

## § 272. Particular Kinds of Deposits

Bank deposits may be classified broadly as general and special.

The primary division of deposits is into general and special deposits,<sup>27</sup> or those in which title passes to the bank and those in which title remains in the depositor.<sup>28</sup> The same deposit cannot be both a general and a special deposit.<sup>23</sup>

It has also been said that three classes of deposits are recognized by law-general, special, and deposits for a specific purpose; the last named class is frequently included under the head of special deposits.<sup>30</sup>

"Call" and "time" deposits. A "call deposit," in banking circles, is a deposit subject to call at the

pleasure of the depositor, and is distinguished from a "time deposit," which is a deposit for a specified time.<sup>31</sup>

## § 273. General Deposits

A general deposit is one to the general credit of the depositor, wherein title to the money passes to the bank and it becomes the debtor of the depositor with the obligation to repay such money in current funds on the depositor's order or demand.

A general deposit, which is the ordinary form, is the payment of money into the bank to be repaid on demand, in whole or in part, as called for, in any current money,<sup>32</sup> and has been defined as a deposit generally to the credit of the depositor to be drawn upon by him in the usual course of the banking business.<sup>33</sup> Ordinarily a general deposit consists of

depositor has a property right in the information contained therein and the bank is under an implied duty to keep such records from scrutiny unless compelled by a court of competent jurisdiction to do otherwise. *Brex v. Smith*, 146 A. 34, 104 N.J.Eq. 3S6.

## Duty as respects third person

Banks are under no legal duty to warn investing public as to financial condition of their depositors. *Cunningham v. Merchants' Nat. Bank of Manchester*, N. H., C.C.A.N.H., 4 F.2d 25, 41 A.L.R. 529, affirming, D. C., *Lowell v. Merchants' Nat. Bank of Manchester*, N. H., 7S3 F. 124, certiorari denied *Cunningham v. Merchants' Nat. Bank*, 45 S.Ct. 511, 268 U.S. 691, 69 L.Ed. 1160.

27. U.S.-Taylor v. richer, D.C.31e.. 13 F.Supp. 857-Bridge v. First Nat. Bank, D.C.Mich., 5 F.Supp. 442. Ala.-Tallageda Ins. Co. v. Landers, 43 Ala. 115.

Fla.-McCrary Stores Corporation v. Tunnieliff?, 140 So. 806, 104 Fla. 683-Newsom v. Acacia Mut. Life Ass'n, 136 So. 389, 102 Fla. 567-Tinsley v. Amos, 135 So. 397, 102 Fla. 1-Martin v. Meyerheim, 133 So. 636, 101 Fla. 82-Amos v. Baird, 117 So. 789, 06 Fla. 181, followed in *Duncan v. Davis*, 147 So. 690.

III.-People Y. Farmers' State & Savings Bank of Grant Park, 170 N.E. 236, 338 Ill. 134-People v. Home State Bank of Grant Park, 170 N. E. 205, 338 Ill. 179, affirming *Nelson v. Home State Bank of Grant Park*, 252 111.App. 323-Baiar v. O'Connell, App., 1 N.E.2d 805. Iowa.-Bates v. Madison County Say. Bank of Winterset, 269 N.W. 341. Atch.-Owosso-Masonie Temple Ass'n v. State Say. Bank, 263 N.W. 771, 273 Mich. 682.

MonL-Montana-Dakota Power Co. v.

*Johnson*, 23 P.2d 95G, 93 Mont. 16 - *Pethybridge v. First State Bank of Livingston*, 243 P. 569, 75 Mont. 173. N.Y.-In re McCarthy's Funds, 243 N.Y.S. 335, 139 Misc. 147.

Tex.-Tyler County State Bank v. Rhodes, Civ.App., 256 S.W. 047.

Wash.-Northwest Lumber Co. v. Scandinavian-American Bank of Seattle, 225 P. 825, 130 Wash. 33, 39 A.L.R. 922-Washington Show Mfg. Co. v. Duke, 218 P. 232, 233, 126 Wash. 610, 37 A.L.R. 611-Carlson v. Kies, 134 P. 808, 75 Wash. 171, 47 L.R.A., N.S., 317.

Wyo.-Gray v. Elliott, 255 P. 593, 3G Wyo. 361, 53 A.L.R. 554, rehearing denied 257 P. 345, 37 Wyo. 4, 53 A.L.E. 554. 7 C.T. p 628 note 91.

28. U.S.-Keyes v. Paducah & I. R. Co., C.C.A.Ky., 61 F.2d 611, 612, 86 A.L.R. 203.

"All deposits made with bankers may be divided into two classes, namely, those in which the bank becomes bailee of the depositor, the title to the thing deposited remaining with the latter; and that other kind of deposit of money peculiar to banking business, in which the depositor, for his own convenience, parts with the title to his money, and loans it to the banker, and the latter, in consideration of the loan of the money, and the right to use it for his own profit, agrees to refund the same amount, or any part thereof, on demand."-Commercial Nat. Bank of Pennsylvania v. Armstrong, Ohio, 13 S.Ct. 533, 535, 148 U.S. 50, 37 L.Ed. 363-Keyes v. Paducah & I. R. Co., supra-Marine Bank v. Fulton Bank, 2 Wall. 252, 17 L.Ed. 785.

29. Tex.-Tyler County State Bank v. Rhodes, Civ.App., 256 SAV, 947.

Ohio.-Busher v. Fulton, 191 N. E. 752, 128 Ohio St. 485, affirming *Fulton v. Busher*, 191 N.E. 475, 47 Ohio App. 169.

31. Iowa.-State v. Cadwell, 44 N. W. 700, 701, 79 Iowa 432.

32. 'U.S.-Keyes v. Paducah & I. R Co., C.C.A.Ky., 61 F.2d 611, 86 A. L.R. 203.

Ala.-Tallageda Ins. Co. v. Landers, 43 Ala. 115.

111.-Baier v. O'Connell, 6 N.E.2d 140. 365 Ill. 208, affirming 1 N.E.2d 805, 284 IllApp. 331.

Mo.-Ellington v. Cantley. App., 300 S.W. 529.

N.C.-Corporation Commission of N. C. v. Merchants' Bank & Trust Co., 138 S.E. 22, 193 N.C. 696.

Ohio.-Busher v. Fulton, 191 N.E. 752, 128 Ohio St. 485, affirming *Fulton v. Busher*, 191 N.E. 475, 47 Ohio App. 169.

7 C.J. p 628 note 92-18 C.J. p 563 notes 19, 20.

"A general deposit is one where the bank is given custody of money, with the intention, expressed or implied, that the bank is not to be required to return the identical money, but only its equivalent."-In re North Missouri Trust Co. of Mexico, Mo., Mo.App., 39 S.W.2d 412, 414.

General deposits in a commercial bank comprise all moneys that are simply deposited therewith on account of the depositor without being complicated by any other transaction than that of the depositing and withdrawing of the moneys by the customer from time to time.-*Martin v. Meyerhelm*, 133 So. 636, 101 Fla. 82.

33. Fla.-McCrary Stores Corporation, v. Tunnicliffe, 140 So. 506, 104 Fla. 683.

111.-People v. 111.700 N.E. 205, 338 Ill. 179, affirming *Nelson v. Home Bank*, 252 111. 323.

3.e3B2ank of Grant Park, 252 111. N.Y.-Wasserman V. Broderick-590

N.Y.S. 84, 140 Misc. 174. Ohio.-Busher v. Fulton. 191 N.E. 752, 128 Ohio St. 485, "Arai"

money which is mingled with other money of a bank, the entire amount forming a single fund from or therein is that of debtor and creditor,<sup>36</sup> and which depositors are paid.<sup>34</sup>

Fulton v. Busher. 191 N.E. 476, 47 Ohio App. 169.

Tex.—Tyler County State Bank v. Rhodes, Civ.App., 256 S.W. 947. W.Va.—Lawhead v. Nelson, 168 S.E. 659.

34. Neb.—In re Cronk, 194 N.W. 865, 110 Neb. 676.

N.C.—Corporation Commission of North Carolina v. Merchants' Bank & Trust Co., 138 S.E. 22, 193 N.C. 696. Ohio.—Busher v. Fulton. 191 N.E. 752, 128 Ohio St. 485. affirming Fulton v. Busher, 191 N.E. 475, 47 Ohio App. 169.

Tex.—Tyler County State Bank v. Rhodes. Civ.App., 256 S.W. 947. C.J. p 628 note 93.

35. U.S.—Santee Timber Co. v. Elliott. C.C.A.S.C., 70 F.2d 179, 93 A.L.R. 874—Laws v. II. S. C.C.A. old. 66 F.2d 570—Charles A. Eaton Co. v. Louis Mark Shoes, D.C.Pa., 37 F.2d 715—Lebanon Iron Co. v. Donnelly & Co., D.C.Pa., 29 F.2d 411—Cooley v. Bergin, D.C.Mass., 27 F.2d 930—U. S. Shipping Board Emergency Fleet Corporation v. Atlantic Corporation, D.C.Mass., 5 F.2d 529, error dismissed. C.C.A. 16 F.2d 27—Ross v. Knott. D.C. Fla., 13 F.Supp. 963—In re Retail Stores Delivery Corporation, D.C. N.Y., 11 F.Supp. 658—Dektor v.

Overbrook Nat. Bank of Philadelphia, D.C.Pa., 10 F.Supp. 894, affirmed, C.C.A. 77 F.2d 491, certiorari denied 55 S.Ct. 917, 295 U.S. 755, 79 L.Ed. 1698, rehearing denied 56 S.Ct. 82, 296 U.S. 661, 80 L.Ed. 471—Hall v. Rochester Trust Co., D.C.N.H., 9 F.Supp. 797—U. S. v. Bank of Ti. S., D.C.N.Y., 5 F. Supp. 942—In re Interborough Consolidated Corporation. C.C.A.N.Y., 288 F. 334, 32 A.L.R. 932, affirming, D.C., 277 F. 249, certiorari denied Porges v. Sheffield. 43 S.Ct. 700, 262 U.S. 752, 67 L.Ed. 1215, and Rothschild v. Sheffield. 43 S.Ct. 700, 262 U.S. 752, 67 L.Ed. 1215—First Nat. Bank v. Farrell. C.C.A.Pa., 272 F. 371, modifying, D.C., Farrell v. First Nat. Bank, 263 F. 778, certiorari denied First Nat. Bank v. Farrell, 42 S.Ct. 48, 257 U.S. 634, 66 L.Ed. 408, 16 A.L.R. 651, and 42 S.Ct. 49, 257 U.S. 635, 66 L.Ed. 408—In re United Grocery Co., D.C.Fla., 253

Bank, 42 S.W.2d 546, 184 Ark. 442, 78 A.L.R. 377—Arkansas-Louisiana Highway Improvement Dist. v. Taylor, 6 S.W.2d 533, 177 Ark. 440—Hastings v. First Nat. Bank, 281 S.W. 905, 170 Ark. 939—Morgan v. State, 257 S.W. 364, 162 Ark. 34—Bank of Hatfield v. Chatham, 255 S.W. H. 160 Ark. 530—Citizens' Bank & Trust Co. v. Hinkle, 189 S. W. 679, 126 Ark. 266—State Nat. Bank v. First Nat. Bank of Atchison, 187 S.W. 673, 124 Ark. 531.

Cal.—Bank of America Nat. Trust & Savings Ass'n v. California Savings & Commercial Bank, 22 P. 2d 704, 218 Cal. 261—Union Tool Co. v. Farmers' & Merchants' Nat. Bank of Los Angeles, 218 P. 424, 192 Cal. 40, 28 A.L.R. 1417—Glas-sell Development Co. v. Citizens' Nat. Bank of Los Angeles, 216 P. 1012, 191 Cal. 375, 28 A.L.R. 1427—Arnold v. San Ramon Valley Bank, 194 P. 1012, 184 Cal. 632, 13 A.L.R. 320—Fidelity Savings & Loan Ass'n v. Rodgers, 182 P. 426, 180 Cal. 683—Pullen v. Placer County Bank, 71 P. 83, 138 Cal. 169—Nag-lee v. Palmer, 7 Cal. 543.

Conn.—Bassett v. City Bank & Trust Co., 160 A. 60, 115 Conn. 1, 81 A.L.R. 1488—Alexiou v. Bridgeport-People's Say. Bank, 148 A. 374, 110 Conn. 397.

Del.—Reed v. Central Nat Bank of Wilmington, 184 A. 772.

Fla.—Mallett v. Tunnicliffe, 136 So. 346, 102 Fla. 809, 80 A.L.R. 785, rehearing denied 137 So. 238, 102 Fla. 809, 80 A.L.R. 785—Johnson v. Barton, 83 So. 722, 79 Fla. 46.

Ga.—American Surety Co. of New York v. Peoples Bank, App., 189 S. E. 414—Federal Deposit Ins. Corporation v. Thompson, 188 S.E. 737, 54 Ga.App. 611—Foster v. People's Bank, 156 S.E. 62, 42 Ga.App. 102—Moore v. Moultrie Banking Co., 148 S.E. 311, 39 Ga.App. 687.

Ill.—People ex rel. Nelson v. Sheridan Trust Co. & Savings Bank, 193 N.E. 186, 358 Ill. 290, reversing 272 Ill.ADp. 27, certiorari denied Elie Sheetz Candies Co. v. O'Connell, 55 S.Ct. 654, 295 U.S. 740, 79 L.Ed. 1687—Kamfiner v. Auburn Park Trust & Savings Bank, 176 N.E. 363, 344 Ill. 200—Urban v. Hynes. 1 N.E.2d 885, 285 Ill.App. 182—People ex rel. Nelson v. Waukegan State Bank, 283 Ill.App. 1—People ex rel. Nelson v. Chicago Bank of Commerce, 282 IMAM? 155—People ex rel. Nelson v. First State Bank of Mineral, 275 Ill.ADp. 123—People ex rel. Nelson v. People's Bank & Trust Co. of Rockford, 268 Ill. App. 39, affirmed 187 N.E. 522, 353 Ill. 479, 89 A.L.R. 1328.

Ind.—City Nat. Bank of Auburn v. Brink, 187 N.E. 689, 98 Ind.App. 275—Scott v. Stark, App., 183 N.E. 662—Barnard v. First Nat. Bank, 111 N.B. 451, 61 Ind.App. 634.

Iowa.—Duckworth v. Manning's Estate, 252 N.W. 659—Davis Bros. & Potter v. Fort Dodge Nat. Bank, 249 N.W. 170, 216 Iowa 277—In re Olson's Estate, 219 N.W. 401, 206 Iowa 706—Andrew v. Colo Say. Bank, 219 N.W. 62, 205 Iowa 872—Leach v. First Nat Bank, 217 N.W. 865, 206 Iowa 265—In re Farmers' & Merchants' Say. Bank of Mt. Pleasant, 211 N.W. 632, 202 Iowa 859, 51 A.L.R. 910.

Kan.—Bankers' Agr. Credit Corporation v. Maize State Bank, 39 P.2d 922, 141 Kan. 210—Bloomheart v. Foster, 221 P. 279, 114 Kan. 786.

Ky.—Dorman v. Adams, 67 S.W.2d 534, 247 Ky. 678—Lewis v. Dark Tobacco Growers' Co-op. Ass'n, 57 S.W.2d 8, 247 Ky. 301—Burnam v. Commonwealth, 15 S.W.2d 256, 228 Ky. 410.

La.—Allen v. Cochran, 107 So. 292, 160 La. 425, 60 A.L.R. 459.

Me.—Cooper v. Fidelity Trust Co., 170 A. 726, 132 Me. 260—American Lumber Sales Co. v. Fidelity Trust Co., 141 A. 102, 127 Me. 65—Lawrence v. Lincoln County Trust Co., 131 A. 863, 125 Me. 150.

Md.—Newark Distributing Terminals Co. v. Hospelhorn, 191 A. 707—Dunlop Sand & Gravel Corporation v. Hospelhorn, 191 A. 701.

Mass.—Commissioner of Banks v. T. C. Lee & Co., 197 N.E. 88—Universal Adjustment Corporation v. Midland Bank. Limited, of London, England, 184 N.E. 152—Bachrach v. Allen, 131 N.E. 867, 239 Mass. 272—Leighton v. Brookline Trust Co., 114 N.E. 871, 226 Mass. 458, L.R.A.1917C 129.

Mich.—Owosso Masonic Temple Ass'n v. State Say. Bank. 263 N. W. 771, 273 Mich. 682—Beichert v. Fidelity Bank & Trust Co., 241 N.W. 236, 257 Mich. 635—Detroit Piston Ring Co. v. Wayne County & Home Say. Bank, 233 N.W. 185, 252 Mich. 163, 75 A.L.R. 1273.

Minn.—Rodgers v. Bankers' Nat Bank, 229 N.W. 90, 179 Minn. 191,

Miss.—Deposit Guaranty Bank et Trust Co. v. Merchants' Bank & Trust Co., 158 So. 136, 171 Miss. 653—Deer Island Fish & Oyster Co. v. First Nat. Bank, 146 So. 116—Moreland v. People's Bank of Waynesboro, 74 So. 828, 114 Miss. 203, L.R.A.1917F 263.

Mo.—American Sash & Door Co. v. Commerce Trust Co., 56 S.W.2d 1034, affirming, App., 25 S.W.2d 545—Bank of Republic Y. Republic

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Ala.—Willis v. Barrow, 119 So. 678, 218 Ala. 549—Hardy v. First Nat. Bank, 122 So. 701, 23 Ala.App. 190, certiorari denied 122 So. 702, Ala. 219 435  
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- Mont.-Powell Building & Loan Ass'n v. Larabee Bros. Bankers, 46 P.2d 697-Mitchell v. Banking Corporation of Montana, 22 P.2d 175, 94 Mont. 165-State v. Banking Corporation of Montana, 251 P. 151, 77 Mont. 134.
- Neb.-State ex rel. Sorensen v. Citizens State Bank of Wahoo, 248 N. W. 368, 124 Neb. 846-Harrison State Bank v. First Nat. Bank, 218 N.W. 92, 116 Neb. 456-State v. Farmers' & Merchants' Bank of Morrill, 207 N.W. 666, 114 Neb. 378.
- N.J.-Jacobson v. Slaughter, 175 A. 278, 117 N.J.Eq. 252.
- N.Y.-In re Delaney, 176 N.E. 407, 256 N.Y. 315, reversing 244 N.Y.S. 853, 230 App.Div. 821-Fidelity & Casualty Co. of New York v. Farmers Nat. Bank of Hudson, 293 N.Y.S. 8, 249 App.Div. 348, reversing 290 N.Y.S. 895, 160 Misc. 510-Kress v. Central Trust Co. of Rochester, 283 N.Y.S. 467, 246 App.Div. 76, affirming 275 N.Y.S. 14, 153 Misc. 397-In re Hammer's Estate, 261 N.Y.S. 478, 237 App. Div. 497, reversing 258 N.Y.S. 841, 144 Misc. 39-In re Howell's Will, 260 N.Y.S. 510, 237 App.Div. 56-Irving Trust Co. v. Leff, 237 N.Y.S. 577, 227 App.Div. 263, reversed 171 N.E. 569, 253 N.Y. 359-General Fire Assur. Co. of Paris, France, v. State Bank, 164 N.Y.S. 871, 177 App.Div. 745-Town of Eastches-ter v. Mt. Vernon Trust Co., 159 N.Y.S. 289, 173 App.Div. 482-Parker-Smith v. Prince Mfg. Co., 158 N.Y.S. 346, 172 App.Div. 302-Fidelity & Casualty Co. of New York v. Farmers Nat. Bank of Hudson, 290 N.Y.S. 895, 160 Misc. 510-In re Stites' Estate, 289 N. Y.S. 697, 160 Misc. 162-Kress v. Central Trust Co. of Rochester, 275 N.Y.S. 14, 153 Misc. 397, affirmed 283 N.Y.S. 467, 245 App. Div. 76-Beech-Nut Packing Co. v. National City Bank of New York, 268 N.Y.S. 61, 149 Misc. 682-Samuels v. Public Nat. Bank & Trust Co. of New York, 251 N.Y.S. 671, 140 Misc. 744, reversed on other grounds Samuel v. Public Nat. Bank & Trust Co. of New York, 270 N.Y.S. 112, 151 Misc. 200-In re Forrest's Estate, 249 N. Y.S. 766, 140 Misc. 14, reversed on other grounds In re Grossman, 254 N.Y.S. 1012, 234 App.Div. 890, affirmed 182 N.B. 177, 259 N.Y. 553-Capital City Surety Co. v. De Luxe Sightseeing Co., 233 N.Y.S. 126, 133 Misc. 750-In re Wilkins' Will, 226 N.Y.S. 415, 131 Misc. 188-Sokoloff v. National City Bank of New York, 224 N.Y.S. 102, 130 Misc. 66, affirmed 227 N.Y.S. 907, 223 App.Div. 754, and affirmed 164 N.E. 745, 250 N.Y. 69-Gruber v. Bank of America, 215 N.Y.S. 222, 127 Misc. 132-Delano v. Equitable Trust Co. of New York, 181 N.Y.S. 852, 110 Misc. 704-In re Vickery's Estate, 176 N.Y.S. 268, 106 Misc. 459-Berkman v. New York Produce Exch. Bank, 167 N.Y.S. 441, 101 Misc. 262.
- N.C.-Virginia-Carolina Joint Stock Land Bank v. First & Citizens' Nat. Bank of Elizabeth City, 150 S.E. 34, 197 N.C. 626-Woody v. National Bank of Rocky Mount, 140 S.E. 150, 194 N.C. 549, 68 A.L. R. 725-Continental Trust Co. v. Spencer, 133 S.E. 124, 193 N.C. 745 -Page Trust Co. v. Rose, 135 S.E. 795, 192 N.C. 673-Graham v. Proctorville Warehouse, 127 S.E. 540, 169 N.C. 533.
- N.D.-Roach v. McKee, 265 N.W. 264-Minnesota Mut. Life Ins. Co. v. Tagus State Bank, 158 N.W. 1063, 34 N.D. 566, L.R.A.1917A 519.
- Ohio.-Ramisch v. Fulton, 180 N.B. 735, 41 Ohio App. 443-Guaranty Trust Co. of New York v. State, 172 N.E. 674, 36 Ohio App. 45-Cleveland & Western Coal Co. v. O'Brien, 8 Ohio App. 247, affirmed 120 N.B. 214, 98 Ohio St. 14-Flanders v. Adams, 28 Ohio N.P., N.S., 542.
- Ok1.-Board of Com'rs of McCurtain County v. State Nat. Bank of Idabel, 36 P.2d 281, 169 Okl. 182-State Guaranty Bank of Okeene v. Doerfler, 226 P. 1054, 99 Okl. 258.
- Or.-Dahl & Penne v. State Bank of Portland, 222 P. 1090, 110 Or. 68.
- Pa.-Gallagher v. Rogan, 185 A. 707, 322 Pa. 315-Trust Companies as Sureties, 7 Pa. Dist. & Co. 143-Non-Resident Decedents' Bank Deposits, 29 Pa. Dist. 589-Bank Deposits, 29 Pa. Dist. 105-Schram v. Cartwright, 4 Pa. Dist. 632.
- S.C.-Wilson v. Bank of Camden, 185 S.E. 617, 180 S.C. 359,
- Tenn.-State v. Bank of Bristol, 65 S.W.2d 771, 165 Tenn. 461--Grigsby v. People's Bank of Martin, 11 S.W.2d 673, 168 Tenn. 182-Consquest v. Broadway Nat. Bank, t. S.W. 160, 134 Tenn. 17-Ame;r4 Nat. Bank v. Miles, 79 S.W.2dea, 1' 18 Tenn.App. 440-McConnell -v4. Fayette County Bank, 8 TPri 461.
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- Tex.-Stone Fort Nat. Bank of Isla, ogdoches v. Forbess. 91 gAti 2r; 674-Hewitt v. First Nat. Bank, 252 S.W. 161, 113 Tex. 100-Shaw v. Halbert, Civ.App., 68 S.W.2d 391, error refused-Rose v, First State Bank of Paris. Civ.App, 3s S.W.2d 863, affirmed 59
- 1;72d
- 810, 122 Tex. 298-Commere.lal Guaranty State Bank v. City of Longview, Civ.App., 11 S.W.2d 217, reversed on other grounds Foster' v. City of Longview, Com.APP., 26 S.W.2d 1059-Shaw v. McBride. Civ.App., 9 S.W.2d 410, affirmed' Com.App., 27 S.W.2d 121-Austin v. Wasaff, Civ.App., 284 S.W. 694 - Tyler County State Bank v. Rhodes, Civ.App., 256 S.W. 947-Meador v. Rudolph, Civ.App., 218 S.W. 620, dismissed for want of jurisdiction-Padgett v. Young County, Civ.App., 204 S.W. 1046, error dismissed Padgitt v. Young County, 229 S.W. 459, 111 Tex. 98.
- Va.-W. L. Chase & Co. v. Norfolk Nat. Bank of Commerce and Trusts, 145 S.E. 725, 151 Va. 1040 -Cocke's Adm'r v. Loyall, 143 S. E. 881, 150 Va. 336-Federal Reserve Bank of Richmond, Va., v. State & City Bank & Trust Co., 143 S.E. 697, 150 Va. 423.
- Wash.-Northwest Lumber Co. v. Scandinavian-American Bank of Seattle, 225 P. 825, 130 Wash. 33, 39 A.L.R. 922-Washington Show Mfg. Co. v. Duke, 218 P. 232, 233. 126 Wash. 510, 37 A.L.R. 611-Spiroplos v. Scandinavian American Bank of Tacoma, 199 P. 997, 116 Wash. 491, 16 A.L.R. 181.
- Wis.-Schwenker v. Parry, 236 N.W. 652, 204 Wis. 590-Peart V. Schwenicer, 227 N.W. 945, 200 Wis. 200-Union State Bank of Lancaster v. People's State Bank of Lancaster, 211 N.W. 931, 192 Wis. 28.
- Wyo.-Gray v. Elliott, 255 P. 593. 36 Wyo. 361, 53 A.L.R. 554, rehearing denied 267 P. 345. 37 Wyo. 4, 53 A.L.R. 554.
- 7 C.J. P 628 note 94, p 642 note 2. "There can be no doubt that as between its depositor and a bank, the relationship of debtor and creditor exists. The depositor is the creditor of the bank in the amount he has on deposit and the bank is a debtor to such creditor for a like amount."-People ex rel. Nelson v. People's Bank & Trust Co. of Rockford, 268 Ill.App. 39, 43. affirmed 127 N.E. 522, 353 Ill. 479, 89 A.L.R. 1325 - People ex rel. Nelson V. Seward State Bank, 268 Ill.App. 32.
- Every general deposit of money i<sup>a</sup> \_ a bank, whether in checking or saw



not that of agent and principal,<sup>36</sup> nor that of bailee and bailor,<sup>37</sup> nor **that of** trustee and beneficiary.<sup>38</sup>

ings account, on certificate of deposit payable on demand or time, creates the relation of debtor and creditor.—In re Welch's Estate and Guardianship. Mont., 45 P.2d 681, 683.

The bank is not a custodian of a deposit, but a debtor to the depositor in the amount thereof.—Bank of Conway v. Stary, 200 N.W. 505, 51 N.D. 399, 37 A.L.R. 1186.

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The original and every subsequent general deposit is in strict legal effect a loan by the customer to the bank.—Martin v. aleyerheim. 133 So. 63G. 101 Fla. S2.

Account of husband and wife

Deposit of sum in bank to joint account of husband and wife created relation of debtor and creditor between bank and husband and wife.—In re Edwards' Estate, 14 P.2d 274. 140 Or. 431.

Public or private funds

When funds, public or private, are deposited in a bank upon a general deposit, the relationship of debtor and creditor is created. In effect, the funds are loaned to the bank.—Storen v. Sexton, Ind., 200 N.E. 251.

Despite application to specific purpose

"Where a bank receives money on deposit which is to be mingled with its other assets and become a part thereof, the relation created by the deposit is that of creditor and debtor although the amount represented by the deposit is to be used and applied to a specific purpose."—Great Atlantic & Pacific Tea Co. v. Citizens' Nat. Bank, D.C.Pa., 2 F.Supp. 29, ill. Call money

(1) Corporation depositing to credit of borrowing bank money received for can loans created debtor creditor relation between borrowing and lending bank, not "deposit" in borrowing bank.—Bank of Dania v. Farmers' & Traders' Bank, 151 S.E. 803, 169 Ga. 846.

(2) Debtor creditor relation arises between lending bank placing money with corporation on call and bank borrowing from corporation with knowledge thereof.—Bank of Dania v. Farmers' & Traders' Bank, supra.

Deposits with private banker

(1) Where "the Legislature has not determined what the obligations of a Private banker to his depositors shall be, the relation is determined by the common law. It is firmly settled as a debtor and creditor."—Gartner v. Cassatt, 169 A. 889, 890. 313 Pa. 491.

(2) Arrangement whereby private banker gave depositors credit in

passbooks and required that passbooks he presented for withdrawals and that two weeks' notice be given for withdrawals exceeding one hundred dollars did not change debtor and creditor relation implied at common law.—Gartner v. Cassatt, supra.

(3) Private banker holds title to capital and assets, and depositors are not owners of deposits, but creditors, with preference over general creditors as respects certain assets. —Moak v. Vet, 223 N.Y.S. 247, 221 App.Div, 289.

36. U.S.—Ashley State Bank of Ashley, N. D., v. City Nat. Bank of Bismarck, N. D., C.C.A.N.D., 32 F.2d 166.

Ill.—People ex rel. Nelson v. Sheridan Trust & Savings Bank, 193 N.E. 186, 358 Ill. 290, reversing 272 Ill.App. 27, certiorari denied Elie Sheets Candies Co. v. O'Connell, 55 S.Ct. 654, 295 U.S. 740, 79 L.Ed. 1687—Karnfner v. Auburn Park Trust & Savings Bank, 176 N.E. 363, 344 Ill. 200.

N.Y.—General Fire Assur. Co. of Paris. France, v. State Bank, 164 N.Y.S. 871, 177 App.Div. 745—In re Wilkin's Will, 226 N.Y.S. 415. 131 Misc. 183.

In case of deposit of negotiable paper

The relation between bank and depositor is converted from that of agent and principal to that of debtor and creditor immediately on payment of deposited papers.—Peoples Trust & Guaranty Co. of Hackensack v. Genden, 182 A. 25, 119 N.J. Eq. 249.

**Reservation** of right to charge back if uncollected

Debtor and creditor relation, rather than principal and agent, held to exist on deposit of draft where bank credited depositor's account with amount of draft drawn by latter payable to bank, and allowed him to check against it, but reserved right to charge back amount of draft if it was not collected.—Cottondale Planting Co. v. Diehlstadt Bank, 28G S.W. 425, 220 Mo.App. 265.

**Agency not shown**

An interesting question with respect to the relationship of bank and depositor arose in a case decided in Montana. Defendant who was the duly appointed and acting special administratrix of a certain estate had as a deposit as such in a bank, and another person claiming to have been appointed special administrator made a demand for payment to him of the sum deposited. The bank notified defendant of this demand and defendant requested the bank to refuse the demand and to retain the deposit in her name until

it could be ascertained who was entitled to it. The person claiming to be special administrator brought suit against the bank. Defendant was subsequently removed from her office of special administratrix, and after her removal, the other person claiming to be special administrator recovered judgment against the bank for the amount of the deposit, with interest from the date of his demand. The bank claimed that defendant was liable to reimburse it for the amount so paid as interest. It was held, however, that there was no implied liability because there was no implied contract to indemnify the bank, it being the bank's duty, without request, to retain the deposit to meet its obligation to defendant, the other person having no claim thereto at the time the demand was made, and there being therefore no consideration for such an implied contract, as it did not appear that the bank refrained from bringing an action to compel defendant and the other person to inter-plead in reliance on defendant's request, and further that defendant was not liable on the theory that the bank was her agent, as her request to the bank did not change the bank's relation to her.—Murphy v. Nett, 149 P. 713, 51 Mont. 82.

37. N.Y.—In re Kruger's Estate, 249 N.Y.S. 772, 139 afisc. 907.

Ohio.—Ramisch v. Fulton. 160 N.D. 735, 41 Ohio App. 443—Flanders v. Adams. 28 Ohio N.P., N.S., 542.

Tenn.—McConnell v. Fayette County Bank, S Tenn.App. 461.

"In case of a general deposit, there is a depositor, not a bailor: a debtor, not a bailee; a creditor, not an owner."—Owosso Masonic Temple Ass'n v. State Say. Bank, 263 N.W. 771, 774, 273 Mich. 682.

38. U.S.—Hall v. Rochester Trust Co., D.C.N.H., 9 F.Supp. 797—General Baking Co. v. Gordon, D.C. Pa., 9 F.Supp. 210.

Ill.—People ex rel. Nelson v. Sheridan Trust Co. & Savings Bank, 193 N.E. 186, 358 Ill. 290, reversing 272 Ill.App. 27, certiorari denied Elia Sheetz Candies Co. v. O'Connell, 55 S.Ct. 654, 295 U.S. 740. 79 L.Ed. 1667—Karnfner v. Auburn Park Trust & Savings Bank, 176 N.E. 363, 344 Ill. 200—People ex rel. Nelson v. Seward State Bank, 26S Ill.App. 32. Iowa.—Blatt v. First State Bank of Calmar, 220 N.W. 318, 206 Iowa 252. Kan.—Epley v. Citizens' State Bank of Mullinville, ISO P. 187, 104 Kan. 459. Md.—Dunlop Sand & Gravel Corporation v. Ilospenturn. 191 A. 701. alicla—Wenzel v. People's State Bank, 259 N.W. 120, 270 Mich. 424.

The bank acquires title in the money deposited, which it becomes a part of its general funds,<sup>39</sup> to be paid

- Miss.-Moreland v. People's Bank of Waynesboro, 74 So. 828, 114 Miss. 203. L.R.A.1917F 263.
- Mo.-McClure Garage v. Sturdivant Bank, App., 76 S.W.2d 438.
- Mont.-Powell Building & Loan Ass'n v. Larabie Bros. Bankers, 46 P.2d 697.
- Ohio.-Busher v. **Fulton**, 191 N.E. 752, 12S Ohio St. 485, affirming Fulton v. Busher, 191 N.E. 475, 47 Ohio App. 169-Ramisch v. Fulton, 180 N.E. 735, 41 Ohio App. 443-Flanders v. Adams, 28 Ohio N.P., N.S., 542.
- Or.-Dahl v. Penne v. State Bank of Portland, 222 P. 1090, 110 Or. 68.
- Pa.-Trust Companies as Sureties, 7 Pa. Dist. & Co. 143.
- C.J. p 630 note 95. p 641 note 1.
- Relation as not confidential**
- It does not suffice as a basis of a claim of a confidential relation that the relation of banker and depositor exists. It is the usual custom with many depositors in business transactions to ask the banker for his opinion of the transaction, but to say that under such circumstances a confidential relation is created would be going too far.-Klatt v. First State Bank of Calmar, 220 N.W. 31S, 320. 206 Iowa 252.
- Claim that bank was trustee ex maléficio**
- Deposit was not impressed with trust on ground that bank became trustee ex maléficio because of its refusal to pay at expiration of ninety-day period, since relationship remained that of debtor and creditor.-Wenzel v. People's State Bank, 259 N.W. 120, 270 Mich. 424,
- "Unless there are special arrangements agreed upon between the parties at the time the deposit is made that the money is a special deposit, the relation between the depositor and the bank is that of debtor and creditor and not trustee and beneficiary. In the absence of fraud, we know of no exceptions to this rule." -Powell Building & Loan Ass'n v. Larabie Bros. Bankers, Mont., 46 P. 2d 697, 701.
- 39. U.S.-Santee Timber Corporation v. Elliott**, C.C.A.S.C., 70 F.2d 179, **93 A.L.R.** 874-Keyes v. Paducah & I. R. Co., C.C.A.Ky., 61 F. 2d 611, 86 A.L.R. 203-Burnett v. Bank of Duncan, C.C.A.S.C., 30 F. 2d 52-Lebanon Iron Co. v. Donnelly & Co., D.C.Pa., 29 F.2d 411-Cory Mann George Corporation v. Old, C.C.A.Va., 23 F.2d 803-In re Ruskay, C.C.A.N.Y., 5 F.2d 143-Hall v. Rochester Trust Co., D.C. N.H., 9 F.Supp. 797-General Baking Co. v. Gordon, D.C.Pa., 9 F. Supp. 210.
- Ark.-Taylor v. Dierks Lumber & Coal Co., 39 S.W.2d 724, 183 Ark 937.
- Cal.-Bank of America Nat. Trust & Savings Ass'n v. California Savings & Commercial Bank, 22 P.2d 704, 218 Cal. 261-Allen v. Rainey, 41 P.2d 374, 4 Cal.App.2d 558-Pendleton v. Hellman Commercial Trust & Savings Bank, 208 P. 702, 68 Cal.App. 448.
- Del.-Reed v. Central Nat. Bank of Wilmington, 184 A. 772.
- Fla.-Everglade Cypress Co. v. Tunnicliffe, 148 So. 192, 107 Fla. 675-Martin v. Meyerheirn, 133 So. 636, 101 Fla. 82-Tomaseilo v. Murphy, 129 So. 328, 100 Fla. 132-Glidden v. Gutelius, 119 So. **140**, 96 Fla. 334, rehearing denied Glidden v. Getultus, 120 So. 1, 96 Fla. 834-Johnson v. Barton, 83 So. 722, 79 Fla. 46.
- Ga.-American Surety Co. of New York v. Bank of Dawson, 159 S.E. 736, 43 Ga.App. 593-Foster v. People's Bank, 155 S.E. 62, 42 Ga. App. 102.
- Idaho.-First Nat. Bank v. Stringfield, 235 P. 897, 40 Idaho 587.
- 111.-Baier v. O'Connell, 6 N.E.2d 140, 365 Ill. 208, affirming 1 N.E. 2d 805, 284 Ill.App. 331-People ex rel. Nelson v. Sheridan Trust & Savings Bank, 193 N.E. 186, 358 Ill. 290, reversing 272 Ill.App. 27, certiorari denied Elie Sheetz Candies Co. v. O'Connell, 55 S.Ct. 654, 295 U.S. 740, 79 L.Ed. 1687-Kamfner v. Auburn Park Trust & Savings Bank, 176 N.E. 363, 344 Ill. 200-People v. Farmers' State & Savings Bank of Grant Park, 170 N.E. 236, 33S **III. 134-People ex rel. Nelson v. Chicago Bank of Commerce**, 282 Ill.App. 156-Live Stock Exchange v. State Bank of Roseville, 249 Ill.App. 44.
- Ind.-Barger v. Stults, 172 N.E. **549**, **92 Ind.App.** 87.
- Iowa.-Andrew v. Union Say. Bank & Trust Co. of Davenport, 263 N.W. 495, 220 Iowa 712-Runyan v. Farmers' Bank of Liberty Center, 230 N.W. 418, 210 Iowa 147-Andrew v. Colo Say. Bank, 219 N.W. 62, 205 Iowa 872.
- Me.-Manufacturers' Nat. Bank v. Chabot & Richard Co., 96 A. 836, 114 Me. 514.
- Mich.-Owosso Masonic Temple Ass'n v. State Say. Bank, 263 N.W. 771, 273 Mich. 682.
- Miss.-Deposit Guaranty Bank & Trust Co. v. Merchants' Bank & Trust Co., 158 So. 136, **171 Miss.** 553-Rice v. Webb, 105 So. 354, 141 Miss. 66.
- Mo.-State v. Pate, 188 S.W. 139, 268 Mo. 431-Bank of Illinois v. Sturdivant Bank, App., 89 S.W.2d 560-Horgan Realty Co. v. First Nat. Bank, 273 S.W. 772, 221 Mo.App. 329-Haas v. Kings County Fruit Co., **App.**, **183 S.W.** 676.
- Neb.-Harrison State Bank v. **First Nat. Bank**, 218 N.W. 92, **116 Neb.** 456.
- N.J.-Slavin v. Passaic Nat. Bank & Trust Co., 176 A. 339, 114 N.J.Law 341-Maurello v. Broadway Bank & Trust Co. of Paterson, 176 A. 391, 114 N.J.Law 167.
- N.Y.-General Fire Assur. Co. of Paris. France, v. State Bank, 164 N.Y.S. 871, 177 App.Div. 745-In re Liquidation of State Bank of Binghamton, 274 N.Y.S. 41, 152 Misc. 679-Wasserman v. Broderick, 250 N.Y.S. 84, 140 Misc. 174-In re McCarthy's Funds, 248 N.Y. S. 335, 139 Misc. 147-In re Witlin's Will, 226 N.Y.S. 415, 131 Misc. 188.
- N.C.-Roebuck v. National Surety Co., 156 S.E. 531, 200 N.C. 196-Wall v. Howard, 139 S.E. 449, 194 N.C. 310.
- Ohio.-Busher v. Fulton, 191 N.E. 752, 128 Ohio St. 485, affirming Fulton v. Busher, 191 N.E. 475, 47 Ohio App. 109.
- Pa.-In re Hober's Estate, 180 A. 140, 118 Pa.Super. 209.
- S.D.-Calmenson Clothing Co. v. First Nat. Bank & Trust Co. of Aberdeen, 253 N.W. 555-Commercial Nat. Bank of Sturgis v. Smith, 244 N.W. 521, 60 S.D. 376.
- Tex.-Stone Fort Nat. Bank v. Forbes, 91 S.W.2d 674.
- Va.-Federal Reserve Bank of Richmond. Va., v. State & City Bank & Trust Co., 143 S.E. 697, 150 Va. 423.
- Wash.-Washington Show Mfg. Co. v. Duke, 218 P. 232, 233, 126 Wash. 510. 37 A.L.R. G11.
- 7 C.J. p 628 note 94.
- Deposit of money or equivalent**
- Generally, when a person deposits money, or its equivalent, in a bank, such as defendant in this case, the relation of debtor and creditor is set up. Title to the funds so deposited immediately vests in the bank, and whatever sum it pays on a check of a creditor-depositor is paid from funds of the bank, and thereupon, if properly paid, the bank has the right to charge the depositor with the amount of such payment.-Deer Island Fish & Oyster Co. v. First Nat. Bank, Miss., 146 So. 116.
- Deposit of **bankruptcy funds** in authorized depository generally vests ownership of funds in bank and creates a mere indebtedness on **part of bank to trustee making deposit**.-Lamb v. Townshend, C.C.A. W.Va., **71 F.2d** 590, certiorari denied Townshend v. Lamb, 55 S.Ct. 118, 293 U.S. 602, 79 L.Ed. 694.
- Deposits as assets**
- Deposits are not the property of the depositors, but of the bank receiving them, the relation of a bank and its depositors being that er

depositor or on his order,<sup>40</sup> or demand,<sup>41</sup> and in making payments on the depositor's order the bank pays its own money as a debtor and not its depositor's money as an agent.<sup>42</sup> The bank's contract is to honor the checks of its depositor so long as it has sufficient funds to do so,<sup>43</sup> and its obligation is merely to repay the amount due out of its general funds and it is not contemplated that the identical bills or money deposited shall be returned to the customer," nor does the bank incur any obligation to the depositor to preserve his funds, nor to invest them, nor to keep them separate from its other funds.<sup>45</sup>

Deposits are ordinarily presumed to be general

and the burden of proof rests on one asserting the contrary, *infra* § 327 a. The factors considered in determining the general or special character of particular deposits are discussed in § 274 b *infra*.

*Distinguished from special deposit.* The fundamental difference between a general and a special deposit is that title to the thing deposited generally passes to the bank and its obligation is merely to return an equivalent of the money deposited, whereas title to the thing specially deposited remains in the depositor and the bank is ordinarily obligated to return the particular thing deposited/<sup>16</sup> although other authority states that there is no obligation to return the identical money deposited whether the de-

debtor and creditor, so that deposits and investments are equally assets of the bank.—*Anderson v. Farmers' Loan & Trust Co.*, C.C.A.N.Y., 241 F. 322, 154 C.C.A. 202.

#### use in general business

A general bank deposit creates a debtor and creditor relation authorizing the bank to mix the deposit with its funds and use it in its business.—*Folk v. Garrison*, 258 S.W. 631, 162 Ark. 624.

**payment of interest** on deposit by bank is strong, although not conclusive, indication that title to funds deposited has passed to bank and that relation between bank and depositor is that of debtor and creditor.—*In re State Bank of Elkhorn*, 262 N.W. 15, 129 Neb. 506.

#### Panda as not subject to conversion

On receipt of deposit it becomes property of bank, and bank becomes depositor's debtor, and depositor's allegation that bank diverted and converted deposit to own use did not state cause of action, since bank could not divert and convert its own property.—*S. R. & P. Import Co. v. American Union Bank*, 204 N.Y.S. 755, 122 Misc. 798.

**Money deposited with private banker** became banker's property, so that he could mingle deposit with his own moneys, there being no contrary agreement.—*Gartner v. Cas-satt*, 169 A. 889, 313 Pa. 491.

**40.** Ark.—*England v. Hughes*, 217 S.W. 13, 141 Ark. 235. N.J.—*Economy Auto Supply Co. v. Fidelity Union Trust Co.*, 144 A. 30, 105 N.J.Law 206. <sup>Tenn.</sup>—*American Nat. Bank v. Miles*, 79 S.W.2d 47, 18 Tenn.App. 440. <sup>30.</sup> **P 642** note 2.

#### lanaied contract

When one deposits money in a "like on general deposit, the bank thereby becomes the debtor of the depositor for the amount of the money

so deposited, and undertakes piledly to pay the money either to

the depositor himself or to some person to whom he directs it to be paid.—*Darien Bank v. Clifton*, 118 S.E. 641, 156 Ga. 65.

#### Withholding funds

There is no rule of law that requires a bank or any one else to withhold funds owing to another person on the ground that they have knowledge of the fact that some one else has an unsatisfied judgment against such other person.—*Provident Nat. Bank of Waco v. Cairo Flour Co.*, Tex.Civ.App., 226 S.W. 499.

Receipt for a deposit of money in a bank imports an obligation to pay on a reasonable demand and is a written agreement enforceable at law.—*Gary First Nat. Bank v. Jo-setoff*, 105 N.E. 175, 57 Ind.App. 320.

**41.** Tex.—*American Nat. Bank v. Miles*, 79 S.W.2d 47, 18 Tenn.App. 440.

Vt.—*Holman v. Randolph Nat. Bank*, 126 A. 500, 98 Vt. 66.

#### Necessity of demand

Although bank in receiving deposit impliedly agreed to repay same on demand, demand for repayment was an integral and essential part of contract.—*Holman v. Randolph Nat. Bank*, 126 A. 500, 98 Vt. 66.

**42.** N.Y.—*General Fire Assur. Co. of Paris, France. v. State Bank*, 164 N.Y.S. 871, 177 App.Div. 745.—*In re Wilkin's Will*, 226 N.Y.S. 415, 131 Misc. 188.

**4,3. U.S.—U. S. Shipping Board Emergency Fleet Corporation v. Atlantic Corporation, D.C.Mass., 5 F.2d 529. **error dismissed, C.C.A.** 16 F.2d 27.**

**44.** Mich.—*Owosso Masonic Temple Ass'n v. State Say. Bank*, 263 N.W. 771, 273 Mich. 682.

Tex.—*Regan v. Elisondo*, Civ.App., 73 S.W.2d 900, error refused—*Tyler County State Bank v. Rhodes*, Civ.App., 256 S.W. 947.

7 C.J. p 630 note 96.

**45.** U.S.—*Santee Timber Corpora-*

*tion v. Elliott*, C.C.A.S.C., 70 F.2d 179, 93 A.L.R. 874.

**46.** U.S.—*Reyes v. Paducah & I. R. Co.*, C.C.A.Ky., 61 F.2d 611, 612, 86 A.L.R. 203.—*Pitts v. Pease*, C.C.A. Ga., 39 F.2d 14.—*Taylor v. Pickier*, D.C.Me., 13 F.Supp. 857.

Ala.—*Talladega Ins. Co. v. Landers*, 43 Ala. 115.

Cal.—*People v. California Safe Deposit & Trust Co.*, 137 P. 1111, 23 Cal.App. 199.

Fla.—*Martin v. Hteyerheim*, 133 So. 636, 101 Fla. 82.

Idaho.—*Bacon v. State Bank of Remiah*, 240 P. 194, 41 Idaho 518.

Mo.—*In re North Missouri Trust Co. of Mexico, Mo.*, App., 39 S.W.2d 412.—*Schulz v. Bank of Harrison-vile*, App., 246 S.W. 614.

N.Y.—*Wasserman v. Broderick*, 250 N.Y.S. 84, 140 Misc. 174.

S.D.—*Spry v. Miming*, 191 N.W. 833, 46 S.D. 237.

Tex.—*Tyler County State Bank v. Rhodes*, Civ.App., 256 S.W. 947.

"A general deposit . . . consists of money which is mingled with the money of other depositors in a general fund chargeable with the payment of general deposits, possesses no trust quality, and loses its special identity in its general commingling with the funds of the bank. A special deposit is a deposit for safe-keeping. It contemplates the return of the identical money deposited. . . . The title of the money constituting a special deposit does not pass to the bank. The title to the money constituting a general deposit does pass to the bank."—*Owosso Masonic Temple Ass'n v. State Say. Bank*, 263 N.W. 711, 774, 273 Mich. 682.

"A bank deposit is special where the bank becomes bailee, and title to the deposit remains in the depositor; it is general if title passes to the bank, and the bank has the right to use the deposit in its business, being bound only to return an equal amount or any part thereof, usually on demand."—*Pitts v. Pease*, Ga., 39 F.2d 14, 15.



**n 5 7 B 6 e \_ n n u e i t s t :**  
A special deposit implies the theofright of the  
owner to receive bac custodianproce property  
to without t,t's ou u t landi or

infra, not contemplating a credit on general account,<sup>53</sup> and may also be defined as one held for a particular

purpose in identical or equivalent form as {Olen deposited, subject to return at any time and not commingled by the depository with other funds or assets of the bank.<sup>54</sup> A special deposit becomes such by specific directions, or agreement, or through circumstances sufficient to create a trust,<sup>55</sup>

or through wrongful deposit,<sup>56</sup> and rests upon a contract express or implied.<sup>57</sup> The depositor's consent is ordinarily essential to creation of a special deposit.<sup>58</sup>

There is no debtor and creditor relation between the bank in which special deposit is made and its special depositor,<sup>59</sup> their status or relation being that of agent and principal,<sup>60</sup> bailee and bailor,<sup>61</sup> or trust-

the identical thing deposited.—Tuckerman v. Mearns, 49 App.D.C. 153, 262 F. 607.

#### Return of identical bonds

Where plaintiff deposited with defendant bank liberty bonds for safekeeping, the bonds constituted a special deposit not to be paid or accounted for by the bank in money but by the identical deposit.—Tyler County State Bank v. Rhodes, Tex. Civ.App., 256 S.W. 947.

General deposits distinguished see supra. 1273.

53. Fla.—McCrary Stores Corporation v. Tunnicliffe, 140 So. 506, 104 Fla. 683.

Ill.—People v. Home State Bank of Grant Park, 170 N.E. 205, 338 Ill. 179, affirming Nelson v. Home State Bank of Grant Park, 252 Ill. App. 323.

N.Y.—Wasserman v. Broderick, 250 N.Y.S. 34, 140 Misc. 174.

"When the identical money or other thing deposited is to be restored or is given to the bank for some specified and particular purpose, as to pay a certain note or other indebtedness, or is received by the bank as a collecting agent, such collection to be remitted, such deposits are special or specific."—Newcorn v. Acacia Mut. Life Ass'n, 136 So. 369, 102 Fla. 567—Martin v. Meyerheim, 133 So. 636, 101 Fla. 82.

54. U.S.—In re Battani, 6 F.Supp. 376.

Ala.—Collins v. Morgan County Nat. Bank, 147 So. 161.

Conn.—Bassett v. City Bank & Trust Co., 160 A. 60, 115 Conn. 1, 81 A.L.R. 1468.

N.J.—Maurello v. Broadway Bank & Trust Co. of Paterson, 176 A. 391, 114 N.J.Law 167.

Ill.—Baier v. O'Connell, 6 N.E. 2d 140, 365 Ill. 208, affirming 1 N. 11.2d 505, 284 Ill.App. 331—People v. Farmers' State & Savings Bank of Grant Park, 170 N.E. 236, 338 Ill. 134.

11 Y.—Brashear v. Perry Bank & Trust Co.'s Liquidating Agent, 67 S.W.2d 28, 252 Ky. 297. <sup>Mont</sup> Montana-Dakota Power Co. v. Johnson, 23 P.2d 956, 95 Mont. 16.

1. Ifo.—Greene County Building & Loan Ass'n v. Cantley, 62 S.W.2d 31, 228 Mo.App. 14.

#### Methods of creating special deposit enumerated

To make "special deposit," particular money or thing must be understood to be returned, or that money deposited by agreement be used for specifically designated purpose, or that deposit must have been wrongful or illegal.—Greene County Building & Loan Ass'n v. Cantley, 62 S.W. 2d 31, 228 Mo.App. 14.

53. U.S. In re Battani, 6 F.Supp. 376.

54. Ariz.—Plenix Title & Trust Co. v. Central Bank of Phenix, 247 P. 1097, 30 Ariz. 431.

#### Bank's understanding and handling of deposit

Manner in which bank handled deposit, or understanding of its officers and employees that it would be special deposit, would not make it such without depositor's consent.—Phenix Title & Trust Co. v. Central Bank of Phenix, 247 P. 1097, 30 Ariz. 431.

55. T.J.S.—Marchant v. Summers, C. C.A.S.C., 79 F.2d 877—Richards v. Fulton, C.C.A.Ohio, 75 F.2d 853—In re Gans & Klein, D.C.Mont., 14 F.2d 116, affirmed Union Bank & Trust Co. of Helena, Mont. v. Lo-ble. C.C.A., 20 F.2d 124, certiorari denied 48 S.Ct. 83, 275 U.S. 545, 72 L.Ed. 417.

Ala.—Montgomery v. Smith, 145 So. 822.

Ky.—Bailey v. Farmers' Bank of White Plains, 12 S.W.2d 312, 227 Ky. 179—Farmers' Bank of White Plains v. Bailey, 297 S.W. 938, 221 Ky. 55.

Mich.—Owosso Masonic Temple Ass'n v. State Say. Bank, 263 N.W. 771, 273 Mich. 682.

Miss.—Jourdan v. Bennett, 81 So. 239, 119 Miss. 576.

N.C.—Corporation Commission of North Carolina v. Merchants' Bank & Trust Co., 138 S.E. 22, 193 N.C. 696.

Pa.—Franklin Savings & Trust Co. of Pittsburgh v. Clark, 129 A. 56, 283 Pa. 212.

Tee.—Harper v. Merchants' & Planters' Nat. Bank of Mt. Vernon, Civ. App., 65 S.W.2d 351, error dismissed—Tyler County State Bank v. Rhodes, Civ.App., 256 S.W. 947.

56. U.S.—Kershaw v. Kimble, C.C.A. Kan., 65 F.2d 553.

Conn.—Bassett v. City Bank & Trust

Co., 160 A. 60, 115 Conn. 1, 81 A.L.R. 1488.

Fla.—City Bank of Ft. Lauderdale v. Hart, 136 So. 446, 102 Fla. 529—Newsom v. Acacia Mut. Life Ass'n, 136 So. 389, 102 Fla. 567—Amos v. Baird, 117 So. 789, 96 Fla. 181, followed in Duncan v. Davis, 147 So. 690.

2. T.I.S.—Meflon Nat. Bank v. Citizens Bank & Trust Co. of Cambridge, 88 F.2d 128—Richards v. Fulton, C.C.A.Ohio, 75 F.2d 853.

Ala.—Collins v. Morgan County Nat. Bank, 147 So. 161—Montgomery v. Smith, 145 So. 822.

Conn.—Bassett v. City Bank & Trust Co., 160 A. 60, 115 Conn. 1, 81 A.L.R. 1488.

Fla.—City Bank of Ft. Lauderdale v. Hart, 136 So. 446, 102 Fla. 529—Newsom v. Acacia Mut. Life Ass'n, 136 So. 389, 102 Fla. 567—Amos v. Baird, 117 So. 789, 96 Fla. 181, followed in Duncan v. Davis, 147 So. 690.

Ind.—City Nat. Bank of Auburn v. Brink, 187 N.E. 689, 95 Ind.App. 275.

Iowa.—Bates v. Madison County Say. Bank of Winterset, 269 N.W. 341—Cornick v. Weir, 237 N.W. 245, 212 Iowa 715—Leach v. Burton & Co. State Bank of Kellogg, 220 N.W. 113, 206 Iowa 675—Leach v. Sanborn State Bank, Sanborn, Iowa, 212 N.W. 694, 203 Iowa 401, 51 A.L.R. 900.

Kan.—Bloomheart v. Foster, 221 P. 279, 114 Man. 786.

Ky.—Bailey v. Farmers' Bank of White Plains, 12 S.W.2d 312, 227 Ky. 179—Farmers' Bank of White Plains, 297 S.W. 938, 221 Ky. 55.

Mich.—Owosso Masonic Temple Ass'n v. State Say. Bank, 263 N.W. 771, 273 Mich. 662.

Miss.—Jourdan v. Bennett, 81 So. 239, 119 Miss. 576.

N.J.—Maurello v. Broadway Bank & Trust Co. of Paterson, 176 A. 391, 114 N.J.Law 167.

N.C.—Corporation Commission of North Carolina v. Merchants' Bank & Trust Co., 138 S.E. 22, 193 N.C. 606.

Ohio.—Busher v. Fulton, 101 N.E. 752, 121 Ohio St. 485, affirming Fulton v. Busher, 191 X.E. 475, 47 Ohio App. 169.

Pa.—Franklin Savings & Trust Co. of Pittsburgh v. Clark, 123 A. 66, 283 Pa. 212—In re First State



tee and cestui que trust,<sup>62</sup> or a combination of such relationships.<sup>63</sup>

Title to the thing deposited does not pass to the bank but remains in the depositor,<sup>64</sup> the latter retaining the right of control and disposition,<sup>65</sup> and it is ordinarily contemplated that the bank will pre-

serve the identity of the thing deposited by segregation thereof from other like kinds of money or property,<sup>66</sup> and that the bank shall have no authority to use in its business money placed with it on special deposit;<sup>67</sup> but it has been held that a deposit of money may still be regarded as special even though

- Bank of New Castle, 95 Pa.Super. 199.
- Tex.-Harper v. Merchants' & Planters' Nat. Bank of Mt. Vernon, Civ. App., 6S S.W.2d 351, error dismissed-Tyler County State Bank v. Rhodes, Civ.App., 256 S.W. 947.
- Bailment**
- "A special deposit partakes of the nature of a bailment where the funds are to be kept intact and returned upon demand."-Wasserman v. Broderick, 250 N.Y.S. 54, S7, 140 Misc. 174.
- Not always bailment**
- A special deposit is sometimes said to be equivalent to a bailment. It is not always of that order.-Genesee Wesleyan Seminary v. U. S. Fidelity & Guaranty Co., 159 N.E. 720, 247 N.Y. 52, 56 A.L.R. 961, affirming 219 N.Y.S. 920, 219 App.Div. 764.
- Deposit of bonds for security or safe-keeping**
- (1) **Where** bank takes bonds of a customer as security or for safe-keeping, relationship established is that of bailor and bailee and not that of debtor and creditor, which would arise on a sale and purchase of the bonds.-**Marchant v. Summers**, C.C. 79 F.2d S77.
- (2) When a bank receives bonds or other property of a customer for safe-keeping, it becomes a bailee and liable as such.-**In re Farmers' & Merchants' Say. Bank of Mt. Pleasant**, 211 N.W. 532, 202 Iowa 859, 51 A.L.Ft. 910.
62. Fla.-City Bank of Ft. Lauderdale v. Hart, 136 So. 446, 102 Fla. 529-Newsom v. Acacia Mut. Life Ass'n, 136 So. 389, 102 Fla. 567-Amos v. Baird, 117 So. 789, 96 Fla. 181, followed in **Duncan v. Davis**, 147 So. 690.
- Ill.-People ex rel. Nelson v. Stony Island State Say. Bank, 192 N.B. 662, 358 Ill. 118, affirming 272 Ill. App. 365-**People v. Dahlgren** State Bank, 264 Ill.App. 513.
- Ind.-City Nat. Bank of Auburn v. Brink, 187 N.E. 689, 98 Ind.App. 275.
- N.Y.-In re McCarthy's Funds, 248 N.Y.S. 335, 139 Misc. 147.
- Wash.-McGregor v. First Farmers'-Merchants' Bank & Trust Co., 40 P.2d 144, 180 Wash. 440-Carlson v. Kies, 134 P. 808, 75 Wash. 171, 47 L.R.A.,N.S., 317.
- Trustee relationship shown.**
- Bank, with which stated gold and currency were deposited in trust by
- Persons not declaring** themselves claimants thereof in contemporaneous trust instruments, which showed that money was deposited as another's property, without directing disposition thereof, held not mere bailee, but trustee having burden of making proper disposition of property.-**Collins v. Morgan County Nat. Bank**, Ala., 147 So. 161.
63. **Dual capacity**
- Bank which was chosen as escrow agent and which accepted and retained escrow agreement under which grantor delivered deed to bank and grantee delivered consideration occupied dual capacity as agent in so far as manual duties were concerned, and as notpaid trustee in so far as purchase money was concerned.-**Squire Branciforti**, 2 N.E.2d 878, 131 Ohio St. 344.
64. U.S.-**Keyes v. Paducah & I. B. Co.**, C.C.A.Ky., 61 F.2d 611, 86 A.L.R. 203.
- Cal.-In re Smith's Estate, 297 P. 927, 112 Cal.App. 680, followed in **In re Brenhart's Estate**, 297 P. 931, 112 Cal.N. pp. 766 and in re Slingsby's Estate, 297 P. 931, 112 Cal. app. 767.
- Fla.-City Bank of Ft. Lauderdale v. Hart, 136 So. 446, 102 Fla. 529-Newsom v. Acacia Mut. Life Ass'n, 136 So. 389, 102 Fla. 567-Amos v. Baird, 117 So. 789, 96 Fla. 181, followed in **Duncan v. Davis**, 147 So. 690.
- Idaho.-**Bacon v. State Bank of Kamiah**, 240 P. 194, 41 Idaho 518.
- Ill.-People ex rel. Nelson v. Stony Island State Say. Bank, 192 N.E. 682, 358 Ill. 118, affirming 272 Ill. App. 365.
- Me.-Lawrence v. Lincoln County Trust Co., 131 A. 863, 125 Me. 150, Mich.-Owosso Masonic Temple Ass'n v. State Say. Bank, 263 N.W. 771, 273 Mich. 682.
- Miss.-Jourdan v. Bennett, 81 So. 239, 119 Miss. 57G.
- Mo.-In re North Missouri Trust Co. of Mexico, Mo., App., 39 S.W. 2d 412.
- N.Y.-Wasserman v. Broderick, 250 N.Y.S. 84, 140 Misc. 174.
- N.C.-Corporation Commission of North Carolina v. Merchants' Bank & Trust Co., 133 S.E. 22, 193 N.C. 696.
- Ohio.-**Busher v. Fulton**, 191 N.E. 752, 128 Ohio St. 485, affirming **Fulton v. Busher**, 191 N.B. 475, 47 Ohio App. 169.
- Pa.-Franklin Savings & Trust Co. of Pittsburg v. Clark, 129 A. 66, 283 Pa. 212.
- 7 C.J. p 630 note 1.
- Deposit of liberty bonds**
- Where plaintiff deposited liberty bonds in defendant bank to be kept safely by the latter and returned to plaintiff, the title to the bonds did not vest in the bank, but remained in plaintiff.-**Tyler County State Bank v. Rhodes**, Tex.Civ.App., 256 S.W. 947.
- Effect of mingling**
- Owner's title to funds held upon special deposit is not defeated by bank's improperly mingling funds with general assets.-**Bryan v. Coconut Grove Bank & Trust Co.**, 132 So. 481, 101 Fla. 947, rehearing denied 134 So. 229, 101 Fla. 947.
- Determining whether title passes**
- In determining whether title to funds passes to depositary bank, agreement under which deposit is made and all conditions and circumstances of arrangement and legal character of transaction must be considered.-**Squire v. Branciforti**, 2 N.E.2d 878, 131 Ohio St. 344.
65. Mo.-**State v. Bunton**, 285 S.W. 97, 314 Mo. 585, 47 A.L.R. 783.
- Where note was placed in bank solely** for safe-keeping, the owner did not part with the legal or constructive possession thereof, conferred on the bank no power other than that of custodian, and retained the right of control and disposition of the note deposited as a bailment.-**State v. Bunton**, 235 S.W. 97, 814 Mo. 585, 47 A.L.R. 783.
66. U.S.-**Richards v. Fulton**, C.C.A. Ohio, 75 F.2d 853.
- Neb.-In re State Bank of Elkhorn, 262 N.W. 15, 129 Neb. 506.
- Ohio.-**Busher v. Fulton**, 191 N.E. 752, 128 Ohio St. 485, affirming **Fulton v. Busher**, 191 N.E. 475, 47 Ohio App. 169.
67. Cal.-**Dank of America Nat Trust & Savings Ass'n v. California Savings & Commercial Bank**, 22 P.2d 704, 218 Cal. 261.
- Ill.-**Green v. Ashland Sixty-Third State Bank**, 178 N.B. 463, 346 Ill. 174.
- Miss.-**Love v. Little**, 148 So. 646, 167 Miss. 175.
- Ohio.-**Busher v. Fulton**, 191 N.E. 752, 128 Ohio St. 485, affirming **Fulton v. Busher**, 191 N.E. 475, 47 Ohio App. 169.
- Tex.-Tyler County State Bank v. Rhodes.

the funds have been mingled with other funds of the bank so that it is no longer possible to identify the particular bills or coins deposited,<sup>68</sup> as where a sum equivalent to the deposit is to be kept intact for the use of the depositor,<sup>68</sup> and that where money is made the subject of pledge, trust, or special deposit, the identity of the particular money delivered need not be preserved in specie, as by setting it aside in a marked bag or package.<sup>70</sup>

#### b. Determination of Character of Deposit

In the final analysis the character of a deposit as

##### mere physical custody

Deposit with bank as mere bailee amounts merely to physical custody for safe-keeping, precluding bank's use of funds for own purposes.--In re Kruger's Estate. 249 N.Y.S. 772. 139 Misc. 907.

**613.** Mo.-In re North Missouri Trust Co. of Mexico, Mo., App., 39 S.W. 2d 412.

##### Bona fide contract as controlling

Deposit may be "special" although mingled with other funds, bona fide contract between parties being determinative of issue.--Spicer v. Round Prairie Bank of Fillmore, 71 S.W.2d 121, 228 Mo.App. 525.

69. N.Y.-Genesee Wesleyan Seminary v. U. S. Fidelity & Guaranty Co., 159 N.E. 720, 247 N.Y. 52, 56 A.L.R. 964. affirming 219 N.Y.S. 820. 219 App.Div. 764-Wasserman v. Broderick, 250 N.Y.S. 84, 140 Misc. 174.

70. Cal.-Bank of America Nat. Trust & Savings Ass'n v. California Savings & Commercial Bank, 22 P.2d 704, 218 Cal. 261.

**n.** Ind.-Olinger v. Sanders, 174 N. E. 513. 92 Ind.App. 358.

General deposit defined, and distinguished from special deposit in general see supra § 273.

**72.** Mich.-Owosso Masonic Temple Ass'n v. State Sav. Bank, 263 N.W. 771, 273 Mich. 682-Wenzel v. People's State Bank, 259 N.W. 120, 270 Mich. 424-Borgess Hospital v. Union Industrial Trust & Savings Bank of Flint. 251 N.W. 363, 265 Mich. 156. Mo.-Spicer v. Round Prairie Bank of Fillmore, 71 S.W.2d 121, 228 Mo. App. 525-In re Central Trust Co. of St. Charles. App., 6S S.W.2d 919 - In re North Missouri Trust Co. of Mexico, Mo.. App., 39 S.W.2d 412.

##### Mutual intent to hold for special purpose

(1) To justify designation of account in bank as "special deposit," not only its special purpose must be shown, but also intention on part of both parties that it must be held and used exclusively for such pur-

both bank and depositor must understand that fund is to be held for special purpose and that bank shall not pay checks drawn against it for other purposes.-In re Central Trust Co. of St. Charles, hlo.App., 68 S.W. 2d 919.

73. Ill.-Gits v. Foreman, 196 N.E. 434. 360 Ill. 461, 101 A.L.R. 595. affirming People ex rel. Nelson v. Chicago Bank of Commerce, 275 111.App. SO. Mont.-Chicago, M., St. P. & P. R. Co. v. Larabie Bros. Bankers, 61 P.2d 623.

**65.** U.S.-Keyes v. Paducah & I. R. Co., C.C.A.Ky., 61 F.2d 611, 86 A.L. R. 203-Taylor v. Picker, D.C.Ale., 13 F.Supp. 857-John L. Walker Co. v. Alden, D.C.111., 6 F.Supp. 262.

Conn.-Bassett v. City Bank & Trust Co., 160 A. 60. 115 Conn. 1, 81 A. L.R. 1488.

Fla.-Hart v. Savary, 152 So. 705. 114 Fla. 41-Bryan v. Coconut Grove Bank & Trust Co., 132 So. 481, 101 Fla. 947, rehearing denied 134 So. 229, 101 Fla. 947.

Iowa.-Andrew v. Security Trust & Savings Bank, 243 N.W. 642, 214 Iowa 1199.

Mo.-Kling v. Benson Banking Co., App., 100 S.W.2d 638-In re Central Trust Co. of St. Charles, App., 68 S.W.2d 919-In re North Missouri Trust Co. of Mexico. Mo., App., 39 S.W.2d 412-Missouri Mut. Ass'n v. Holland Banking Co., 290 S.W. 100, 220 Mo.App. 1256.

N.Y.-Gray v. First Nat. Bank & Trust Co. of Yonkers, 189 N.E. 557, 263 N.Y. 479, reversing 267 N.Y.S. 971. 240 App.Div. 893, amending 266 N.Y.S. 1002. 240 App.Div. 858.

Tex.-Shaw v. Davidson, Civ.App., 19 S.W.2d 789.

74. Ind.-Sindlinger v. Department of Financial Institutions of Indiana, 199 N.E. 715.

Mo.-Security Nat. Bank Savings & Trust Co. v. Moberly, 101 S.W.2d 33-In re Central Trust Co. of St. Charles, APP., 68 S.W.2d 919-In re North Missouri Trust Co. of Mexico, Mo., APP., 39 S.W.2d 412-Missouri Mut. Ass'n v. Holland Banking Co., 290 S.W. 100, 220 Mo. App. 1256.

Mont.-Chicago, AL, St. P. & P. R.

general or special is a question or fact to be determined by the intention of the parties as revealed by their agreement and all the circumstances of the particular case involved.

The general or special character of an account is a question of fact,<sup>71</sup> to be determined by the purpose for which the deposit was made,<sup>72</sup> the relationship existing between the depositor and the bank,<sup>73</sup> and the intention of the parties<sup>74</sup> as expressed in their contract<sup>75</sup> and as revealed by the facts and circumstances of the case, such as the words and acts of the parties and their course of business.<sup>76</sup>

Co. v. Larabie Bros., Bankers, 61 P. (2d) 823.

N.Y.-Wasserman v. Broderick, 250 N.Y.S. 84, 140 Misc. 174.

Tex.-First Nat. Bank v. Price, Cly. App., 262 S.W. 797.

Wash.-Hitt Fireworks Co. v. Scandinavian American Bank. 195 P. 13, 114 Wash. 167. rehearing denied Hitt Fireworks Co. v. Scandinavian-American Bank of Tacoma, 196 P. 629. 114 Wash. 167.

"If there is no mala fides connected with the transaction, the character of the deposit, whether general or special, is to be determined from the contract between the depositor and the bank."-Missouri Mut. Ass'n v. Holland Banking Co., 290 S.W. 100, 102, 220 Mo.App. 1256. Construction All parts of written agreement between depositor and bank as to deposit will be construed together in determining whether deposit is special or general.-Duncan v. Anderson, 250 P. 1015, 120 Okl. 194.

##### No particular form of contract

Whether a deposit in a bank is general or special depends upon the mutual understanding and intention of the parties with reference thereto. The law prescribes no particular formula of contract."-Bryan v. Coconut Grove Bank & Trust Co., 132 So. 481, 101 Fla. 947, rehearing denied 134 So. 229, 101 Fla. 947. 7 C.I. p 630 note 3 [b].

##### Explicit understanding

Where a deposit was made in a bank upon the express understanding that it was to be a special deposit for the purpose of organizing a bank and defraying expenses in connection therewith, it was a special deposit.-First Nat. Bank v. Price. Tex.Civ. App., 262 S.W. 797.

##### Express or implied contract

Bank deposit is subject to any agreement which depositor and banker may make, and a special deposit may be created either by express agreement of parties or by circumstances indicating that such was understanding of parties.-Chicago, St. P. & P. R. Co. v. Larabie Bros. Bankers, Mont., 61 P.241 823.

**76.** Ind.-Olinger v. Sanders, 174 N. E. 513, 92 Ind.App. 358.

It has been said that a deposit is not special unless made so by the depositor or unless made in a particular capacity.<sup>77</sup> In the notes below will be found references to particular cases wherein deposits were held to be general<sup>78</sup> or where deposits were held

- Iowa.-Gillett v. American Sav. America v. Fulton, 56 Keyes v. Paducah & I. R. Co., C.C. AIS'y.. 61 F.2d 611, S6 A.L.R. 203-Bridge v. First Nat. Bank, D.C. Mich., 5 F.Supp. 442.
- Bank of Maquoketa, 258 NM. 99, 219 Iowa 497-Andrew v. Security Trust & Savings Bank, 243 N.W. 542, 214 Iowa 1199.
- Md.-Doty v. Ghinger, 171 A. 40, 166 Md. 426.
- Mo.-McQuerry v. Bank of Eldorado Springs, App., 96 S.W.2d 515-Spicer v. Round Prairie Bank of Fillmore, 71 S.W.2d 121, 228 Mo. App. 525.
- Ohio.-Fulton v. Escanaba Paper Co., 193 N.E. 758, 129 Ohio St. 90.
- Pa.-Franklin Savings & Trust Co. of Pittsburgh Y. Clark, 129 A. 56, 2S3 Pa. 212.
- 7 C.J. p 630 note 3.
- Custom**  
The character of a deposit should be determined "from all the evidence as to custom, course of dealing, understanding, and circumstances of the particular case under investigation," Olinger v. Sanders, 174 N.E. 513, 515 92 Ind.App. 353.
- Drawing draft**  
Act of depositor in drawing draft against her deposit in bank was held to be incompatible with her claim that it was special deposit.-Bacon v. State Bank of Kamiah, 240 P. 194, 41 Idaho 515.
- Acts attending making**  
"Whether a deposit is general or special depends on the facts and circumstances attending its making."-Franklin Savings & Trust Co. of Pittsburgh Y. Clark, 129 A. 56, 58, 253 Pa. 212.
- Separate listing**  
If, when plaintiff's debtor deposited money in defendant bank, he directed defendant's cashier to list the deposit separately for plaintiff's benefit, a special deposit resulted.-Hanby v. First Say. Bank of Spring 197 N.W. 5], 197 Iowa 150.
- Specification of nature**  
"The nature of the deposit, as well as its purpose, must be specified in order to constitute it a special deposit."-Bacon v. State Bank of Kamiah. 240 P. 194, 197, 41 Idaho 51S.
- Construing acts together**  
In determining the nature of a deposit of bonds with a bank, the various acts of the parties were to be construed together in ascertaining their intention.-Bloomheart v. Foster. 221 P. 279, 114 Kan. 786.
77. Idaho.-Xaeseineyer v. Smith, 123 P. 943, 22 Idaho 1. 43 L.R.A., N.S., 100.
- 7 C.J. p G31 note 4.
78. LI 8.-Fulton v. Evans, C.C.A. Ohio. 79 F.2d 718, certiorari denied Old Line Life Ins. Co. of
- Ariz.-Phoenix Title & Trust Co. v. Central Bank of Phcenix, 247 P. 1097, 30 Ariz. 431.
- Ark.-Kansas City Life Ins. Co. v. Taylor, 43 S.W.2d 372, 184 Ark. 772-Taylor v. Dierks Lumber & Coal Co., 39 S.W.2d 724, 183 Ark. 937.
- York v. Bank of Italy, 218 P. 466, 63 Cal.App. 149.
- Fla.-McCrory Stores Corporation v. Tunncliffe, 140 So. 806, 104 Fla. 683.
- Ga.-Wells v. Mobley, 157 S.D. 223, 42 Ga.App. 833-Few v. First Nat. Bank, 151 S.E. 546, 40 Ga.App. 791.
- Idaho.-Pacific States Savings & Loan Co. v. Commercial State Bank. 269 P. 86, 46 Idaho 481, 59 A.L.R. 443.
- Ind.-Surprise v. First Trust & Savings Bank of Hammond, 180 N. E. 926, 96 Ind.App. 66, certiorari denied Surprise v. First Trust & Sayings Bank of Hammond, Ind., 54 S.Ct. 69, 290 U.S. 653, 78 L.Ed. 566.
- Iowa.-Andrew v. Farmers' State Bank of Garnavillo, 251 N.W. 508, 217 Iowa 684-Andrew v. Colo Say. Bank, 219 N.W. 62, 205 Iowa 872-Andrew v. Marshalltown State Bank, 216 N.W. 723, 204 Iowa 1190-Leach v. State Bank of Redfield, 212 N.W. 390-In re Security Say. Bank of Perry, 211 N.W. 233-Border v. State Say. Bank of Dedham, 209 N.W. 302, 202 Iowa 27.
- Kan.-Duncan v. Farmers' State Bank of Esbon, 278 P. 763, 128 Kan. 591.
- Ky.-Brashear v. Perry Bank & Trust Co.'s Liquidating Agent, 67 S.W.2d 28. 252 Ky. 297-Lewis v. Dark Tobacco Growers' Co-op. Ass'n, 57 S.W.2d 8, 247 Ky. 301.
- Md.-Dunlop Sand & Gravel Corporation v. liospelhorn, 191 A. 701-Suburban Const. Co. v. Page, 159 A. 777, 162 Md. 355.
- Mich.-Owosso Masonic Temple Ass'n v. State Say. Bank, 263 NM. 771. 273 Mich. 682-Borgess Hospital v. Union Industrial Trust & Sayings Dank of Flint, 251 N.W. 363, 265 Mich. 156-Reichert y American State Say. Bank, 249 N. W. 876. 264 Mich. 366, 89 A.L.R. 1284.
- Minn.-Hjelle v. Veigel, 210 N.W. 891. 169 Minn. 173-Pierson v. Swift County Bank, 204 N.W. 31, 163 Minn. 344.
- Miss.-Mabry v. Waller, 172 So. 870 -Mississippi Cent. R. Co. v. Cosner, 75 So. 57. 114 Miss. 63. Mo.-Security Nat. Bank Sayings & Trust Co. v. Moberly, 101 S.W.2d 33-Landwehr v. Moberly, 92 s.w. 2d 935-In re Liquidation of Fidelity Bank & Trust Co.. App., 77 S.W.2d 480-Missouri Utilities Co. v. Scott County Bank, App., 62 S. W.2d 933-Greene County Building & Loan Ass'n v. Cantley, 62 S.W. 2d 931, 228 Mo.App. 14-Fred A. Boswell Post of American Legion v. Farmers' State Bank of Mt. Vernon, App., 61 S.W.2d 761-In re North Missouri Trust Co. of Mexico. Mo., App., 39 S.W.2d 412 -Ellington v. Cantley, App., 300 S.E. 529-May v. Bank of Hughesville, App., 291 S.W. 170-Missouri Mut. Ass'n Y. Holland Banking Co.. 290 S.W. 100, 220 Mo.App. 1256. Neb.-In re State Bank of Elkhorn, 262 N.W. 15, 129 Neb. 506-State ex rel. Sorensen v. South Omaha State Bank, 252 N.W. 476, 126 Neb. 46. N.Y.-In re Littman, 130 N.E. 174. 258 N.Y. 468, reversing Littman v. Broderick, 250 N.Y.S. 546, 232 App.Div. 538, and certiorari denied 53 S.Ct. 219, 287 U.S. 663, 77 L.Ed. 572.
- N.C.--Cooke v. Hood ex rel. Central Bank & Trust Co., 175 S.E. 841. 207 N.C. 14.
- Ok1.-Shull v. Town of Avant, 15 P. 2d 49, 159 Okl. 271.
- Or.-Dahl & Penne v. State Bank of Portland, 222 P. 1090, 110 Or. 68. S.C.-Lawton v. Lower Main St. Bank, 170 S.E. 469, 170 S.C. 334-Pant v. Home Bank & Trust Co.. 149 S.E. 599, 152 S.C. 140. Tex.-1-lays v. Shaw, Civ.App., 69 S. W.2d 807-Shaw v. Davidson, Cie. App., 19 S.W.2d 789-Wise v. Johnson, Civ.App., 198 S.W. 977. Wash.-Big West Oil Co. v. Moody. 35 P.2d 1093, 179 Wash. 95-Washington Shoe Mfg. Co. v. Duke. 218 P. 232, 126 Wash. 510, 37 A.L.R. G 11-Spiroplos v. Scandinavian American Bank of Tacoma, 199 P. 997, 116 Wash. 491, 16 A.L.R. 181. 7 C.J. p 630 note 3 [O], p 750 note GO [O].
- Bondholders' assessments**  
**Bondholders'** assessments deposited under agreement for purpose of retiring notes at maturity held to constitute general and not special deposit-Pitts v. Pease, C.C.A.Ga. 39 PM 14.
- Cash bonds**  
Cash bonds deposited in bank by officers accepting cash bonds for appearance in criminal cases become general deposits.-Martin v. Meyer-heitri, 133 So. 636, 101 Fla. S2.



to be special<sup>79</sup> under the circumstances involved. In general, it will be so regarded by the courts, n

Where the parties have agreed that a deposit shall be provided the deposit meets the requirements essen-

Deposit by prospective bond purchaser

Where one already having a general checking account with a bank ordered some bonds to be purchased for his account by the bank and at about the same time deposited enough money to cover the probable cost of the bonds, and the money was deposited by regular deposit slip without anything to indicate a special deposit, the deposit was general and not special and on insolvency of the bank the depositor was not entitled to a preference as respects such money. - In re North Missouri Trust Co. of Mexico, Mo., 39 S.I.V.2s1 412.

Deposit to credit of municipal sinking fund

Deposit of money to credit of municipal sinking fund, without any agreement to hold the same as a special account, is a general deposit. - Shull v. Town of Avant, Okl., 15 P.2d 49.

Depositor's balance to cover claims

Understanding between bank and depositor that depositor should keep deposit in bank sufficient to satisfy claims of local investors did not prevent deposit from being general deposit, subject to check. - Cunniff v. Merchants' Nat. Bank of Manchester, N. H., 4 P. 2d 25, 41 A.L.R. 529, affirming, D.C., Lowell v. Merchants' Nat. Bank of Manchester, N. H., 283 F. 124, certiorari denied Cunningham v. Merchants' Nat. Bank, 45 S.Ct. 511, 261 U.S. 69 L.Ed. 1160.

Money paid for drafts

The purchase by one at a bank of drafts does not constitute the money paid for them a special deposit in favor of the purchaser. - Gellert v. Bank of California National Ass'n, 214 P. 377, 107 Or. 162.

Time deposit

Agent's statement that deposit would be placed on earning basis is sufficient notice to principal that funds would be placed on time deposit, and indicates that the deposit was general and not special in character. - Bacon v. State Bank of Kamiah, 240 P. 194, 41 Idaho 513.

<sup>79</sup> U.S.-Mellon Nat. Bank v. Citizens Bank and Trust Co. of Cambridge, D.C.Ark., 88 F.2d 12S.

Alaska.-Davison v. Alaska Banking Co., 5 Alaska 683.

Ark.-Calhoun v. Sharkey, 180 S.W. 216, 120 Ark. 616.

Ga.-Manget v. National City Bank of Rome, 149 S.E.2d 213, 168 Ga. 87G. - Slarletta Trust & Banking Co. v. raw, 121 S.E. 244, 31 Ga.App. 507.

Ira-Stults v. Gordon, 167 N.B. 564, 89 Ind.App. GIL

Woe-Hamilton v. Imes, 219 N.W.

135, 216 Iowa 855-Townsend v. Athelstan Bank, 237 N.W. 356, 212 Iowa 1078-Leach v. Iowa State Bank of Atlantic, 211 N.W. 529, 202 Iowa 887.

Ky.-Farincrs' Bank of White Plains v. Bailey, 257 S.W. 938, 221 Ky. 55. La.-Merchants' & Farmers' Bank of Natchitoches v. Marine Bank & Trust Co. of New Orleans, 111 So. 323, 162 La. 906.

Minn.-Luiten v. Peyton, 249 N.W. 420, 189 Minn. 365-Blummer v. Scandinavian American State Bank of Badger, 210 N.W. 865, 169 Minn. 89.

110.-Vandivort v. Sturdivant Bank, App., 77 SAV.2d 484-In re Liquidation of Fidelity Bank & Trust Co., App., 77 S.W.2d 410-Wanes v. Bank of Pendleton, 65 S.W.2d 167. 228 Mo.App. 1150-Ozark Fruit Growers' Ass'n v. Bank of Aurora, App., 52 S.W.2d 430-Central Coal

& Coke Co. v. Bank of Bush, 44 S.W.2d 1183-26 Mo.App. 594-Greenfield v. Clarence Say, Bank of Clarence, App., 6 S.W.2d 708.

Mont.-Chicago, M., St. P. & P. R. Co. v. Larabie Bros. Bankers, 61 P.2d 823.

N.Y.-Shawmut Corporation of Boston v. William H. Bobrick Sales Corporation, 184 N.B. 68, 260 N. Y. 499, affirming 255 N.Y.S. 841, 235 App.Div. 665.

N.C.-Brunswick County v. North Carolina Bank & Trust Co., 173 S.E. 327, 206 N.C. 127-Zachevy v. Hood, 170 S.E. 641, 205 N.C. 194.

Ohio.-Stepfield v. Fulton, 185 N.E. 412, 126 Ohio St. 251-Diebold Safe & Lock Co. v. Fulton, 197 N. E. 390, 49 Ohio App. 516.

Pa.-Baldi v. Baldi, 189 A. 490, 325 Pa. 177.

Wash.-Zydek v. First Bank of Wilekeson, 30 P.2d 554, 176 Wash. 685 - Pacific Building & Loan Ass'n v. Central Bank & Trust Co., 221

P. 313, 127 Wash. 524-Central Bank & Trust Co. v. Ritchie, 206 P. 926, 120 Wash. 160-Hitt Fireworks Co. v. Scandinavian American Bank, 195 P. 13, 114 Wash. 167. rehearing denied Hitt Fireworks Co. v. Scandintivitin-American Bank of Tacoma, 196 P. 629, 114 Wash. 167. C.J. p G30 note 3 Lc], p 631 note 5.

7

Bonds

(1) Where victory loan bonds were deposited with a bank for no other purpose than that of safe-keeping, the deposit was a special one. - Leach v. Iowa State Bank of Atlantic, 211 N.W. 529, 202 Iowa SS7.

(2) Where particular bonds deposited were to be returned, deposits were "special deposits" and bank

was "bailee." - Farmers' Bank of White Plains v. Bailey, 297 S.W. 938, 221 Ky. 55.

(3) Where a depositor left two thousand seven hundred dollars of United States bonds with a bank for safe-keeping, the bonds being placed in an envelope with other papers belonging to the depositor, who called at the bank and clipped the interest coupons, but the bank, without depositor's knowledge, sold the bonds, and later, without informing the depositor, executed an agreement with him specifying that the depositor loaned the bonds to the bank to be used by it, the bank to deliver bonds of the same description and issue except as to serial number, the deposit of the bonds in the first instance created the relation of bailor and bailee. - Bloomheart v. Foster, 221 P. 279, 114 Nan. 736.

**Gold and currency**

(1) Deposit of gold coin in bank's deposit vault without interest and returnable on depositor's demand is "special deposit." under which title to coin remained in depositor. - Montgomery v. Smith, Ala., 145 So. 822.

(2) Deposits of gold and currency with bank in trust for safe-keeping were not "general" but "special" deposit. - Collins v. Morgan County Nat. Bank, Ala., 147 So. 161.

**Travelers' checks**

Travelers' checks issued by plaintiff bank and delivered to defendant bank, which executed trust receipt promising to sell checks for not more than specified price and to hold proceeds in trust and to account for such proceeds and checks, including lost or stolen checks, were held to constitute special deposit under contract creating bailor-bailee relation. - Mellon Nat. Bank v. Citizens Bank & Trust Co. of Camden, C.C.A.Arke 81 F.2d 128.

**80.** Mont.-Powell Building & Loan Ass'n v. Larabie Bros. Bankers, 46 P.2d 657.

"While It is certainly true that parties may by agreement give to deposits which would otherwise be general the special character of trust funds, an agreement definitely fixing the character of the deposit as general may not be disregarded, because, if the depositor had fully known the law and the facts, he would have acted differently for his protection." - Texas & P. ny. CO. v. Pottorff, C.C.A.Tex., 63 F.2d 1, 4.

**Relation of depositor to others**

Deposit, which it is agreed and understood that bank may use as general deposit, is general, regardless of relation between depositor

tial to the classification of "general."<sup>81</sup>

Pursuant to principles discussed supra in § 273 and subdivision a of this section, factors that may be considered in determining whether a deposit is general or special include the bank's right to control the funds,<sup>82</sup> or to mingle the deposit with its own money,<sup>83</sup> whether the identical thing deposited was to be returned,<sup>84</sup> the status of title as being in bank or depositor,<sup>85</sup> whether the parties contemplated the regular course of banking,<sup>86</sup> and the presence or ab-

sence of a trust relationship between bank and depositor.<sup>87</sup>

A deposit made by the customer with the intention that it be general, but received by the bank with the undisclosed intent that it be special, and kept separate from its general funds, is a general and not a special deposit.<sup>88</sup>

The fact that a deposit is marked "special," or bears some other particular designation, is not controlling,<sup>88</sup> nor is the lack of such a designation con-

and other parties.—Powell Building & Loan Ass'n v. Larabie Bros. Bankers, Mont., 46 P.2d 697.

81. Mo.—In re Cooper County State Bank, App., 07 S.W.2d 109.

#### Passing of title and right to draw

To create a general deposit, the money must be with the depositor's knowledge, credited to deposit account and with full right to draw against it for all purposes. There must be a passing of the title to the bank for that purpose, and where a deposit did not fulfill such requirements it was not "general."—In re Cooper County State Bank. Mo. App., 67 S.W.2d 109. **113.**

82. Mo.—Missouri Mut. Ass'n v. Holland Banking Co., 290 S.W. 100, 220 Mo.App. 1256.

#### Right to use fund

If the contract between the parties takes away from the bank the right to use the fund deposited as it uses its general deposits, then it is a special deposit. If, however, it is agreed and understood, either expressly or impliedly, that the bank may use this deposit as it uses its general deposits, then, in the absence of any wrongful intent, the deposit is a general one, no matter what the relation between the depositor and other parties may be.—Sindlinger v. Department of Financial Institutions of Indiana, Ind., 199 N.E. 716.

#### Limited control by third party

"The fact . . . that another party may have some control over the deposit so that he must countersign checks before money can be paid upon it does not alone make the deposit a special one."—Missouri! Slut. Ass'n v. Holland Banking Co., 290 S.W. 100, 103, 220 Mo. App. 1256.

83. Md.—Dunlop Sand & Gravel Corporation v. Hospelhorn, 191 A. 701. Miss.—Love v. Little, 148 So. 696, 167 Miss. 106.

Mo.—Schulz v. Bank of Harrisonville, App., 246 S.W. 614.

#### "Right" versus "fact" of commingling

Right of bank to commingle and Use deposits is determinative of whether deposit is "special deposit" and not the fact of commingling.—

Security Nat. Bank Savings & Trust Co. v. Moberly, Mo., 101 S.W.2d 33—Vandivort v. Sturdivant Bank, /do, App., 77 S.W.2d 484.

#### Agreement for commingling

Rule with regard to creation of special deposits has not been relaxed to the extent that, where money deposited is to be used for a specifically designated purpose, it may still be regarded as a special deposit, even though the funds were deposited under an agreement allowing them to become commingled with other funds in the bank, and they are so mingled that identical money deposited can no longer be identified.—Security Nat. Bank Savings & Trust Co. v. Moberly, Mo., 101 S.W.2d 33.

#### Unauthorized mingling

Where a draft was delivered to a bank pinned to a contract for the sale of land, with instructions to the bank to hold the draft until the completion of the contract, the act of the cashier in taking the draft from the contract of his own motion, making a deposit slip therefor, and mingling the proceeds of the draft with the general funds of the bank without the knowledge or consent of the depositor, does not change the deposit from a special to a general one.—Schulz v. Bank of Harrisonville, Mo.App., 246 S.W. 614.

79. Md.—Dunlop Sand & Gravel Corporation v. Hospelhorn, 191 A. 701.

Nev.—State v. Carson Valley Bank, 47 P.2d 384.

#### Return of bonds of same issue

A delivery of bonds to a bank for safekeeping, without a provision that the identical bonds were to be returned to the customer but only that bonds of the same issue should be returned, is not a special deposit, to constitute which it must appear from the agreement of the parties that a return in kind was contemplated.—Spry v. Miming, 191 N.W. 833, 46 S.D. 237.

80. Md.—Dunlop Sand & Gravel Corporation v. Hospelhorn, 191 A. 701.

"A bank deposit is special where the bank becomes bailee, and title to the deposit remains in the depos-

itor; it is general if title passes to the bank, and the bank has the right to use the deposit in its business, being bound only to return an equal amount or any part thereof, usually on demand."—Pitts v. Pease, C.C.A.Ga., 39 F.2d 14, **15.**

81. Idaho.—Bacon v. State Bank of Namiale 240 P. 194, 41 Idaho 618.

82. Ill.—People ex rel. Nelson v. People's State Bank of Maywood. 188 N.B. 853. 354 Ill. 619, reversing 266 Ill.App. 330—Baier v. O'Connell, App., 1 N.E.2d 805.

"To make a deposit special the bank must be made an agent or trustee rather than a debtor."—People ex rel. Nelson v. Farmers State Bank of Warsaw, 263 111.App. 414, 419.

83. Wash.—Washington Show Mfg. Co. v. Duke, 218 P. 232, 233, 120 Wash. 510, 37 A.L.R. 611.

84. S.D.—Steinmetz v. Schultz, 241 N.W. 734, 59 S.D. 603.

7 C.J. p 630 note 3 [e].

#### "Earmarking"

A depositor may establish an account in a bank under a special designation, or earmark as a particular account, and yet, in the absence of an agreement with, or instructions to, the bank that the account is a special deposit, or to be used for a specific purpose, the deposit is to be regarded as belonging to the general account of the depositor, and may be so treated by the bank.—American Surety Co. of New York v. Bank of Italy, 218 P. 466, 63 Cal.

#### Separation of funds

The fact that plaintiff opened accounts under special names was not sufficient in and of itself to stamp them as special deposits, the court saying: "Very frequently a person may open several accounts at the same bank, one for business purposes, and

addition to another for personal uses, etc. The fact that plaintiff opened accounts in specially designated account

Separation of funds in this instance, will open a account, will open a is often accomplished for bookkeeping purposes and does not necessarily establish an intention to make special deposit."—Borgess

clusive,<sup>99</sup> and where the deposit is made without any imitations, restrictions, or qualifications, and in the usual course of business, subject to be drawn out by the depositor on demand, it is general in character.<sup>91</sup>

An *account subject to check* is ordinarily regarded as a general deposit,<sup>92</sup> although the single fact that funds were placed in a checking account is not conclusive of their character as a general deposit.<sup>93</sup> Deposits may, of course, be general although not carried in a checking account.<sup>94</sup>

*Crediting of interest* on a deposit is an indication that it is general in character,<sup>96</sup> although this factor is not necessarily controlling.<sup>96</sup> The fact that a deposit draws interest and also is subject to withdrawal does not make it a special deposit.<sup>97</sup>

*Accepting goods for storage.* Allowing a stock of shoes in which a bank has no interest to be stored in the back end of the bank is not a transaction coming within the general line of banking business and is not within the general scope and meaning of the term "special deposit."<sup>98</sup>

### c. Change in Character of Deposit

The general or special character of a deposit may be changed by mutual agreement of the parties, but not by unilateral action.

By agreement between the parties, a general deposit may be converted into a special deposit,<sup>99</sup> or a deposit special when made may become general in character). To change a general deposit into one of a special character requires a contract,<sup>2</sup> and *the*

tal v. Union Industrial Trust & Savings Bank of Flint, 251 N.W. 363, 265 Mich. 156.

Mere use of the word "special," placed after the depositor's name, will not cause a deposit to come within that category.-Franklin Savings & Trust Co. of Pittsburg v. Clark, 129 A. 56, 283 Pa. 212.

90. Mo.-In re Liquidation of Fidelity Bank & Trust Co., App., 77 S.W.2d 450-Ozark Fruit Growers' Ass'n v. Bank of Aurora, App., 52 S.W.2d 430.

Agreement governs

It is not essential to designate an account as special in order to establish that it has such character, this question being determined by the agreement between the parties.-Ozark Fruit Growers' Ass'n v. Bank of Aurora, Mo.App., 52 S.W.2d 430. As designation on deposit slips

The lack of any special characterization of an account on the deposit slips warrants a "bank in treating the deposits as general only in the absence of information that they were in fact made for a special purpose."-In re Liquidation of Fidelity Bank & Trust Co., Mo.App., 77 S.W. 2d 480, 482.

0. 0k1.-Board of Com'rs of Mc-Curtain County v. State Nat. Bank of Idabel, 36 P.2d 281, 169 Okl. 182.

33. Iowa.-Andrew v. Waterville Say. Bank of Waterville, 219 N.W. 53, 205 Iowa 888.

Mc-In re Central Trust Co. of St. Charles, App., 68 S.W.2d 919-Elington v. Cantley, App., 300 S.E. 520.

Okl.-First State Bank v. Hunt. 185

1082, 77 Okl. 4.

1. Chilson v. Lane County State & Savings Bank, 290 P. 238, 133 Or. 328.-Downing v. Lane County State & Savings Bank, 290 P. 237, 123 Or. 320.-Downing v. Lane County State & Savings Bank, 290 P. 236, 133 Or. 822.

Wis.-Ruben v. Banking Commission of Wisconsin, 256 N.W. 712, 216 Wis. 98.

7 C.J. p 630 note 3 [a].

Right to draw for all purposes

Where the deposit is placed in the general checking account of the depositor, with his knowledge, and with the right in him to draw against it for all purposes, it is a general deposit, and title thereto passes to the bank.-In re North Missouri Trust Co. of Mexico, Mo., Mo.App., 39 S.W.2d 412, 414.

93. Mo.-Spicer v. Round Prairie Bank of Fillmore, 71 S.W.2d 121, 228 Mo.App. 525.

Factor for consideration

That money has been placed in general checking account is not conclusive that deposit is "general" but is fact to be considered together with other facts and circumstances including conduct of depositor and bank.-Spicer v. Round Prairie Bank of Fillmore, 71 S.W.2d 121, 228 Mo. App. 525.

94. Mo.-In re Liquidation of Fidelity Bank & Trust Co., App., 77 S.W.2d 480.

95. U.S.-Richards v. Fulton, C.C. A.Ohio. 75 F.2d 853.

Ohio.-Fulton v. Escanaba Paper Co., 193 N.E. 758, 129 Ohio St. 90.

96. Ind.-Rottger v. Delta Delta Delta Realty Corporation, App., 184 N.E. 412.

Contract expressly to contrary

While the agreement to pay interest on a deposit may be a circumstance to be considered in determining the relation of the parties, this of itself is not sufficient to overcome express provisions in a contract. designating a deposit as a special deposit to be held and used for a particular purpose.-Rottger v. Delta Delta Delta Realty Corporation, Ind.App., 184 N.E. 412, 416.

97. Mont -Pethybridge v, First

State Bank of Livingston, 243 P. 569, 76 Mont. 173.

98. Okl.-American Nat. Bank v. Adams, 143 P. 508, 44 Okl. 129. L. R.A.1915B 542.

7 C.J. p 631 note 6.

99. U.S.-Schumacher v. Brinson. C.C.A.N.C., 52 F.2d 821, certiorari granted Blakey v. Brinson, 62 S. Ct. 312, 285 U.S. 531, 76 L.Ed. 926, and reversed on other grounds Blakey v. Brinson, 62 S.Ct. 616, 286 U.S. 254, 76 L.Ed. 1098, 82 A. L.R. 1288.

7 C.J. p 632 note 7 [e].

1. Mo.-Spicer v. Round Prairie Bank of Fillmore, 71 S.W.2d 121, 228 Mo.App. 525.

Later conduct of depositor

Generally, deposit, although "special" when made, may become "general" by later conduct of depositor, and mere fact that depositor has issued no checks to deplete his account below amount specified is not conclusive that special deposit may not for other reasons become general.-Spicer v. Round Prairie Bank of Fillmore, 71 S.W.2d 121, 228 Mo. App. 625.

2. Iowa.-Andrew v. Union Say. Bank & Trust Co. of Davenport, 263 N.W. 495. 220 Iowa 712.

"The mutuality of agreement between the bank and its depositor which is necessary . . . to convert the relationship from that of a general depositor to that of a ape. Mal depositor is found in the nature of the depositor's agreement with the bank, which is consented to by the bank in its acceptance of deposits, namely, that depositors shall have the right at all times to withdraw their deposits and thereby terminate the relationship of creditor of the bank on demand. The demand having been made and acknowledged by the bank, the previous relation is in contemplation of law necessarily ended, giving rise to a succeeding relationship in which



fund, at least in legal contemplation, must be withdrawn from the general deposit and redeposited with, and accepted by, the bank under a new arrangement.<sup>3</sup> If a deposit is made as special, the bank cannot change its character by carrying the account on its books as a general one,<sup>4</sup> as by wrongfully placing it to the depositor's credit in a general checking account,<sup>5</sup> nor will deposit of a personal item in a fiduciary account change the special character of the latter,<sup>6</sup> nor will the bank's conversion of a special deposit transmute it into a general deposit.<sup>7</sup> A bank's issuance to its depositor of cashier's checks to the extent of his deposits does not change their relationship of debtor and creditor nor make the transaction a special deposits

Where money deposited in a bank is conclusively impressed with a trust, no change can be made in the status of the trust fund without the depositor's consent.<sup>9</sup>

A trustee's unauthorized diversion of funds in a special deposit will not alter its character,<sup>10</sup> nor will the special character of a deposit be changed

by any other factors which fail clearly to show the intention of the parties to treat the deposit as general.<sup>11</sup>

To change a general deposit into one of a special character, there must be some act, at least on the part of the depositor, tending to segregate the funds in the bank's possession and to segregate them for a particular purpose.<sup>12</sup>

## § 275. - Deposits for Specific Purposes

- a. In general
- b. Deposit as impressed with trust

### a. In General

A delivery of money or property to a bank for application to a particular specific purpose is not a general deposit, nor is it, strictly speaking a "special" deposit as that term is usually employed, but ordinarily it partakes of the nature of a special deposit in that title to the thing remains in the depositor and the bank becomes an agent, bailee, or trustee and not a debtor.

It is not ultra vires for a bank to receive and hold money to be applied to a specific purpose.<sup>13</sup> A spe-

title to the deposit becomes vested in the depositor, the bank holding the fund as trustee."-Mallett v. Tunntcliffe, 137 So. 238. 239. 102 Fla. S09. SO A.L.R. 765. denying rehearing 136 So. 346, 102 Fla. 809, 80 A.L.R. 765.

3. Iowa-Andrew v. Union Say. Bank & Trust Co. of Davenport. 263 N.W. 495, 220 Iowa 712.

### Charge not shown

Money deposited in checking account was "general deposit" as distinguished from "special deposit." and depositor was not entitled to preferred claim on bank's insolvency notwithstanding depositor requested bank to purchase bonds and authorized bank to draw check against account to pay for bonds or to charge account with amount of purchase price of bonds when they should be received, where bank closed before bonds came and before check was drawn against account or account was charged.-Cockrell v. Moberly, Mo.App., 85 S.W.2d 186.

4. Mo.-In re Liquidation of Fidelity Bank & Trust Co., App., 77 S.W.2d 480.

Tex.-First Nat. Bank v. Price, Civ. App., 262 S.W. 797.

5. Mo.-In re Central Trust Co. of St. Charles. App. 68 S.W.2d 919A small v. Commercial Bank of Wellsville, App., 45 S.W.2d 909-In re North Missouri Trust Co. of Mexico. Mo., App., 39 S.W.2d 412 - Ellington v. Cantles. App., 300 S.W. 529.

### Cashier's conclusion

If proceeds of bonds were accept-

ed by bank in trust for fixed purpose and depositor in good faith left designated proceeds in bank for purposes of mutual agreement, although proceeds were credited to depositor's checking account, cashier's conclusion as to what he would have done if depositor had broken agreement and presented check for proceeds could not change deposit from "special" to "general."-Spicer v. Round Prairie Bank of Fillmore, 71 SM, 2d 121, 228 Mo.App. 625.

- 0.Kan.-Drumm-Standish Commission Co. v. Farmers' State Bank of Neosho Falls, 297 P. 726, 132 Kan. 736.

"A special deposit made by one already a depositor, at the suggestion of an officer of the bank, in order to keep the funds belonging to another party generate and apart from those of the depositor, does not lose its character as a special deposit by an item belonging to the depositor individually being deposited in that account."-Drumm-Standish Commission Co. v. Farmers' State Bank of Neosho Falls, supra.

3. Neb.-State v. Clinton State Bank, 218 N.W. 389, 116 Neb. 510.

### Converting proceeds of bonds

Where liberty bonds are placed for safekeeping in a safety deposit box in a state bank, and without the owner's consent or authority, the officers of the bank abstract such bonds and sell and convert the proceeds, the relation of bank and general depositor is not created.-State v. Clinton State Bank, 218 N.W. 389, 116 Neb. 510.

3. Miss.-Jourdan v. Bennett, 81 So. 239, 119 Miss. 576.

4. Ill.-People v. Bates, 184 N.E. 597, 351 Ill. 439. reversing Bates v. People, 265 Ill.App. 1.

5. Tex.-First Nat. Bank v. Price. Civ.App., 262 S.W. 797.

### Drawing against fund for unperfected purposes

Where a special deposit was made for purpose of organizing a bank, that trustee thereof drew against fund for purposes other than organization did not change deposit's character as special, but was simply an unauthorized diversion thereof.-App., 1262 Nat.s.Bwa. 797.

0. Price, Tex.Civ.

- 11.Tex.-First Nat. Bank v. Price.

### supra

Authorization to draw checks bank, that

Where a special deposit was made for

trustee organizing was authorized to draw checks upon fund thereof a proposed for organization expenses did not change its status, since that was issuance

superior: of e. purposes, p p

for 2062s which deposit was made.-First Nat. Bank

The character of a special: odoekposit was not altered because ordinal" pass book was given to depositors. since it was simply an evidengier, deposit.-First Nat. Bank V. 95.

Tex.Civ.App., 262 S.W. 797-

85. Wash.-Big West Oil Co. v. Moody, 35 P.2d 1093, 179 Wash

86. Wis.-Ertman v. Usla. 415 DI. W. 693.