1933).

<sup>2</sup>The present discussion is largely indebted both for its general method and for much of its source material to the scholarly article of E. C. Goddard, *The Evolution of Cost of Reproduction*, 41 H. L. R. 564. (1928).

<sup>3</sup>*San Diego Water Co. v. City of San Diego*, 118 Cal. 556, 50 Pac. 633, 636 (1897). *Metropolitan Trust Co. of City of New York v. Houston & T. C. R. Co. et al.*, 90 Fed. 683, 688 (1898).