DIGEST OF DECISIONS RELATING TO NATIONAL BANKS.

[The following Federal cases were reported in vols. 216 to 224, Fed. Rep. Two State cases, one reported in 151 N. Y. Supp., and one reported in 178 S. W. Rep. are also given.

COLLATERAL SECURITIES.

Pledges—Release of securities—Tender.

(Tenn. Sup. 1915.) Where a creditor holds securities as collateral for several items of indebtedness, a tender by the debtor which does not include all such items does not operate to release the securities. (Fourth National Bank of Nashville *v.* Stahlman et ux.; Fourth National Bank of Nashville *v.* Nashville Banner Pub. Co. et al. 178 S. W. Rep. 942).

Pledges—Security for loans—Debts secured—"Obligation."

(Tenn. Sup. 1915.) Collateral deposited with a bank to secure a promissory note, written on the blank form furnished by the bank and reciting that such collateral "shall be applicable in like manner to secure the payment of any other obligations of the undersigned, whether past or future, held by the holder of this obligation. All such securities in their hands shall stand as one general continuing security for the whole of such obligations, so that the deficiency on any one shall be made good from the collateral upon the rest"—may be held by the bank to secure the performance of a contract previously executed, whereby the pledgor agreed to purchase certain corporate stock from the bank, such contract constituting an "obligation" within the recitals of the note. (Ib.)

Pledges—Security for loans—Application of collateral.

(Tenn. Sup. 1915.) Where the language of a note made to a bank by its customer under which collateral is deposited as security, is unambiguous, and plainly shows that the parties contemplated that such collateral might be held as security for all other legal obligations or liabilities, the contract will be so construed, it being only where the language is ambiguous and the meaning doubtful that its provisions will be limited to a restricted class of obligations presumed to have been in the contemplation of the parties when the contract was made. (Ib.)

Pledges—Security for loans—Application of collateral.

(Tenn. Sup. 1915.) Where collateral has been deposited with a bank to secure a promissory note, reciting that the collateral shall be applicable in like manner to secure the payment of any other obligations of the undersigned, whether past or future, held by the holder of such obligation, such language will not be construed to mean that another bank, to which the holder might transfer the note with its collaterals can hold them as security for other debts which the maker might have created with such other bank, since such other debts would not have been in the contemplation of the parties when the loan was made. (Ib.)

Pledges—Application of collateral to other debts—Surety's right of subrogation.

(Tenn. Sup. 1915.) Where collateral has been deposited with a bank to secure a promissory note, reciting that such collateral may be applied to all other obligations of the maker to the bank, a surety or indorser who pays such note will be subrogated to the place of the bank as to such collaterals, which right may not be defeated by the application of the collaterals to any other debts owing by the maker to the bank. (Ib.)

FORGED OR ALTERED PAPER.

Bills and notes—Construction—Payable to bearer—United States depositories—Forged checks.

(U. S. C. C. A., 1915.) Notwithstanding Rem. & Bal. Code Wash. § 3400, subd. 3, providing that a bill of exchange is payable to bearer, when it is payable to the order of a fictitious person and such fact is known to the person making it so payable, checks drawn by a Government disbursing officer, payable to fictitious payees, on a national bank constituting a depository, under regulations of the Treasury Department declaring that any check drawn by a disbursing officer on moneys deposited must be in favor of the party by name to whom the payment is to be made and payable to order, are not payable to bearer, and the bank paying the checks on forged indorsements of the officer who misappropriated the money procured thereon can not escape liability to the Government for the loss on that theory. (National Bank of Commerce of Seattle *v.* United States, 224 Fed. Rep., 679.)

United States depositories—Forged checks—Accounting.

(U. S. C. C. A., 1915.) In an action by the United States against a national bank constituting a depository, for payments made by it on checks drawn by a disbursing officer in favor of fictitious payees and containing forged indorsements made by the officer, the bank is not entitled to credit for money paid out by the disbursing officer upon legitimate claims incurred through his agency, in the absence of an accounting between the disbursing officer and the Government. (Ib.)

United States depositories—Payment of forged checks—Recovery of money—Estoppel.

(U. S. C. C. A., 1915.) The act of the Government in prosecuting for embezzlement a disbursing officer drawing checks on a Government depository, forging indorsements thereon, and applying to his own use the proceeds on the depository paying the checks did not estop the Government from proceeding against the bank to recover the payments made on the theory that the money was the property of the bank, whether the bank was a debtor to the Government to the amount of the deposits or it held the same in specie subject to Government's checks or demands, since the funds were the funds of the Government. (Ib.).

Bills and notes—Drafts—Name of drawer—Forgery—Payment—Right to recover.

(U. S. C. C. A., 1914.) The Secretary of the Treasury is bound to know the signatures of those officers of the United States who are authorized to draw on him; and hence, having paid a draft purporting to have been drawn by the American consul in Argentine, but in fact bearing the consul's forged signature, the United States could not recover the money so paid, whether the draft was negotiable or not. (United States *v.* Bank of New York National Banking Association, 219 Fed. Rep., 648.)

INSOLVENCY AND RECEIVERS.

POWERS OF RECEIVER TO DISPOSE OF ASSETS AND COMPOUND CLAIMS.

Effect of acts ultra vires.

(U. S. C. C. A., 1915.) That a purchase of real estate by a national bank was in violation of the national banking law and ultra vires does not render the transaction void but voidable only, and its validity can not be questioned by private parties but only by the United States. (Baker et al. *v.* Schofield, 221 Fed. Rep., 322.)

Receivers on insolvency—Sale of assets—Construction of order.

(U. S. C. C. A., 1915.) An order of court authorizing the receiver of a national bank to sell at private sale all assets of the insolvent bank which were, in his judgment, bad and doubtful, "consisting of bills receivable, judgments, overdrafts, * * * and other personal and chattel property and evidences of indebtedness," did not confer on the receiver power to sell and assign a contract with the State for the purchase of tide lands, which as owner of the adjacent upland the bank had the preference right to purchase, and which contract conveyed to it an interest which under the State law was real estate. (Ib.)

Receivers—Fraudulent sale of property.

(U. S. C. C. A., 1915.) Evidence *held* to entitle the receiver of a national bank to recover tide lands, the contract for the purchase of which from the State had been sold and assigned by a former receiver, on the ground that such sale was

Receivers—Fraudulent sale of property—Continued.

fraudulent as being subject to a secret trust in favor of the receiver; it appearing that the sum received was much less than the value of the property, that the nominal purchaser resold it two years later to the receiver for the same price, with interest, and that the receiver's ownership had been concealed, even up to the time of suit. (Ib.)

Receivers—Suit to recover assets.

(U. S. C. C. A., 1915.) A suit by the receiver of a national bank to recover real estate fraudulently transferred by a former receiver on a secret trust for himself *held* not barred by laches because of lapse of time where the former receiver was still the owner of the property and had been for 14 years, but it had never been in his name, and his connection with it had been carefully concealed. Ib.)

PROOF AND PAYMENT OF CLAIMS—CLAIMS PROVABLE.

Receivers—Actions on claims—Evidence.

(U. S. D. C., 1914.) In a suit by a depositor to charge the receiver of a national bank with the proceeds of certain notes and drafts delivered to it by complainant, evidence *held* to show that the instruments were given for the accommodation of the president of the bank, so that the amounts were not proper charges against the bank, but against the president individually. (Stallo *v.* Wagner, 220 Fed. Rep., 360.)

Receivers—Actions on claims—Evidence.

(U. S. D. C., 1914.) In a suit by a depositor in an insolvent national bank to charge the receiver with amounts transferred by the president of the bank from complainant's account to other accounts, evidence *held* to show that the transfers so made were authorized by the depositor, notwithstanding his denial. (Ib.)

Receivers—Actions on claims—Evidence.

(U. S. D. C., 1914.) Evidence *held* insufficient to charge the receiver of an insolvent national bank with the proceeds of the sale of certain bonds, which complainant delivered to the president of the bank, taking his individual receipt therefor. (Ib.)

Acts of president—Agency.

(U. S. D. C., 1914.) Where a national bank depositor gave the president of the bank bonds to be sold and the proceeds deposited, and also checks for the amount to be realized from the sale, which were to be applied by the president to certain payments, the president was the agent of the depositor, and not of the bank, in making the application of the proceeds, and the bank is not liable for a misapplication thereof. (Ib.)

Liability to depositor—Laches of depositor.

(U. S. D. C., 1914.) Where a depositor in a national bank received and receipted for a statement from the bank, with accompanying vouchers which showed that the bank, with whose president the depositor was closely associated in many business transactions, had without authority diverted funds from his account to another account under circumstances which practically amounted to theft by the president, but the depositor made no complaint to anyone except to the president and the cashier, who was under the president's control, and to them he merely stated that he desired to have his affairs with the bank, including that item, straightened out, the depositor can not, after the bank has become insolvent through the acts of its president, enforce a claim for that amount against the receiver. (Ib.)

Liability to depositors—Misapplication of check.

(U. S. D. C., 1914.) Where a depositor had a bank discount his note with the understanding that he would pay the money out of the proceeds of some stock in a few days, but on the same day learned that the stock would not be available and gave to the president of the bank a check for the amount of the note, which the president diverted to his own use, and the amount of the check was debited against the depositor's account, but he was not credited with the amount of the note, a statement of the account from the bank would not necessarily put him on notice that the money had been diverted, and he could therefore either recover from the receiver of the bank the possession of the note or be decreed a creditor for the amount of the check. (Ib.)

DEPOSIT OF CITY FUNDS.

Insolvency—Application of payment.

(U. S. D. C., 1915.) Where, at the time an insolvent national bank closed, a city, which had designated such bank as the authorized city depositary, had therein a special deposit, and the bank had also collected for the city a draft in excess of the amount of the bond required from the bank as such depositary, the proceeds of which draft it was sought to recover as a trust fund, the city had a right to apply the amount received on the bond on the special deposit, and to apply the balance on the other account. (City of Centralia *v.* United States Natl. Bank of Centralia et al., 221 Fed. Rep., 755.)

Collections—Relation between bank and customer.

(U. S. D. C., 1915.) Under Pierce's Code Wash., 1912, section 77—681, relative to the designation of city depositaries, and section 77—683, providing that, before any such designation shall entitle the treasurer to make deposits in the designated bank, such bank shall file a surety bond in the maximum amount of deposits designated by the treasurer to be carried in the bank, or in lieu thereof deposit bonds or warrants, where a bank designated as a city depositary collected a draft for the city in an amount exceeding the amount of its bond as depositary, neither the acquiescence of the city treasurer in the bank's retention of the amount collected as a deposit, nor the payment of interest thereon by the bank, gave the bank title to the money in excess of the amount of the bond, or changed the trust fund into a mere debt, as under the statute title could not pass to the bank without an additional bond. (Ib.)

Collections—Relation between bank and customer—Presumptions.

(U. S. D. C., 1915.) A city delivered a draft for collection to the bank designated as the city depositary under Pierce's Code Wash., 1912, sections 77—681, 77—683, the amount of the draft being in excess of the amount of the bond given by the bank as depositary. The bank sent the draft to its correspondent, an authorized reserve bank, which collected it, gave the depositary bank credit therefor, and advised it of that fact. The depositary bank charged the amount against its correspondent bank and credited it to the city, and subsequently became insolvent, having in the meantime overdrawn its account with the correspondent bank. *Held,* that it would be presumed that the depositary bank diverted from its funds on hand, and held as a trust fund, the amount collected in excess of the bond, and that its expenditures thereafter were from its own money, and that the trust fund remained untouched, the fact that the correspondent bank merely gave the depositary bank credit, without remitting coin or currency, not affecting this result. (Ib.)

Insolvency—Marshaling of securities.

(U. S. D. C., 1915.) Where a city treasurer acquiesced in the retention by a national bank designated as the city's depositary under Pierce's Code Wash., 1912, sections 77—681, 77—683, of an amount collected by it for the city in excess of the amount of its bond as depositary, a temporary injunction restraining the receiver of such bank from paying a dividend to creditors, which would leave an insufficient amount to meet the city's claim, would not be denied, on the ground that under the rule for the marshaling of securities the city should first be required to seek to recover the amount from the city treasurer and his bondsmen and the city commissioner of finance, there being no assurance that sufficient would thereby be realized to make the city whole, and it being clear that before this could be ascertained the receivership would be closed up and a final disposition made of all the bank's assets. (Ib.)

LIBEL AND SLANDER.

Libel and slander—What constitutes.

(N. Y. Supp., 1915.) False articles in a newspaper, charging that a bank, as mortgagee of a hotel, was instrumental in causing the sale of intoxicants to be carried on therein, in violation of law, and that the bank, which had not credited defendant with a deposit, after notifying him that his account had been overdrawn, admitted the mistake and gave credit for the deposit, are libelous, tending necessarily to injure the credit and business of the bank. (First National Bank of Waverly *v.* Winters, 151 N. Y. Supp., 332.)

Libel and slander—Defenses.

(N. Y. Supp., 1915.) Where defendant published false statements tending to injure its cerdit, plaintiff bank could recover damages, unless defendant's reputation was such that his utterances would have no influence. (Ib.)

Libel and slander—Actions—Evidence.

(N. Y. Supp., 1915.) In an action for libel, evidence held to show that defendant maliciously published defamatory articles concerning plaintiff. (Ib.)

Libel and slander—Damages.

(N. Y. Supp., 1915.) Libelous articles, reflecting on the honesty of a bank, entitle the bank to substantial damages. (Ib.)

OFFICERS.

Representation of Bank by Officers.

Corporations—Officers—Unauthorized contracts—Ratification.

(U. S. C. C. A., 1915.) Where a fraternal insurance corporation was governed by nine directors and three trustees, an instrument authorising B. to sell any of its securities, signed by the trustees before their term of office had commenced, and a bill of sale to B., executed by two of the trustees after their term commenced, were wholly ineffectual, and incapable of ratification by the board of directors. (Ballard *v.* Audubon National Bank, 222 Fed. Rep., 57.)

Knowledge of officers—Imputing to bank.

(U. S. C. C. A., 1915.) Where the president of a bank accepted, as collateral security for a loan to B. personally, securities which he knew belonged to a fraternal insurance corporation, and which he knew B. had no authority to use for his own personal purposes, his knowledge was imputable to the bank, though he had a standing arrangement with the brokers, through whom the securities were subsequently sold by the bank, for a division of commissions on all business brought them by him; this being a collateral and incidental contract, not bringing the case within the rule that an agent's knowledge will not be imputed to his principal, when the transaction is such as to compel the agent's concealment. (Ib.)

Receivers—Right to sue—Conversion—Title and right to possession.

(U. S. C. C. A., 1915.) An instrument, executed by the trustees of a fraternal insurance corporation, authorizing B. to sell any of the securities of the corporation and account therefor to the trustees, and a bill of sale subsequently executed by the trustees to B., even though valid, conferred on B. authority to act only as agent of the corporation, and his title and possession being the title and possession of the corporation, its receiver could maintain an action of trover for the conversion of securities by a bank to whom B. pledged them. (Ib.)

OFFICERS, CIVIL LIABILITY OF.

Actions against directors—Sufficiency of evidence.

(U. S. C. C. A., 1915.) In an action against a director in a national bank for damages sustained by a person induced to buy stock in such bank in reliance on published reports of its condition which include as assets a large amount of worthless loans, evidence *held* insufficient to make a question for the jury as to defendant's knowledge at the time the reports were made and published of the worthlessness of any part of the loans in excess of the amount written off as worthless, a little more than a year thereafter. (Chesbrough *v.* Woodworth, 221 Fed. Rep., 912.)

Actions against directors—Admissibility of evidence.

(U. S. C. C. A., 1915.) In such action, evidence that other directors of the bank personally believed the loans to be well enough secured so that they were mostly good, was properly excluded, as it was defendant's belief, and not what the other directors believed, that was in issue, and his conclusions would be based on the extent to which his personal confidence in the borrower was impaired; the extent of his knowledge of the borrower's assets from other sources than the borrower, his expert knowledge of the business of the borrower, and his resulting skill in valuing the assets of such a business, and his individual tendency to look on the bright or dark side of the matter, and with respect to most of these elements it could not be assumed that he was in the same situation as the other directors. (Ib.)

Actions against officers—Form of remedy.

(U. S. C. C. A., 1915.) Under Act June 22, 1906, c. 3516, 34 Stat. 451 (Comp. St. 1913, paragraph 9761), providing that the total liabilities to any national banking association of any party for money borrowed shall at no time exceed one-tenth of the capital stock and surplus, and Revised Statutes, section 5239 (Comp. St. 1913, sec. 9831), providing that, if the directors of any national banking association shall knowingly violate or permit the violation of any of the provisions of that title, every director who participated in or assented to the violation shall be liable for all damages which the association, its shareholders, or any other person shall sustain, an action by a national bank against an officer for a loss sustained on a loan in excess of the statutory limit in which he participated was one at law, not cognizable by equity, in the absence of a showing of the inadequacy of the legal remedy, and the fact that the bank had received from the bankrupt estate of one of the borrowers certain corporate stock did not give jurisdiction to equity, as the abatement in damages on account of this stock could be made at law as well as in equity. (Corsicana National Bank *v.* Johnson, 218 Fed. Rep., 822.)

Action—Nature and form—Change of character or form.

(U. S. C. C. A., 1915.) Under the express provisions of equity rule 22 (198 Fed. xxiv, 115 C. C. A. xxiv), where a suit commenced in equity should have been brought at law, it should have been transferred to the law side of the court, instead of dismissing the bill. (Ib.)

Liability of directors for negligence.

(U. S. D. C., 1915.) Directors of national banks must exercise ordinary care and prudence in the administration of the affairs of their institutions, and exercise reasonable supervision, and are not shielded from liability by their want of knowledge or wrongdoing, if their ignorance is the result of gross inattention. (Williams *v.* Brady et al., 221 Fed. Rep., 118.)

Actions against directors—Sufficiency of complaint.

(U. S. D. C., 1915.) In an action against directors of a national bank, a complaint alleging that at different times loans were made in excess of one-tenth part of the unimpaired capital and surplus of the bank, that the directors and officers conspired to violate the law by taking accommodation paper executed by persons financially irresponsible, the proceeds of the loans being put to the credit of the real borrower and exceeding one-tenth part of the unimpaired capital and surplus, that the directors approved large loans to persons of financial irresponsibility, that they negligently permitted overdrafts by persons financially irresponsible, that they negligently permitted checks to be improperly and illegally certified when the drawers had no funds on deposit, and that dividends were declared when there were no profits or surplus, and that the directors illegally appropriated such dividends, and further alleging the details of the wrongful acts stated, was sufficient as against the directors who attended at the meetings at which the acts in question were done. (Ib.)

Actions against directors—Sufficiency of complaint.

(U. S. D. C., 1915.) In an action against the directors of a national bank for damages resulting from their wrongful and illegal acts, an allegation that certain directors were negligent, because of their unreasonable neglect and failure to attend meetings at which the alleged improper, unlawful, and negligent acts were done, was insufficient, where no facts were set forth showing that there was unreasonable neglect and failure, or that they purposely or negligently refrained from attending meetings, as, there being no legal presumption of negligence, one who undertakes to hold the directors responsible should state facts sufficient to put them upon their defense. (Ib.)

Actions against directors—Sufficiency of complaint.

(U. S. D. C., 1915.) In an action against the directors of a national bank, an allegation that they were guilty of negligence, carelessness, and violation of statutes in retaining in office unfit persons as president and vice president, should have been more specific, where it did not appear whether the unfitness and incompetence was based upon the doing of the wrongful acts in which it was alleged in other parts of the complaint the officers participated, or whether the unfitness consisted of dishonesty. (Ib.)

Actions against directors—Premature filing.

(U. S. D. C., 1915.) Where a national bank was insolvent and in the hands of a receiver, and had sustained large losses through wrongful, improper, and illegal acts on the part of its directors, a suit against the directors while the affairs of the bank were in liquidation was not prematurely filed. (Ib.)

Equity—Bill—Multifariousness.

(U. S. D. C., 1915.) Where, though the alleged wrongful transactions on the part of the directors of an insolvent national bank were many and extended over several years, there were only a few characters of transactions, and the same legal questions would arise as to each group of general transactions, a bill was not multifarious, though all of such transactions were set forth therein. (Ib.)

OFFSETS.

Offsets Between Insolvent Banks and Their Creditors.

Set-off of deposit against debt to bank.

(U. S. D. C., 1914.) Where a depositor in an insolvent national bank had indorsed a note, on which he was in fact primarily liable, and procured the bank to discount it for his benefit, he was entitled, in a suit by the bank's receiver to recover the amount of the note, to set off his deposit in the bank against his liability on the note. (Williams *v.* Rose, 218 Fed. Rep., 898.)

POWERS.

Purchase of stock in building corporation by national bank.

(Tenn. Sup. 1915.) A contract between a national bank and the promoter of a building corporation, whereby the promoter was to purchase from the bank stock subscribed for by it, was not ultra vires of the bank, the stock having been taken by the bank as part of a transaction for the renting of banking quarters. (Fourth National Bank of Nashville *v.* Stahlman et ux.; Fourth National Bank of Nashville *v.* Nashville Banner Pub. Co. et al., 178 S. W. Rep., 942).

Power of national bank to purchase stock.

(Tenn. Sup. 1915.) Under Revised Statutes, section 5137, providing that a national bank may purchase and hold real estate necessary for its immediate accommodation in the transaction of its business, and section 5136, providing that such bank may exercise all incidental powers necessary to carry on the business, a national bank may acquire and hold stock in a building corporation as part of a transaction for renting desirable banking quarters; good faith being the test whether such investment is legitimate. (Ib.)

Power of national bank to purchase stock.

(Tenn. Sup. 1915.) While it is unlawful for a national bank to deal in stocks, it may loan money on shares of other corporations, and in order to collect the debt may purchase the stock, or may acquire it to protect itself against loss in compromising a doubtful liability. (Ib.)

Purchase of stock—Consideration—Mutual promises.

(Tenn. Sup. 1915.) A contract between a national bank and the promoter of a building corporation, whereby the promoter agreed to purchase from the bank building corporation stock held by it, in consideration that the bank would pay its subscription for the stock, was not void as being unilateral; the obligation to sell and buy being mutual. (Ib.)

Contracts for purchase of stock.

(Tenn. Sup. 1915.) An agreement between a bank and the promoter of a building corporation, whereby the latter agreed to purchase certain shares of stock owned by the bank, the bank reserving an option to sell the stock at any time to other persons, but providing that the promoter was to have the option to buy such stock at par and accumulated dividends at any time before the bank sold it to others, and providing for 30 days' notice to the promoter before selling, is an absolute and unconditional agreement to sell, and not a mere option. (Ib.)

Transfer of stock—Unpaid dividends.

(Tenn. Sup. 1915.) A contract between a bank and the promoter of a building corporation, whereby the promoter agreed to buy certain guaranteed 6 per cent cumulative preferred stock in the building corporation from the bank, and that if any dividends upon such stock remained unpaid at the time of purchase the promoter was to pay the accumulated dividends at the rate of 6 per cent per annum, bears interest as upon a loan, and the promoter is liable for guaranteed dividends unpaid by the corporation, although not earned nor declared by it. (Ib.)

Account stated—Omission of item.

(Tenn. Sup. 1915.) Where a bank rendered a statement containing separate items of indebtedness in response to a debtor's request, and the latter thereupon made a tender of the amount stated, that the bank had erroneously omitted a particular item from the statement did not estop it from suing thereon, no one having been prejudiced by the making of such statement. (Ib.)

SHAREHOLDERS.

Transfer of Stock.

Liability of shareholders—Recission of purchase of stock[1]*—Injunction—Bill—Sufficiency—Premature dismissal.*

(U. S. C. C. A., 1915.) In a suit to restrain an action on a note given for the purchase price of stock in a national bank, a bill alleging that the bank, by its president, offered to sell plaintiff the stock, making false and fraudulent representations as to the solvency of the business, its assets, surplus, etc., that plaintiff relied upon such representations and was thereby induced to purchase the stock and give his note therefor, upon which he afterwards made several payments, that when the purchase was made the bank was hopelessly insolvent, without surplus, and with liabilities much greater than its assets, that plaintiff could not have discovered the fraud until the bank closed its doors, and that thereupon he repudiated and rescinded the purchase and offered to return the stock, was prematurely dismissed without requiring an answer, as the question as to plaintiff's right to rescind after the bank failed should be reserved until the facts were definitely ascertained, including the facts as to whether the bank was the real owner of the stock, how it came to become the owner of its original capital stock, if it was not, who the real owner was, and why it held the apparent title, and whether the note was discounted for plaintiff, or merely delivered to the bank, nothing being done with it, except to renew it and make payments on account. (Salter *v.* Williams et al., 221 Fed Rep., 928.)

Liability of shareholders—Recission of purchase of stock.[1]

(U. S. D. C., 1914.) Under Revised Statutes, section 5151, providing that shareholders of every national banking association shall be individually responsible for all contracts of the association to the extent of their stock, in addition to the amount invested therein, upon the failure of a national bank, the rights of creditors attach, and a purchaser of stock who has held it for several months, and made no complaint until after the appointment of a receiver, can not thereafter, as against creditors, have the purchase rescinded because of false representations by the bank's president as to the solvency of the bank. (Salter *v.* Williams et al., 219 Fed. Rep., 1017.)

Stockholder's liability—Fraud in sale of stock.

(U. S. C. C. A., 1915.) One who bought stock in a national bank from an officer thereof can not, after the failure of the bank, avoid his liabiliy for the assessment on such stock for the benefit of the bank's creditors because the bank officer fraudulently misrepresented the financial condition of the bank at the time the stock was bought. (Ryan *v.* Mount Vernon National Bank et al., 224 Fed. Rep., 429.)

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[1] NOTE.—The case Salter *v.* Williams, reported in 221 Federal Reporter, 928, was to restrain a suit at law; the case Salter *v.* Williams, reported in 219 Federal Reporter, 1017, was a suit in equity and was not reviewed by the court in the case reported in 221 Federal Reporter.

ASSESSMENTS—CONCLUSIVENESS OF COMPTROLLER'S ACTION.

Revocation of assessment.

(U. S. C. C. A., 1915.) The Comptroller of the Currency having found a national bank insolvent and made an assessment of 100 per cent on its stock, such assessment was not vacated or annulled by a letter written by the Comptroller to the directors, approving a contemplated sale of bonds held by the bank, and stating that, if such sale was made, he did not hesitate to say that there would be no necessity for an assessment on stockholders, unless an unlooked-for shrinkage in the valve of the assets should occur, which was highly improbable. (Pepper *v.* Springfield Institution for Savings et al.; Springfield Institution for Savings et al. *v.* Pepper, 218 Fed. Rep., 814.)

Right of comptroller to make successive assessments.

(U. S. C. C. A., 1915.) Where an assessment of 100 per cent had been levied on the stockholders of a national bank, a subsequent assessment of 49 per cent could not be sustained while the original assessment continued in force. (Pepper *v.* Springfield Institution for Savings et al.; Springfield Institution for Savings et al. *v.* Pepper, 218 Fed. Rep., 814.)

Liability of stockholders where trust funds were invested in stock of national banks without authority.

(U. S. C. C. A., 1914.) Though, under the rules and practice of the courts of Wisconsin and Laws of Wisconsin, 1903, chapter 317, authorizing the investment of trust funds in certain securities, executors had no authority to invest a trust fund in shares of stock in a national bank, where they did transfer stock owned by the estate to themselves as trustees, caused the stock to be transferred on the books of the bank, and filed their final account showing such transfer more than a year before the bank failed, the transfer was voidable only and not void, and, so long as it was permitted to stand, neither the estate nor a legatee, made liable by statute for contingent claims becoming absolute after the distribution of the estate, were liable for an assessment against the stock by the Comptroller of the Currency. (Williams *v.* Cobb, 219 Fed. Rep., 663.)

Shares of stock in national banks not interest-bearing securities.

(U. S. C. C. A., 1914.) A will directing executors to invest a trust fund in "interest-bearing securities" did not authorize the investment thereof in the stock of a national bank, since, while shares of stock may be securities, they are not interest bearing. (Ib.)

Executors and administrators—Distribution of estate—Executor as legatee.

(U. S. C. C. A., 1914.) When an executor is also a legatee or distributee, no formal act is necessary to vest title to the legacy or distributive share in him as an individual, and any act on his part, showing an intention to retain assets in payment, is sufficient. (Ib.)

Executors and administrators—Sale of personal property—Authority to sell.

(U. S. C. C. A., 1914.) In the absence of statute providing otherwise, an executor or administrator has the absolute power to sell or dispose of the personal assets of the estate as he sees fit, and can pass a good title to the property without any order of court. (Ib.)

Executors and administrators—Sale of personal property—Purchase by executor.

(U. S. C. C. A., 1914.) When an executor sells stock owned by the estate to himself individually he does that which he has no right to do, but which he has a capacity to do, and the transaction is not void, but voidable only at the option of those interested. (Ib.)

A beneficiary accepting trust funds improperly invested liable as a stockholder.

(U. S. C. C. A., 1914.) Under Revised Statutes, section 5152 (Comp. St. 1913, par. 9690), providing that persons holding stock as executors, administrators, guardians, or trustees shall not be personally liable as stockholders in national banks, but that the estate and funds in their hands shall be liable, where a trustee improperly invested the trust fund in the stock of a national bank, the beneficiary had the right, when the nature of the investment was brought to her attention, to accept or reject it, and if she accepted it or lost her right to reject it by laches or acquiescence, she would be liable as a stockholder. (Ib.)

Equity—Amendment of pleading—Discretion of court.

(U. S. C. C. A., 1914.) In an action against an executor for the amount of an assessment against the stock of an insolvent national bank improperly brought against him individually on the theory that a transfer of stock owned by the estate to the executors as trustees was void, leaving title thereto in the estate, and that the executor was liable as legatee under a statute making legatees liable for contingent claims becoming absolute after the distribution of the estate, the court did not abuse its discretion in refusing to allow the bill to be amended to cure the defects. (Ib.)

Set-Off Against Assessment.

Stockholder's liability—Set-off.

(U. S. D. C., 1914.) A stockholder of a national bank was not entitled to set off against his double stock liability the amount of his unpaid deposit account in the bank at the time of its failure; such stock liability, imposed by Revised Statutes, sections 5226, 5227 (Comp. St. 1913, paragraphs 9813, 9814), being for the express purpose of making good the contracts, debts, and engagements of the bank and being a trust fund in which all creditors were entitled to share pro rata. (Williams *v.* Rose, 218 Fed. Rep., 898.)

TAXATION.

Taxation—Shares of stock in national banks.

(U. S. C. C. A., 1915.) A national banking corporation and its property are separate and distinct from its shares of stock, and while a tax levied upon the bank itself by a State would be invalid a tax levied by a State on its shares of stock is valid, and the State may lawfully require the tax to be paid in the first instance by the corporation, with the right to reimbursement from the stockholders. (National Bank of Commerce in St. Louis *v.* Allen, internal-revenue collector, 223 Fed. Rep., 472.)

Internal revenue—Excise tax on corporations—Net income—"Taxes imposed by authority of the State."

(U. S. C. C. A., 1915.) A tax levied by a State on the shares of a national bank, and paid by the bank as required by the State statute, but which under the statute it has the right to recover back from the stockholder, is not a "tax imposed under the authority of the State" on the corporation or its property, within the meaning of corporation tax law August 5, 1909, chapter 6, section 38 (2), 36 Statutes, 112 (Comp. St. 1913, paragraph 6301), such as the bank is thereby authorized to deduct from its gross income to ascertain its taxable net income; nor can it be deducted as an expense of the business. (Ib.)

Internal revenue—Excise tax on corporations—Construction of statute—"Excise tax."

U. S. C. C. A., 1915.) The tax imposed by corporation tax law, section 38 (Comp. St. 1913, paragraph 6301), is not a tax upon income, but an "excise tax" upon the right to do business as a corporation, the amount of which is measured by income. (Ib.)

Internal revenue—Excise tax on corporations—"False" return—Power of commissioner to amend.

(U. S. C. C. A., 1915.) Corporation tax law, section 38, by subdivision 3 (Comp. St. 1913, paragraph 6302) requires corporations to make "true and accurate" returns. Subdivision 4 (paragraph 6303) authorizes the Commissioner of Internal Revenue to amend any return believed to be inaccurate without any limit as to time, and subdivision 5 (paragraph 6304) provides that in case of "false or fraudulent" returns he shall, on discovery of the fact within three years, make a return and assessment thereon. *Held*, that, construing such provisions together, the word "false," as used in subdivision 5, is not to be construed as meaning intentionally or fraudulently false, but the same as "not true," or the equivalent of "incorrect," and that the commissioner has power in such case to amend a return at any time within three years. (Ib.)

Internal revenue—Excise tax on corporations—"Net income."

(U. S. D. C., 1915.) A net increase in the book value of securities held by a banking and trust company as an investment for surplus funds, as shown by an adjustment of such values entered on its books, such increase in some instances extending over a number of years, does not constitute "net income" received by the corporation during the year in which the adjustment was made, within the meaning of corporation tax act August 5, 1909, chapter 6, sections 38, 36 Statutes, 112 (Comp. St. 1913, paragraphs 6300–6307), and is not subject to the excise tax thereby imposed. (Industrial Trust Co. *v.* Walsh, internal-revenue collector, 222 Fed. Rep., 437.)

Internal revenue—Corporation taxes—Deduction—"Taxes imposed."

(U. S. C. C. A., 1914.) Corporation tax law, August 5, 1909, chapter 6, section 38, paragraph 2, 36 Statutes, 112 (Comp. St. 1913, paragraph 6301), imposes a tax on the net income of corporations, but authorizes deductions from the gross amount of income of all sums paid by the corporation within the year for taxes imposed under the authority of the United States or of any State. *Held*, that the term "taxes imposed" must be construed to mean taxes imposed on a corporation which it was compelled to pay out of its own assets, and did not include taxes imposed on the corporation's capital stock against the stockholders, though the corporation is required to pay the taxes in the first instance, being authorized to charge the amount so paid against the stock. (Eliot Nat. Bank *v.* Gill, 218 Fed. Rep., 600.)

Internal revenue—Corporations—Excise tax—Return—"False"—Commissioners' power to amend.

(U. S. C. C. A., 1914.) Corporation tax law, August 5, 1909, chapter 6, section 38, paragraph 5, 36 Statutes, 112 (Comp. St. 1913, paragraph 6304), providing for the collection of a corporation excise tax, authorizes the Commissioner of Internal Revenue, in case a return is false or fraudulent, to amend the same at any time within three years and assess and collect the correct amount of the tax. *Held*, that the word "false," as so used, did not include only returns fraudulently made, or with intent to defraud, but should be construed as including all erroneous or incorrect returns, and to authorize the correction of an incorrect return within the three-year period, though made under a mistake of law, and though the tax under the return had been paid. (Ib.)

DIGEST OF DECISIONS RELATING TO NATIONAL BANKS.

[The following Federal cases were reported in vols. 238 and 240, U. S. Reports, and vols. 225-234, Fed. Rep. Five State cases—one Illinois case reported in 110 Northeastern Rep., one Massachusetts case reported in 112 Northeastern Rep.—one Michigan case reported in 159 Northwestern Rep., one New York case reported in 160 N. Y. Supp., and one Oklahoma case reported in 150 Pacific Rep.—are also given.]

CHECKS.

OBLIGATION OF BANK TO PAYEE OR HOLDER.

Assignments—Check as "assignment"—Letters of advice.

(U. S. D. C., 1916.) That simultaneously with the drawing of a check on a bank by a foreign depositor the depositor, pursuant to the usual practice between the parties, sent the common letter of advice which frequently goes with a foreign check, to the bank, directing it to protect the check, did not create an "assignment" in view of Negotiable Instruments Law N. Y. (Consol. Laws, c. 38), section 325, providing that a check does not operate as an assignment and that the bank is not liable to the holder unless and until it accepts or certifies the check. (Eastman Kodak Co. *v.* National Park Bank et al., 231 Fed. Rep., 320.)

Checks—Payment through clearing house.

(U. S. D. C., 1916.) A check drawn on one bank in favor of another was presented for payment at the clearing house and marked as a credit to the payee bank on the sheet of the drawee, but before the clearing house closed it was returned to the payee with the statement that the drawee had no instructions to pay it. Under the rules of the clearing house, the whole day must expire before the credit entries are to be taken as receiving the assent of the debtor members, and it makes no difference for what reason they decline to admit the item. *Held*, that there was no payment of the check, and it did not alter the situation that the payee, upon return of the check, drew its check and in form made a repayment to the drawee instead of changing the clearing-house entries. (Ib.)

Checks—Refusal to pay—Liability.

(U. S. D. C., 1916.) That a bank's refusal to pay a check was based upon a mistake of fact, in that it incorrectly believed it had received no letter of advice from the depositor directing payment of the check, did not make the bank liable to the holder of the check in view of Negotiable Instruments Law N. Y. section 325, providing that a check does not operate as an assignment and that the bank is not liable to the holder unless it accepts or certifies the check. (Ib.)

Checks—Acceptance.

(U. S. D. C., 1916.) A check drawn on a bank by a foreign depositor in favor of another bank was presented for payment at the clearing house and credited to the payee, but on the same day it was returned to the payee with the statement: "No instructions to pay. Present again." *Held*, that there was no acceptance, and moreover the clearing house is a means of payment of checks and not of their acceptance, and checks do not contemplate acceptance, but payment. (Ib.)

Checks—Equities.

(U. S. D. C., 1916.) Where a check or draft to the order of a bank for plaintiff's account was purchased from a drawer who made an assignment for the benefit of creditors and against whom a petition in bankruptcy was filed before payment of the check or draft, plaintiff had no greater equities than other creditors of the drawer and was not entitled to have the drawee adjudged to hold the amount of the draft in trust for it. (Ib.)

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Courts—Jurisdiction—Law or equity.

(U. S. D. C., 1916.) A draft or check was purchased in England and sent by the purchaser to a bank for plaintiff's account. It was presented for payment at the clearing house and credited to the payee, but subsequently returned on the ground that the drawee had received no instructions to pay it; whereupon the payee bank drew its check and in form repaid the amount to the drawee. Before payment, the drawer made an assignment for the benefit of creditors, and a petition in bankruptcy was filed against him in New York. A creditor attempted to attach the account in the drawee bank, and plaintiff sued the bank to declare a trust for plaintiff and named as defendants the drawee bank, the attaching creditor, the purchaser of the draft, the drawer, his assignee, the petitioning creditors in bankruptcy, and the receiver in bankruptcy. *Held,* that there being the requisite diversity of citizenship between plaintiff and the drawee bank, the court had jurisdiction, since, if equitable jurisdiction did not exist, jurisdiction at law existed on the theory that there was a claim in personam against the drawee for money had and received under a mistake of fact, and under the new equity rules the claim would be disposed of whether at law or in equity. (Ib.)

CERTIFICATION OF CHECKS.

Certification of checks.

(U. S. D. C., 1916.) A bank which certifies a check, though the depositor is without funds, is not liable to anyone, save a bona fide holder for value; and that rule applies where a bank issues a certificate of deposit, though none has been made.—(National City Bank of Seattle *v.* Titlow, 233 Fed. Rep., 838.)

COLLATERAL SECURITIES.

(WAREHOUSE ACT.)

One who has no title to chattels can not transfer title.

(U. S. Sup. Ct. 1915.) One who has no title to chattels can not transfer title unless the owner has given authority or is estopped, nor can he, in the absence of such authority or estoppel, transfer title by warehousing the goods and indorsing the receipts. If, however, the owner of chattels clothes another with apparent ownership through the possession of warehouse receipts negotiable in form, a bona fide purchaser for value to whom the receipts are negotiated can be protected. (Commercial National Bank of New Orleans *v.* Canal Louisiana Bank & Trust Company, 239 U. S., R. 520.)

Possession of negotiable warehouse receipts as representation of title.

(U. S. Sup. Ct. 1915.) The clear import of the applicable provisions of the uniform warehouse receipts act enacted in Louisiana in 1908, is that if the owner of goods permits another to have possession or custody of negotiable warehouse receipts running to the latter or to bearer, it is a representation of title upon which bona fide purchasers for value may rely, notwithstanding breaches of trust or violations of agreement on the part of the apparent owner. (Ib.)

Construction of warehouse act.

(U. S. Sup. Ct. 1915.) The provision in section 57 of the uniform warehouse act as enacted in Louisiana in 1908, and as the same has been enacted in other States, that the act is to be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it, is a rule of construction that prevents the act from being regarded as an offshoot of local laws to be construed in the light of decisions under former statutes of the enacting State, and requires the statute to be construed in the light of the cardinal principle of the act itself. The uniform acts relating to commercial affairs have been enacted in various States for the beneficent object of unifying so far as possible under one dual system of government the commercial law of the country, and to give effect, within prescribed limits, to the mercantile view of documents of title, and this principle should be recognized in construing the acts to the exclusion of any inconsistent doctrine previously obtaining in any of the enacting States. (Ib.)

When later equities will prevail over earlier equities.

(U. S. Sup. Ct. 1915.) Where the holder of warehouse receipts clothes another with such indicia of ownership of the goods that a bona fide purchaser for value is enabled to take title thereto, the rule that the earlier of equal equities should

When later equities will prevail over earlier equities—Continued.

prevail does not apply, as the later equities are based upon the action of the holder of the earlier equity who is estopped thereby. In a controversy between claimants of goods, held that giving to another negotiable bills of lading under trust receipts which authorized the taker to receive the avails of the goods or the documents therefor, so clothes the latter with indicia of ownership of the goods that the equities of a bona fide purchaser for value of warehouse receipts obtained for the goods on the bills of lading surrendered in exchange therefor are superior to those of the original owner of the bills of lading who had indorsed and delivered them under trust receipts which had been violated by the party transferring to the later purchaser. 211 Fed. Rep. 337, reversed. (Ib.)

INSOLVENCY AND RECEIVERS.

JURISDICTION IN ACTIONS BY AND AGAINST RECEIVERS.

United States courts—Jurisdiction—Actions under banking statutes.

(U. S. D. C.,1916.) Where a suit against a national bank and its receiver upon the bank's covenant in a lease to indemnify the lessor from any loss of rent in case of the lessor's reentry was one to wind up the affairs of the bank, a Federal court had jurisdiction.—(Providence Building Co. *v.* Atlantic National Bank of Providence et al., 228 Fed. Rep., 814.)

LIQUIDATION.

Voluntary liquidation of national banks—Effect of, on assets of bank and rights of creditors.

(U. S. D. C., 1916.) The action of the stockholders of a national bank in voting to go into voluntary liquidation and in appointing a liquidation agent, pursuant to Revised Statutes, sections 5220, 5221 (Comp. St. 1913, secs. 9806, 9808), is equivalent to the appointment of a receiver by the comptroller in its effect on the property and the rights of the creditors. The assets of the bank become a trust fund to be administered for the benefit of all creditors pro rata, and while the bank retains its corporate existence and may be sued, the effect of a judgment obtained against it by a creditor is only to fix the amount of the debt, and the judgment plaintiff can acquire no lien which will give him an advantage over other creditors. (Merchants National Bank of Richmond *v.* National Bank of Lillington, 231 Fed. Rep., 556.)

Stockholders suing on behalf of bank—Pleading.

(N. Y. Supp., 1916.) In a national bank stockholders' action for the benefit of the corporation, it being neither shown by the complaint nor alleged in the defense that a resolution for a voluntary liquidation was adopted prior to the commencement of the action, a defense that there must be a demand upon the liquidating committee and their refusal to bring the action, before plaintiff as a stockholder can bring it, was insufficient. (Planten *v.* National Nassau Bank of New York et al., 160 N. Y. Supp., 297.)

Dissolution of national banks—Liquidating committee.

(N. Y. Supp., 1916.) Under Revised Statutes United States, section 5220 (U. S. Comp. St., 1913, sec. 9806), providing that any association may go into liquidation by a two-thirds vote of its shareholders, and section 5221 (sec. 9808), providing that, when a vote is taken to go into liquidation, it shall be the duty of the board of directors to cause the Comptroller of the Currency to be notified under the seal of the association by its president or cashier, and providing for newspaper publication, there being no express provision for the appointment of a liquidating committee on voluntary dissolution, the adoption of a resolution for voluntary liquidation does not effect a dissolution of the corporation, or, in the absence of other action by the stockholders, oust the directors from office, but merely suspends the ordinary functions of the corporation. (Ib.)

Corporations—Stockholders' suits in behalf of corporation—Parties.

(N. Y. Supp., 1916.) While the authority of a stockholder to sue in the right of the corporation is a rule of necessity, resting solely on judicial decisions, to protect the stockholders when those in authority fail or refuse to protect the rights of the corporation, when a proper foundation is laid for the action by a stockholder, although the cause of action belongs to the corporation, the fruits of the

Corporations—Stockholders' suits in behalf of corporation—Parties—Continued.

litigation inure to its benefit, and it must be made a party defendant, the control of the litigation becomes vested in the shareholder who brings it and such others as may join therein. (Ib.)

Corporations—Stockholders—Suits in behalf of corporation—Conditions precedent.

(N Y. Supp., 1916.) In order that a stockholder may not be permitted unnecessarily to maintain an action for the benefit of the corporation, he is required to show, as a condition precedent to his right to sue, a demand and refusal by those authorized to represent the corporation, and whose duty it is to bring the action, or facts indicating that a demand upon them would be futile, or that they would not be likely to prosecute the action in good faith. (Ib.)

Corporations—Stockholders—Suit in behalf of corporation—Conditions precedent—Trustees and receivers.

(N. Y. Supp., 1916.) Where the affairs of a corporation are in the hands of a receiver, or trustee, or other person who has superseded the board of directors, and is clothed with authority to sue, a stockholder must make demand upon him before bringing action for the benefit of the corporation, regardless of whether or not the directors are hostile, for in such case their attitude is immaterial. (Ib.)

National banks—Stockholders—Meetings—Notice.

(N. Y. Supp., 1916.) A stockholder of a national bank is charged with notice of the adoption of a resolution to appoint a liquidating committee, adopted at a meeting of the shareholders duly convened, whether he appeared or not. (Ib.)

National banks—Liquidating committee—Powers.

(N. Y. Supp., 1916.) A liquidating committee, appointed to take charge of assets and property of a national bank, could not maintain an action for the benefit of the bank in their own names, but must bring it in the name of the bank. (Ib.)

National banks—Liquidation—Liquidating committee under the supervision of the board of directors.

(N. Y. Supp., 1916.) Under Code of Civil Procedure, section 525, subdivision 1, providing that the authority to bring or defend an action is vested in the board of directors, and where a complaint or answer is verified, it must be verified by an officer of the corporation, section 3343, subdivision 18, providing that a national bank located in New York is regarded as a domestic corporation; section 43, subdivision 3, providing that service upon the members of the liquidating committee of a national bank is insufficient, in the absence of Federal statutory authority or any decision of the Federal courts holding that the authority of the board of directors of a national bank is suspended pending a liquidation, where a liquidating committee has been appointed, but the bank is not dissolved, the authority of the liquidating committee is subject to the supervision and control of the board of directors, and a stockholder is not required to show a demand upon and refusal by the liquidating committee before bringing action for the benefit of the bank. (Ib.)

National banks—Stockholders—Actions for benefit of bank—Conditions precedent.

(N. Y. Supp., 1916.) In a national bank stockholders' action on behalf of the bank, the plaintiff was not required to show a demand upon and refusal by a liquidating committee, appointed to liquidate the affairs of the bank, before bringing the action. (Ib.)

National banks—Stockholders' suits in behalf of bank—Demand on stockholders.

(N. Y. Supp., 1916.) Although the cause of action is the same, and recovery must be the same, whether action is brought in the name or in the right of a corporation, in whatever jurisdiction the remedy is sought to be enforced, the remedy must be prescribed by the law of the forum in which the action is brought, and under the well-established law of the State of New York, that the business of a corporation must be conducted by its board of directors, and that the stockholders can not control their action, a stockholder in a national bank may bring an action for the benefit of the bank without making demand upon the stockholders. (Ib.)

NEGOTIABLE PAPER.

GENERALLY.

Certificate of deposit a negotiable instrument.

(U. S. D. C., 1916.) A certificate of deposit is a negotiable instrument. (National City Bank of Seattle *v.* Titlow, 233 Fed. Rep., 838.)

Bona fide holder—Due course—Infirmatives on face of instrument.

(U. S. D. C., 1916.) Rem. and Bal. Code Wash., 3443, declares that a holder in due course is one who has taken a negotiable instrument, complete and regular on its face, without notice, at the time of negotiation, of any infirmity in the instrument or defect in title of the person negotiating it. Section 3574 declares that where a note is drawn to the maker's own order, it is not complete until indorsed by him, while section 3440 declares that, where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferor had, and for the purpose of determining whether the transferee is a holder in due course the negotiation takes effect as of the time when the indorsement is actually made. The insolvent bank requested plaintiff bank to carry a bag company, and plaintiff bank offered to do so on the credit of the insolvent institution. Thereupon, though no deposit was actually made, the insolvent bank issued to the bag company a certificate of deposit which appeared regular on its face, and which the bag company indorsed to plaintiff. *Held*, that as the certificate of deposit was not signed by the insolvent bank, and as plaintiff had notice that the insolvent bank was furnishing credit for the bag company, it had sufficient knowledge to put it on inquiry as to whether the deposit was actually made, and none having been made, recovery could be defeated for want of consideration. (Ib.)

OFFICERS.

POWERS OF AND REPRESENTATION OF BANK BY OFFICERS.

President—Agency of.

(U. S. C. C. A., 1916.) Where a depositor authorized the president of a bank to act for him in making payments on notes, the fact that the depositor was only an accommodation maker of the notes is immaterial on the question of the president's agency. (Stallo *v.* Wagner, 233 Fed. Rep., 379.)

President—Agency of.

(U. S. C. C. A., 1916.) Where national bank depositor gave the president of the bank bonds to be sold and the proceeds to be deposited, and also checks for the amount to be realized from the sale, which were to be applied by the president to certain payments, the president was the agent of the depositor, and not of the bank, in making the application of the proceeds, and the bank is not liable for misapplication therefor, for such notice to the president was not notice to the bank. (Ib.)

Claims—Liability—Fraud.

(U. S. C. C. A., 1916.) Where a depositor, several years after he had received his statements and signed receipts, attacked the balances, claiming that large sums had been diverted from his account, there could be no recovery against a receiver of the bank, unless fraud was shown. (Ib.)

Sufficiency of evidence.

(U. S. C. C. A., 1916.) Where a depositor, several years after receiving his statements, alleged that large sums had been diverted from his account, evidence *held* insufficient to establish any fraud on the part of the bank, warranting recovery against a receiver of the bank. (Ib.)

Burden of proof.

(U. S. C. C. A., 1916.) Where depositor and president of bank were closely allied in business transactions, and president made deposits and in many respects controlled the depositor's account, the depositor, in an action against the receiver of the bank, has burden of proving that president was agent of bank, and not his agent, in misapplying funds. (Ib.)

Knowledge of cashier—Notice to bank.

(U. S. C. C. A., 1915.) Where a bank cashier who received a note for discount with another institution, the proceeds to be used to buy land for the makers, fraudulently represented to them that he had destroyed it, and then pledged it to secure his own debt, his own bank, from which he appropriated funds to pay his debt, can not assert equitable rights in the note, being charged with the agent's knowledge. (Pensacola State Bank *v.* Thornberry, 226 Fed. Rep., 611.)

Representation of bank by officer—Individual interest of officer.

(U. S. D. C., 1915.) Where a third person deals with an officer of a bank in a matter in which the officer is personally interested, the officer acts in a dual and inconsistent capacity, and his acts are not binding upon the bank. (Florida National Bank of Gainesville, Fla., *v.* Merchants and Farmers Bank of Claxton, Ga., 227 Fed. Rep., 714.)

Representation of bank by officers—Individual interest of officer.

(U. S. D. C., 1915.) Where the holder of a certificate of stock in a bank as collateral security for a debt of its cashier sent such certificate to the bank itself, with a request that smaller certificates be issued in lieu thereof and returned, which the bank undertook to do, it was responsible for the proper execution and return of the new certificates, and is liable for the action of its cashier in raising certain of the certificates after they were signed, sending the raised certificates, and retaining others equal to the difference. (Ib.)

OFFICERS—CIVIL LIABILITY OF.

LIABILITY OF DIRECTORS FOR MISMANAGEMENT.

Liability of directors.

(U. S. D. C., 1916.) There is a liability on the part of national bank directors for failure to perform the duties which the general principles of law cast upon them when they become directors, distinct from and in addition to the duties and liabilities expressly imposed by the statutes. (Williams *v.* Brady et al., 232 Fed. Rep., 740.)

LIABILITY OF DIRECTORS FOR FALSE STATEMENTS.

(U. S. Sup. Ct., 1916.) The trial court, having found that defendants had knowingly made false statements as to the condition of a national bank of which they were directors, and that plaintiffs were entitled to recover from defendants their losses by reason of their reliance thereon, this court reverses the Supreme Court of the State and affirms the judgment of the trial court; and held, that plaintiffs, as creditors of a national bank, may recover from those directors who knowingly made statements required by the national bank act that were false or who knowingly permitted, assented to and allowed the same to be made and published; and also held that in this case the findings of the trial court as to the condition of the bank and the knowledge by the defendant directors of the falsity of the statements made and published under the Federal statute, and the reliance thereon by the plaintiffs, were supported by substantial evidence. 93 Nebraska 121 reversed. (Jones National Bank *v.* Yates, Bank of Staplehurst *v.* same, Utica Bank *v.* same, Bailey *v.* same, 240 U. S. R., 541.)

ACTIONS BY SHAREHOLDERS.

Jurisdiction of suits of stockholders against directors of national banks.

(U. S. Sup. Ct., 1915.) The rule that, in the absence of diversity of citizenship, jurisdiction of the district court over a suit depends upon whether there is a Federal cause of action stated in the bill applies to suits against national banks and their directors. Under the act of August 13, 1888, the Federal courts have not, in the absence of diverse citizenship, jurisdiction of a suit by a stockholder against directors of a national bank and the bank to compel the directors to reimburse the bank for wrongfully investing its funds, nor has the district court any jurisdiction of such a suit under paragraph 16 of section 24, Judicial Code. The intention of Congress to make such a radical change in the rule prevailing for many years as to confer jurisdiction on the Federal courts of all suits by and against national banks will not be presumed in the absence of clear manifestation of such purpose. (Herrmann *v.* Edwards, 238 U. S. R., 107.)

RECEIVER'S SUIT AGAINST DIRECTORS.

Suit against directors.

(U. S. D. C., 1916.) The directors of a national bank are severally liable for the failure to perform their official duties, and a suit by a receiver may be brought against one, all, or any number of them. (Williams *v.* Brady et al., 232 Fed. Rep., 740.)

Abatement and revival—Action against director of national bank—Survival.

(U. S. D. C., 1916.) An action against a national bank director, whether based on the common law or Revised Statutes, section 5239 (Comp. St., 1913, sec. 9831), survives against his personal representatives. (Ib.)

Suit against directors—Sufficiency of bill.

(U. S. D. C., 1916.) The bill in a suit by the receiver of a national bank against its directors held to sufficiently charge a breach of their common-law duty on the part of certain defendants by setting out their continued failure and refusal to attend meetings of the directors at which action was taken resulting in losses to the bank. (Ib.)

Action by receiver to enforce liability of directors.

(U. S. D. C., 1915.) The receiver of an insolvent national bank may maintain a suit for the benefit of its creditors and stockholders to recover from its directors for losses alleged to have been sustained in various ways by reason of their illegal, fraudulent, and negligent acts in the management of its business, and such suit is cognizable in equity. (Freeman *v.* Jackson et al., 227 Fed. Rep., 688.)

Suit by receiver against directors—Pleading.

(U. S. D. C., 1915.) Various exceptions to a bill by the receiver of an insolvent national bank against its directors to enforce their liability for losses sustained through their negligent and fraudulent acts considered. (Ib.)

Liabilities of directors for failing to make examinations at proper times and in proper manner.

(U. S. D. C., 1915.) The by-laws of a national bank provided that every six months, which was supposed to be immediately preceding the declaring of the semiannual dividend, there should be appointed by the board of directors "a committee whose duty it shall be to examine into the affairs of the bank, to count its cash and compare its assets and liabilities with the balance on the general ledger, for the purpose of ascertaining whether or not the books are correctly kept and the condition of the bank in a sound and solvent condition." The deposits averaged between $300,000 and $400,000. During the three years and three months preceding its closing the bookkeeper who kept the deposit ledger was stealing from the bank in increasing amounts, which aggregated $310,000. His method was the drawing of checks on the bank, which were cashed in a city and returned with other checks through the clearing house. He received the checks, withdrew his own, and charged the sum to other deposit accounts, until the amount grew too large to be covered in that way, and then made false entries and footings, which an examination of his ledger would have readily detected. During the time the directors made but two examinations, and on neither occasion did the committee examine the deposit ledger, nor compare the checks received through the clearing house with the lists which accompanied the same, from which the remittances were made. There were also other circumstances which should have put them on inquiry. *Held*, that the directors were negligent in failing to make examinations at proper times and in proper manner, and were liable for the losses of the bank through the thefts after the time when a proper examination would have disclosed the same. (Bates *v.* Dresser et al., 229 Fed. Rep., 772.)

Jurisdiction of Federal courts—Suit by receiver of national bank.

(U. S. D. C., 1915.) The fact that a suit is brought by the receiver of a national bank in the course of winding up its affairs gives a Federal district court jurisdiction, under Judicial Code (act Mar. 3, 1911, ch. 231), section 24, paragraph 16, 36 Statutes, 1092 (Comp. St., 1913, sec. 991), regardless of the citizenship of the parties. (Ib.)

Action by bank receiver against directors—Survival of.

(U. S. D. C., 1915.) An action by the receiver of an insolvent national bank against its directors, to recover for losses sustained through their misconduct or negligence for the benefit of creditors and stockholders, is ex contractu, and survives the death of a defendant. (Ib.)

OFFICERS, CRIMINAL LIABILITY OF.

AIDERS AND ABETTORS.

Officers—Offenses—"Bill of exchange"—Cashier's check.

(U. S. C. C. A., 1916.) A cashier's check drawn by the cashier of a bank, payable to the order of a named person, is a bill of exchange, within Revised Statutes, section 5209 (Comp. St., 1913, sec. 9772), providing that every president, director, cashier, or agent of any banking association, who, without authority from the directors, draws any order or bill of exchange with intent to injure or defraud the association and every person who with like intent aids or abets, shall be guilty of crime; a "bill of exchange" being a writtn order or request by one person to another for the payment of a specified sum of money to the order of a third person absolutely and at all events. (Hoss *v.* U. S., 232 Fed. Rep., 328.)

Officers—Offenses—Fraud—Bills of exchange—Evidence.

(U. S. C. C. A., 1916.) Evidence held to warrant a finding that a cashier drew cashier's checks with intent to defraud a banking association, contrary to Revised Statutes, section 5209, and that plaintiff in error aided and abetted him with like intent. (Ib.)

Offenses—Accessories—Jurisdiction of court—"Principal"—"Felony."

(U. S. C. C. A., 1916.) The Penal Code which went into effect January 1, 1910 (act Mar. 4, 1909, ch. 321, 35 Stat., 1152), provides in section 332 (Comp. St., 1913, sec. 10506) that whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, or procures its commission, is a "principal," while section 335 (sec. 10509) declares that all offenses which may be punished by death or imprisonment for a term exceeding one year shall be deemed felonies. Revised Statutes, section 5209, provides that every cashier, officer, or agent of any banking association, who without authority shall draw any order or bill of exchange with intent to injure or defraud the association and every person who shall aid or abet him with like intent, shall be guilty of a misdemeanor, and shall be imprisoned not less than five years nor more than ten years. *Held* that, after the enactment of the Penal Code, the offense must be deemed a "felony," and therefore, under the rule that where a statute provides that an accessory may be prosecuted and convicted as for a substantive felony, one who aided and abetted in the offense, though he was at the time without the district in which the offense wasa ctually committed, may be convicted in the district where the offense was committed, if such court had jurisdiction over the principal. (Id.)

PROSECUTIONS.

INDICTMENT.

Criminal prosecutions—Indictment.

(U. S. C. C. A., 1915.) An indictment charged in substance that accused, while president of a national bank and by the use of the authority of his position, loaned its funds to a mill company, which was known by him and not known by the bank or its directors to be hopelessly insolvent, under circumstances naturally leading to the loss of the money loaned and so resulting, all with intent to injure and defraud the bank. *Held,* that this, with the details set forth, sufficiently stated an offense under Revised Statutes, section 5209 (Comp. St., 1913, sec. 9772), providing that every president of a national banking association who willfully misapplies any of the moneys, funds, or credits of the association shall be punished as therein provided. (Stout *v.* United States, 227 Fed. Rep., 799.)

Indictment and information—Duplicity—Series of acts constituting same offense.

(U. S. C. C. A., 1916.) Revised Statutes, section 5209 (Comp. St., 1913, sec. 9772), provides that every cashier, etc., of a national banking association, who without authority from the directors issues or puts forth any certificate of

Indictment and information—Duplicity—Series of acts constituting same offense—Con.

deposit with intent to injure or defraud the association, shall be deemed guilty of a misdemeanor. *Held*, that an indictment charging that defendant, without authority and with intent to injure and defraud the bank of which he was cashier, did issue and put forth a certain certificate of deposit was not duplicitous and bad, since, when an offense may be committed in one or more of several ways, or where a penal statute mentions several acts disjunctively and prescribes that each shall constitute the same offense, an indictment may in a single count charge any or all of the acts conjunctively, or charge the commission of the offense in any or all of the ways specified. (Simpson et al. *v*. U. S., 229 Fed. Rep., 940.)

Former jeopardy—Discharge of jury without verdict.

(U. S. C. C. A., 1916). A prosecution on a defective indictment did not bar a subsequent prosecution, where there was no acquittal on the merits, but the court, upon the defects being called to its attention, after the close of the testimony and the arguments to the jury, discharged the jury. (Ib.)

Indictment and information—Objections—Manner of taking objections.

(U. S. C. C. A., 1916). Orderly procedure requires that objections to an indictment should be made either by motion to quash, by demurrer, or by motion in arrest of judgment, and the practice of permitting such objections to be urged during the trial by objections to the testimony, or by requests for instructions, is not to be commended and should not be encouraged. (Ib.)

Venue—Offenses committed partly in different districts.

(U. S. C. C. A., 1916). Judicial Code (act Mar. 3, 1911, ch. 231), section 42, 36 Statute, 1100 (Comp. St., 1913, sec. 1024), provides that, when any offense against the United States is begun in one judicial district and completed in another, it shall be deemed to have been committed in either, and may be dealt with, tried, and punished in either district as if it had been actually and wholly committed therein. *Held* that, where a certificate of deposit was signed in blank by the cashier of a bank in Idaho, and was filled in by another party in Mississippi, and negotiated in Kentucky, a prosecution for issuing and putting forth such certificate with intent to injure and defraud the bank, and for aiding and abetting the cashier to so issue and put it forth, was maintainable in Idaho. (Ib.)

Criminal offenses—Defenses.

(U. S. C. C. A., 1916). Where a certificate of deposit was issued by the cashier of a national bank without authority from the directors and with intent to injure and defraud the bank, in violation of Revised Statutes, section 5209 (Comp. St. 1913, sec. 9772), the criminal act was then complete, and the subsequent ratification of its issuance by the directors could not change the character of the acts. (Ib.)

Conspiracy—Criminal liability—Overt act.

(U. S. D. C., 1915.) The commission of conspiracy is not complete until one or more of the conspirators do some overt act or acts in execution or furtherance of the conspiracy, which acts may be innocent in and of themselves, or criminal acts in their very nature or by virtue of some statute of the United States. (United States *v*. Rogers et al, 226 Fed. Rep. 512.)

Conspiracy—Indictment—Overt acts.

(U. S. D. C., 1915.) An indictment for conspiracy must plainly and distinctly set out the overt acts, or some of them, and if the conspiracy be that one was to do the overt act and that the other should aid and abet him, the indictment necessarily and properly charges what each was to do. (Ib.)

Indictment and information—Federal statute—Duplicity—Conspiracy.

(U. S. D. C., 1915.) Revised Statutes, section 5209 (Comp. St. 1913, sec. 9772), provides that a teller who embezzles, abstracts, or willfully misapplies any of the funds of the bank, with intent to injure or defraud, and every person who with like intent aids or abets him in any such act, shall be guilty of a misdemeanor. Penal Code (act Mar. 4, 1909, ch. 321), section 332, 35 Stat., 1152 (Comp. St. 1913, sec. 10506), provides that whoever directly commits any act constituting an offense defined in any law of the United States, or aids or abets its commission, is a principal. An indictment charged a conspiracy between defendants to commit an offense against the United States, in that one of them, acting as teller in a national bank, would abstract its funds, and

Indictment and information—Federal statute—Duplicity—Conspiracy—Continued.

that the other defendants would aid and abet him in so doing. *Held* that, while it was unnecessary to allege that the overt act constituted a crime, the rule against duplicity did not prohibit the charging of overt acts in and of themselves crimes, or a statement that such acts of themselves constituted a crime, since the conspiracy to commit a crime against the Government and the commission of the crime are separate and distinct crimes, and since, if the proof failed to establish the conspiracy, the whole count fails, and a defendant could not be convicted under a conspiracy count on a showing that he had committed the acts charged therein as an overt act. (Ib.)

Indictment and information—Duplicity—Conspiracy.

(U. S. D. C., 1915.) An indictment for conspiracy to commit an offense against the United States, charging that one of the defendants, as teller of a national bank, abstracted, misapplied, and embezzled moneys, and in each of such counts charging that the other defendants aided and abetted such acts, was not bad for duplicity, since, under Penal Code, section 332, one aiding and abetting an offense against the United States becomes a principal and commits the same crime. (Ib.)

EVIDENCE.

Offenses—Intent.

(U. S. C. C. A., 1916.) Under Revised Statutes, section 5209 (Comp. St. 1913, sec. 9772), declaring that every clerk of any national banking association who abstracts any of the credits of the association with intent to injure or defraud, and every person who with like intent aids or abets any clerk, shall be guilty of a misdemeanor, the intent of accused to injure, defraud, or deceive by the abstraction of credits is an essential element of the offense. (Cummins *v.* U. S. 232, Fed. Rep., 844.)

Evidence—Intent.

(U. S. C. C. A., 1916). Where the intent with which accused aided a clerk of a national bank to abstract credits was material, in a prosecution therefor, accused may testify as to his intent. (Ib.)

Evidence—Similar transactions.

(U. S. C. C. A., 1916). In such prosecution, evidence of other drafts and transactions between the parties to the scheme, issued and occurring about the same time, is admissible, all the occurrences being related. (Hoss *v.* U. S., 232 Fed. Rep., 328.)

Witnesses—Evidence—Admissions—Privilege.

(U. S. D. C., 1915). A defendant in a criminal case, who testifies in behalf of himself and other defendants, may, when it is proper cross-examination, be asked as to a written statement voluntarily made by him to the district attorney prior to any charge against him relating to the general subject matter, or if he did not testify to certain facts before a grand jury, other than the one which afterwards indicted him, after expressly waiving immunity in writing. (U. S. *v.* Oppenheim et al., 228 Fed. Rep., 220.)

Evidence—Admission by accused.

(U. S. D. C., 1915). When it becomes a question of fact whether or not a confession or admission was voluntary, the same is admissible in evidence, and the jury is to determine the fact, and what credit they will give the statement made. (Ib.)

Privilege of accused in criminal cases—Cross-examination.

(U. S. D. C., 1915). Where the defendant in a criminal case takes the stand and testifies, he waives his constitutional privilege of silence, and may be cross-examined with the same latitude as other witnesses. (Ib.)

INSUFFICIENT DEFENSES.

Criminal offenses—Defenses.

(U. S. C. C. A., 1915). Where, though the directors of a national bank knew that loans were being made to a mill company upon so-called bills of exchange, with wheat tickets attached indicating the amount of wheat purchased by the mill company, there was evidence that it was accused, the president of the bank, and not the directors, who established this custom, that he alone knew the mill company was insolvent and was not keeping the

Criminal offenses—Defenses—Continued.

wheat or the flour product as security for the loans, and that in fact the loans were wholly unsecured, that he purposely refrained from informing the directors of the true condition, and in some instances expressly misrepresented it to them, the knowledge of the directors of the custom and the apparent form of the loans, and their reliance upon the semblance of security which did not in fact exist, did not relieve accused of liability for misapplying the funds of the bank. (Stout *v.* U. S. 227 Fed. Rep., 799.)

Conspiracy—Defenses.

(U. S. D. C., 1915). The fact that conspirators, in doing acts to execute the conspiracy, actually commit the crime which they conspired to commit, is no defense to the charge of conspiracy. (U. S. *v.* Rogers et al., 226 Fed. Rep., 512.)

INSTRUCTIONS TO JURY.

Criminal prosecutions—Instructions.

(U. S. C. C. A., 1916.) In a criminal prosecution in which the cashier of a national bank was charged with unlawfully issuing and putting forth a certificate of deposit with intent to injure and defraud the bank and without authority from the directors, and another party was charged with aiding and abetting him, evidence was rejected that the cashier executed a deed to his home to secure one of the directors, who advanced money to take up the certificate. The court charged that, when the certificate was sent to another bank at C. and presented for payment, some arrangement was made by which defendants, or one of them, took care of it and protected the bank against loss; that the charge was not that the bank was injured or defrauded, but that the certificate was issued with the intention to injure or defraud; that defendants were not relieved or acquitted because they took care that the bank did not suffer loss; that evidence of this fact of payment would not have been received, except for the contention that the money realized by the use of the certificate got into defendants' private accounts as a result of a misunderstanding between them, and that the mistake was not discovered until some time later; that if defendants had immediately repaired the wrong, before others had knowledge of the existence of the certificate, the jury might very properly conclude that the restoration to the bank of the value of the certificate tended to corroborate their contention of innocent mistake; that whether the jury would give such significance to the restoration at the later date, when the certificate had come to C. and its existence was known, he left to the jury to say; that, except for such light as the payment threw upon the question whether the certificate was intended to be used for defendants' personal benefit, or whether such benefit was the result of inadvertence and misunderstanding, the payment was without significance. *Held*, that this gave defendants the full benefit of any inference that might be drawn from the fact that the certificate was taken up and paid by them. (Simpson *v.* U. S., 229 Fed. Rep., 940.)

Instructions—Singling out testimony.

(U. S. C. C. A., 1915.) When an instruction in a criminal case proceeds upon a recital of facts and circumstances of which evidence has been received, and a deduction is drawn from them which, if adopted by the court, would be practically a direction to acquit, the recital should be full and comprehensive and not a mere side light on the case; and hence instructions singling out a part of the proof adduced as being insufficient to show guilt or criminal intent were properly refused. (Stout *v.* U. S., 227 Fed. Rep., 799.)

Instructions covered by those given.

(U. S. C. C. A., 1915.) Where the charge contained a definite statement of the offense set forth in the indictment, and told the jury that accused could not be convicted of something else, an instruction that accused was not on trial for various defaults or misconducts which were enumerated was unnecessary and properly refused. (Ib.)

Instructions—Construction of charge as a whole.

(U. S. C. C. A., 1915.) Portions of the charge claimed to be objectionable should be viewed in their proper context. (Ib.)

Instructions—Failure of accused to testify.

(U. S. C. C. A., 1915.) Act March 16, 1878, chapter 37, 20 Stat., 30 (Comp. St., 1913, sec. 1465), provides that a person charged with crime shall at his own request, but not otherwise, be a competent witness, and that his failure to make such request shall not create any presumption against him. On a trial on which there had been no wrongful comment on defendant's failure to testify requiring correction by the court on its own motion, defendant requested an instruction that he had seen fit to rest his case upon the Government's evidence, including such testimony as might have been elicited upon cross-examination of the Government's witnesses, that he had a perfect right to do this, and that this fact must in no wise prejudice the jury against him, but that they should take into consideration the entire evidence introduced, etc. *Held*, that the refusal of such instruction was not error, as the claim of immunity or protection was broader than the statute, since, while there should be no hurtful presumption from the failure of defendant to testify personally, this does not necessarily exclude a prejudice resulting from an entire absence of affirmative evidence in defense, nor inferences from a failure to produce evidence peculiarly within defendant's knowledge or control, not requiring personal disclosures or his presence upon the witness stand, and moreover the court might well have understood that the purpose of the instruction was to assail the sufficiency of the Government's evidence, rather than to claim the immunity afforded by the statute. (Ib.)

Trial—Comments on failure of accused to testify.

(U. S. C. C. A., 1915). Act March 16, 1878, chapter 37, 20 Stat., 30 (Comp. St. 1913, sec. 1465), restrains both court and counsel from commenting upon the failure of accused to testify. (Ib.)

Instructions—Failure of accused to testify.

(U. S. C. C. A., 1915.) If requested, defendant is entitled to an affirmative instruction that his failure to testify shall not create any presumption against him, even in the absence of wrongful comment; but the instruction requested, if not in the language of the statute, should fairly express its thought, so the court may be apprised of what is desired. (Ib.)

Accessories.

(U. S. C. C. A., 1916.) Where a statute provides that an accessory may be prosecuted and convicted as for a substantive felony the crime is cognizable in any court having jurisdiction over the principal. (Hoss *v.* U. S., 232 Fed. Rep. 328.)

Trial—Instructions.

(U. S. C. C. A., 1916.) It is improper to single out individual facts, and call the jury's special attention to them, where the whole matter can be satisfactorily given in the general charge; therefore, in a prosecution of a bank cashier for drawing and issuing bills of exchange with the intent to defraud a banking association, and of other defendants for aiding and abetting therein, contrary to Revised Statutes, section 5209, special instructions relating to kiting of checks, which singled out isolated matters presented by the general charge, were properly refused. (Ib.)

Trial—Instructions—Refusal.

(U. S. C. C. A., 1916.) The refusal of special instructions, though correct in law, which were covered by the general charge, is proper. (Ib.)

Jury question—Intent.

(U. S. C. C. A., 1916.) While the law presumes that every person intends the natural consequences of his acts knowingly committed, the question whether accused, who participated in a clerk's abstraction of credits from a national banking association, intended to injure or defraud the association, and so was guilty of aiding and abetting, under Revised Statutes, section 5209 (Comp. St., 1913, sec. 9772), is a question for the jury in connection with other evidence, and can not be decided by the court as a matter of law, and therefore an instruction that accused is conclusively presumed to have intended to injure the association by reason of the abstraction is erroneous. (Cummins *v.* U. S., 232 Fed. Rep., 844.)

Trial—Instructions.

(U. S. C. C. A., 1916.) In a criminal prosecution the court can not peremptorily instruct the jury to find accused guilty, and an instruction which in effect requires a conviction is improper. (Ib.)

Instructions—Further instructions after retirement of jury.

(U. S. D. C., 1915.) A Federal court may properly give additional instructions to a jury which has returned into court and reported its inability to determine certain questions of fact, and in doing so may call attention to all or any part of the evidence bearing on such questions and state the contentions of the parties with respect to its bearing and weight. (U. S. *v.* Oppenheim et al., 228 Fed. Rep., 220.)

Federal courts not affected by State laws or rules governing procedure.

(U. S. D. C., 1915.) With respect to the charging of juries a Federal court is not affected by State statutes or rules of procedure. (Ib.)

Instructions—Weight and effect of evidence.

(U. S. D. C., 1915.) A court in its charge may illustrate the manner in which a fact may be proved other than by direct evidence by stating a hypothetical case. (Ib.)

PRACTICE—JURY.

Impeaching verdict—Misconduct of jury.

(U. S. C. C. A., 1915.) A verdict in a criminal case can not be impeached by showing that the jurors discussed defendant's failure to testify, where there was no outside improper influence upon the jury, and whatever occurred was in the jury room among the jurors alone. (Stout *v.* U. S., 227 Fed. Rep., 799.)

Trial—Acquittal.

(U. S. C. C. A., 1916.) An acquittal can not be set aside by the court. (Cummins *v.* U. S., 232 Fed. Rep., 844.)

APPEAL.

Appeal—Questions of fact.

(U. S. C. C. A., 1915.) On appeal in a criminal case the question is whether the verdict was supported by substantial evidence, and not whether the proof of guilt was made beyond a reasonable doubt, that being a question for the jury. (Stout *v.* U. S., 227 Fed. Rep., 799.)

ORGANIZATION.

CONVERSION OF BANKS ORGANIZED UNDER STATE STATUTES INTO NATIONAL BANKS.

State bank converted into national bank—Effect on liability.

(Okla. Supp., 1915.) A State bank, by converting into a national bank, places itself beyond State control and ceases to exist as a State corporation, but does not thereby escape liabilities incurred by it during its continuance as a State bank. (State ex rel. West, Atty. Gen., *v.* Farmers' Nat. Bank of Cushing, 150 Pacific Reporter, 212.)

State bank converted into national bank—Effect—Assessment for guaranty fund.

(Okla. Supp., 1915.) The effect of a State bank surrendering its charter and organizing as a national bank, under the United States banking laws, is not to mature or discharge the deferred payments of the assessment levied under section 3 of the act of March 11, 1909. (Ib.)

POWERS.

POWER TO ACT AS TRUSTEE WHEN PERMIT IS GRANTED BY FEDERAL RESERVE BOARD UNDER FEDERAL RESERVE ACT.

ILLINOIS.

Constitutional law—Delegation of legislative powers—Federal reserve act—Powers of Federal Reserve Board.

(Ill. Sup. 1915.) Federal reserve act December 23, 1913, chapter 6, section 11 (*k*), (38 Stat., 262), providing that the Federal Reserve Board may grant to national banks applying therefor, where not in contravention of State or local law, the right to act as trustee, executor, administrator, or registrar of stocks and bonds, under such rules and regulations as the Board may prescribe, is not invalid as an attempted delegation of legislative power, in violation of Constitution of the United States, Article I, section 1, declaring that all legislative power shall be vested in the Congress of the United States, since it was only left to the Federal Reserve Board as a purely administrative matter to apply the provisions of the act to the banks which upon application are entitled to its provisions, and the legislation granting the power remained that of Congress. (People ex rel. First National Bank of Joliet *v.* Brady, auditor of public accounts, 110 N. E. Rep., 864.)

United States—Governmental powers—Constitutional provisions.

(Ill. Sup. 1915.) Under Constitution of the United States amendment 10, declaring that the powers not delegated to the United States by the Constitution nor prohibited by it to the States are reserved to the States, respectively, or to the people, the Government of the United States is one of enumerated powers and can claim no powers not granted to it by the Constitution, and the powers actually granted must be such as are given expressly or by necessary implication. (Ib.)

Banks and banking—Powers of Congress—Federal reserve act—Banks acting as trustees.

(Ill. Sup. 1915.) Federal reserve act December 23, 1913, section 11k, providing that the Federal Reserve Board may grant to national banks applying therefor, when not in contravention of State or local law, the right to act as trustee, executor, registrar, etc., under such rules as the board may prescribe, is not within the power of Congress, as such functions belong exclusively to the States and as the possession of such powers by national banks is not necessary to their continued existence or to their performance of their governmental agencies. (Ib.)

Banks and banking—National banks—Federal reserve act—Right of State—"When not in contravention of State or local law."

(Ill. Sup. 1915.) Federal reserve act December 23, 1913, section 11k, providing that the Federal Reserve Board may grant to national banks applying therefor, "when not in contravention of State or local law," the right to act as trustee, executor, administrator, or registrar of stocks and bonds under such rules as the board may prescribe, in view of the board's rules requiring the trust department of a bank, granted permission to execute trusts, to be a separate department, under the management of officers whose duties shall be prescribed by the officers of the bank, that the funds, investments, etc., shall be held separate from the funds and securities of the bank, that examiners appointed by the Comptroller of the Currency or designated by the board shall make audits of the cash, securities, accounts, and investments of the trust department when examination is made of the banking department, reserving to the board the right to revoke permits where, in its opinion, a bank has willfully violated its regulations or the laws of the State, conflicts with State laws as to State banks and trustees and with the State's control over private property and its acquisition and disposition, and hence is within the exception, "when not in contravention of State or local law," and unauthorized. (Ib.)

Banks and banking—National banks Control of State.

(Ill. Sup. 1915.) National banks are instrumentalities of the Federal Government in carrying out its governmental powers, and in the conduct of their affairs are not subject to the regulation or control of the State, in conflict with the laws of the United States; but Congress is the judge of the extent of powers to be conferred upon national banks, and has the sole authority to regulate and control their operations. (Ib.)

States—Jurisdiction—Regulation of acquisition and distribution of property.

(Ill. Sup. 1915.) The power to regulate property within the limits of the State, the modes of acquiring and transferring it, and the rules of descent and distribution dealt with by trustees, executors, etc., are subjects belonging exclusively to the jurisdiction of the State, not subject to Federal control. (Ib.)

MICHIGAN.

Corporations—Executors and administrators—Trusts—Power of corporation.

(Mich. Sup., 1916.) It is within the power of the legislature to create or provide for creating corporations with the necessary powers to execute trusts, manage trust funds, and act as executors and administrators of deceased persons. (Fellows, Atty. Gen., ex rel. Union Trust Co. et al. *v.* First National Bank of Bay City, 159 N. W. Rep., 334.)

Corporations—Executors and administrators—Trusts—Power of corporation.

(Mich. Sup., 1916.) Having provided for the creation of such domestic corporations, foreign corporations having proper powers may, upon reasonable conditions prescribed by the legislature, be admitted to do in Michigan what domestic corporations may do. (Ib.)

Executors and administrators—Trusts—Appointment and control of property.

(Mich. Sup., 1916.) A corporation or individual can not act in the capacity of trustee, executor, or administrator, except by appointment, and in such relation is governed by the laws of the State and the orders of the State courts. (Ib.)

Banks and banking—National banks—Nature and status.

(Mich. Sup., 1916.) National banks, being agencies of the Federal Government domesticated in the State, may sue and be sued in the courts of the State, but their powers, management, and control are beyond State authority, except that a national bank may not lawfully possess certain powers in contravention of State law. (Ib.)

Banks and banking—National banks—Power to control and regulate.

(Mich. Sup., 1916.) Where the legislature has not declared that national banks shall not in Michigan have the right to act as trustee, executor, administrator, or registrar of stocks and bonds, no State law is contravened by national-bank act June 3, 1864, ch. 106, 13 Stat., 99, nor because a corporation exercises the indicated powers. (Ib.)

Banks and banking—National banks—Powers.

(Mich. Sup., 1916.) Federal reserve act December 23, 1913, ch. 6, sec. 11 (*k*), 38 Stat., 262 (U. S. Comp. St., 1913, sec. 9794 (*k*), providing that the Federal Reserve Board may grant by special permit to national banks applying therefor, when not in contravention of State or local laws, the right to act as trustee, executor, administrator, or registrar of stocks and bonds, is a direct invasion of the sovereignty of the State which controls the devolution of estates of deceased persons, the conducting of private business within the State, the creation of corporations, and the duties of such as may engage in the business of acting as trustees, executors and administrators. (Ib.)

ULTRA VIRES ACTS AND CONTRACTS.

Liability for money received under ultra vires contract.

(U. S. C. C. A., 1915.) A national bank which has received money equitably belonging to another can not defend against a suit for its recovery on the ground that it was received as an incident of a contract made by the bank which was ultra vires and not enforceable. (National Bank of Commerce in St. Louis *v.* Equitable Trust Co. of New York, 227 Fed. Rep., 526.)

SHAREHOLDERS.

ASSESSMENTS—LIABILITY OF MARRIED WOMEN.

Husband and wife—Liabilities of stockholders.

(U. S. C. C. A., 1916.) Notwithstanding the disabilities of married women under the laws of Florida, a married woman, acquiring stock in a national bank by gift from her husband and collecting the dividends thereon, became, like other stockholders, liable for the debts of the bank which it failed to pay to

Husband and wife—Liabilities of stockholders—Continued.

the extent of her holdings, under Revised Statutes, section 5151, making the shareholders of national banking associations individually responsible equally and ratably, and not one for another, for all debts of the association to the extent of the amount of their stock in addition to the amount invested in such shares. (Keyser et al. *v.* Milton, 228 Fed. Rep., 594.)

Husband and wife—Liability of married women—Execution against separate property.

(U. S. C. C. A., 1916.) Constitution of Florida, article 11, section 1, provides that all property of a wife, owned by her before marriage or lawfully acquired afterwards by gift, devise, bequest, descent, or purchase, shall be her separate property, and shall not be liable for the debts of her husband without her consent, given by some instrument in writing, executed according to the law respecting conveyances by married women. Section 2 provides that a married woman's separate real or personal property may be charged in equity and sold, or the rents and profits sequestrated, for the purchase money thereof, for money or thing due upon any agreement by her in writing for the benefit of her separate property, or for the price of any property purchased by her, or labor and material used with her knowledge or assent in the construction of buildings or repairs or improvements upon her property, or for agricultural or other labor thereon with her knowledge and consent. Section 3 provides that the legislature shall enact such laws as shall be necessary to carry that article into effect. General Statutes of Florida, 1906, section 1600, makes judgments a lien upon the real estate of the defendant in the county where rendered; and section 1618 provides that lands, etc., shall be subject to levy and sale under execution. *Held,* that article 11, section 2, merely provides for the enforcement of certain obligations in a court of equity and does not prohibit the enforcement of other obligations, and where a valid judgment is recovered against a married woman in a common-law action, such as a judgment on her statutory liability as a stockholder in a national bank, the judgment is enforceable by execution upon her separate property. (Ib.)

ASSESSMENTS.

ACTIONS BY RECEIVER TO ENFORCE LIABILITY.

Evidence, admissibility—Official documents—Judicial notice.

(Mass. Sup. 1916.) Under Revised Statutes of the United States, section 884, providing that every certificate of the Comptroller of the Currency in pursuance of law, under seal, and all copies certified, shall be received in evidence in all places and courts, and sections 178, 327 (secs. 260, 498), providing that a deputy may exercise the powers of the comptroller's office, and the rule that the courts will take judicial notice that a certain person was a deputy comptroller and assume that at the date of his certificate he was duly authorized to act, all certificates from the comptroller's office, authenticated by seal, are admissible. (Weitzel *v.* Brown, 112 N. E. Rep., 945.)

Powers of comptroller.

(Mass. Sup. 1916.) Since, under Revised Statutes of the United States, section 5234, the power to adjudicate that a national bank is insolvent, and to appoint a receiver, and to levy assessments on stockholders and order their collection, is vested in the Comptroller of the Currency, a stockholder, sued by the receiver for assessments, can not question the legality of the receiver's appointment. (Ib.)

Validity of national bank's incorporation not open to collateral attack.

(Mass. Sup. 1916.) The validity of a national bank's incorporation is not open to collateral attack by the stockholder whose liability the receiver seeks to enforce. (Ib.)

Assessment by comptroller binds stockholders, even if levied without notice to them.

(Mass. Sup., 1916.) An assessment on stockholders of an insolvent national bank by the comptroller binds stockholders, even if levied without notice to them. (Ib.)

Comptroller's certificate sufficient evidence of receiver's appointment.

(Mass. Sup., 1916.) The comptroller's certificate being sufficient evidence of a receiver's appointment, where the receiver is ordered to enforce shareholder's individual liability, he may sue in his own name. (Ib.)

Receiver of an insolvent national bank in Kentucky may sue in courts of Massachsutets.

(Mass. Sup., 1916.) The receiver of an insolvent national bank in Kentucky may sue in the courts of Massachusetts a stockholder resident in that State, since he is clothed with all the rights the bank itself had. (Ib.)

Liability of stockholder for assessments contractual, and not statutory.

(Mass. Sup., 1916.) The liability of a stockholder for assessments levied on national-bank stock in contractual, and not statutory. (Ib.)

TAXATION.

TAXATION OF DEPOSITS HELD BY BANK AS RECEIVER.

Property subject to taxation—Property in possession of court—"Receiver."

(U. S. C. C. A., 1915.) Where, in suits by a water company to enjoin the enforcement of water rates fixed by county supervisors, preliminary injunctions were issued on condition that the company should deposit in banks the difference between the rates fixed and those actually collected, to remain until the final outcome of the litigation, and the water company made the deposits directed, the deposits were taxable under Pol. Code of California, section 3647, providing that money in litigation in possession of the court or receiver must be assessed and the taxes paid thereon under the direction of the court, for the banks receiving the deposits were receivers; a "receiver" being an indifferent person between the parties, appointed by the court to receive property pending suit, and to hold possession and dispose of the same as the court may direct. (Spring Valley Water Co. *v.* City and County of San Francisco et al., 225 Fed. Rep., 728.)

Receivers—Direction to pay taxes.

(U. S. C. C. A., 1915.) Where assessments on money in the possession of banks as receivers of the court were regular, the court could direct the banks to pay the taxes. (Ib.)

Taxation assessments—Validity.

(U. S. C. C. A., 1915.) Where the records of the court and the accounts kept by different banks, receiving deposits pending suits pursuant to order of the court, showed the particular funds involved and to what suits they are referable, error in assessments going to a misdescription of the funds, or to an unwarranted commingling thereof, by the taxing officers, did not render the assessments invalid, for the question as to what part of the funds was referable to a given suit was a mere matter of account and detail for the court officers. (Ib.)

Receivers—Assessments—Enforcement—Orders of court.

(U. S. C. C. A., 1915.) Where the records of the court and the accounts kept by depositories, receiving money pursuant to order of court in pending suits, showed the particular funds involved in each suit, orders of the court directing payment of the taxes were not erroneous, because they did not specify what amounts should be paid out of the moneys on deposit in each suit. (Ib.)

Taxation—Assessments—Validity.

(U. S. C. C. A., 1915.) Where money was deposited with a bank under order of court in a pending suit, an assessment of the money was not vitiated because it was assessed to the bank as receiver. (Ib.)

Taxation—Banks—Constitutional provisions.

(U. S. C. C. A., 1915.) An assessment on deposits in a bank, made pursuant to order of court in pending suits, is not an assessment against the bank or its shares or other property, within constitution California, article 13, section 14, providing for the taxation of the stock of banks, but is an assessment against funds in the hands of the bank acting as receiver. (Ib.)

INTERNAL-REVENUE TAXES ON CAPITAL.

Internal revenue—Excise taxes—Statutory provisions—"Banker."

(U. S. D. C., 1916.) Act of Congress October 22, 1914 (C. 331, 38 Stat., 750, sec. 3), provides that bankers shall pay a special tax of $1 on each $1,000 of capital employed; that, in estimating capital, surplus and undivided profits shall be included; that every person, firm, or company having a place of business where credits are opened by the deposit or collection of money subject to be paid or remitted, or where money is advanced or loaned on stocks, bonds, etc., or where stocks, bonds, etc., are received for discount or sale, shall be a "banker" thereunder. *Held*, That the statute is not void, as imposing a direct tax upon the property of a banker merely because of its ownership of such property, as the act does not tax property as such, but levies a special license tax upon one engaged in a particular business, because of the privilege he is exercising, and the fact, if true, that the amount paid is the same as would be paid, had all the property of the banker been taxed on an assessed value basis, is merely incidental and accidental. (Real Estate Title, Ins. & Trust Co. *v.* Lederer, collector of internal revenue, 229 Fed. Rep., 799.)

TRUSTS.

WHEN DEPOSIT IMPRESSED WITH A TRUST.

Deposit of trust funds—Liability of bank for misappropriation.

(U. S. C. C. A., 1915.) Where trust funds are deposited in a bank, which has knowledge of their character, if it obtains payment of a debt from the depositor personally to itself from the deposit, or affirmatively and intentionally aids him in wrongfully appropriating any part of the fund to his own use, it becomes liable in equity therefor to the beneficiaries of the trust. (United States Fidelity & Guaranty Co. *v.* Union Bank & Trust Co. et al., 228 Fed. Rep., 448.)

Deposit of trust funds—Liability of bank for misappropriation.

(U. S. C. C. A., 1915.) The bank is not relieved from such liability on account of money received on its own debt by the fact that the depositor had funds of his own mingled in the deposit, but accepts the payment at its peril of having to refund if the trust deposit is thereby depleted. (Ib.)

Deposit of trust funds—Liability of bank for misappropriation.

(U. S. C. C. A., 1915.) Nor is the bank protected from liability by the fact that the money of numerous beneficiaries is mingled in the deposit, which is added to from many sources and drawn against for many purposes until the identity of each owner's part is lost. In such case the amount wrongfully taken from the fund must stand to them in the same relation as the remainder does, and the liability is to them as a class, and where there is no right of preference between them, and in the absence of clear proof that the money of any particular owner remains, they are entitled to share pro rata in the fund remaining, and in such money as may be recovered. (Ib.)

Subrogation—Surety of officer—Subrogation to rights of beneficiaries of trust funds.

(U. S. C. C. A., 1915.) Where in such case the depositor was a public officer and the beneficiaries, instead of pursuing their remedy against the bank, recover their loss from the surety on his official bond, the right to bring the action passes to the surety under the general principles of subrogation, and by what amounts to an equitable assignment, but subject to any disability which affected the beneficiaries whose claims were paid. (Ib.)

Limitation of actions—Accrual of right of action—Action to recover bank deposit.

(U. S. C. C. A., 1915.) Limitation begins to run in favor of a bank against the claim of beneficiaries of a trust fund deposit on demand and refusal of payment, or when the claimants have notice that the bank will not pay, and where the depositor was a public officer, an official report of a committee, which was a matter of public record, that he had drawn out practically all of the fund is equivalent to such notice. (Ib.)

Limitation of actions—Exemption in favor of State—Subrogation of surety paying claim.

(U. S. C. C. A., 1915.) Where the claim of a State against a public officer for taxes collected was not subject to limitation, the exemption inures to the benefit of a surety who pays the claim and becomes its assignee by subrogation. (Ib.)

Deposits—Trust funds—Suit to recover.

(U. S. C. C. A., 1915.) Where by the decision of the supreme court of a State the State had a first lien on funds in the hands of a public officer for State taxes collected by him, and his surety was required to pay the State's claim, a suit by the surety as subrogee against a bank in which the officer had deposited his official funds, and from which they were wrongfully withdrawn, is one to restore the fund wrongfully diverted from the office of its principal, and it is not essential to recovery to identify the State's money and trace it in specie into the deposit. (Ib.)

Deposits—Trust funds—Suit to recover.

(U. S. C. C. A., 1915.) While the liability of a bank on account of its participation in the misappropriation of a deposit, consisting of trust funds belonging to numerous beneficiaries, is to such beneficiaries as a class, a decision of a State court that the State, as one of such beneficiaries, was entitled to first lien on the funds and priority of payment therefrom so far segregates its claim from the others that a separate suit may be maintained thereon. (Ib.)

Surety—Subrogation to right of action of obligee—Partial payment.

(U. S. C. C. A., 1915.) The right of a surety on a bond to be subrogated for the obligee in a right of action against one wrongfully causing the liability is founded on payment by the surety to the obligee, and does not come into existence except on full payment of the loss indemnified against, since the cause of action can not be split. (Ib.)

Deposits for special purpose—Loan.

(U. S. C. C. A., 1916.) Where plaintiff, in behalf of the mortgagor, deposited money in the bank for the purpose of discharging a mortgage indebtedness to another, and the bank made but retained a certificate of deposit in favor of the mortgagee and notified her thereof, the transaction was not a loan, but the bank held the money in trust for the mortgagee, and on its failure before execution thereof, the plaintiff could recover the sum deposited, as against general creditors of the bank. (Titlow *v.* Sundquist, 234 Fed. Rep., 613.)

COLLECTIONS WHEN IMPRESSED WITH A TRUST.

Knowledge of assistant cashier—Notice.

(U. S. D. C., 1916.) Where the assistant cashier of a bank knew of its insolvent condition, such knowledge is imputable to the bank and its board of directors. (Clark Sparks & Sons Mule and Horse Co. *v.* American Natl. Bank et al., 230 Fed Rep., 738.)

Collections by insolvent bank.

(U. S. D. C., 1916.) Where a bank had knowledge of its insolvency when it collected a draft sent it for collection, and withheld notice from the owner of the draft, such fraud precludes it from acquiring title to the draft. (Ib.)

Title to collections.

(U. S. D. C., 1916.) Where a draft is sent a bank solely for the purpose of collection, title does not vest in the bank. (Ib.)

Trusts—Trustees—Payments out of trust funds.

(U. S. D. C., 1916.) Where money belonging to a cestui que trust is traced into a general mass in the hands of the trustee, and the trustee makes payments out of the mass, it is always presumed that he makes such payments out of his own funds, and the cestui que trust is entitled to trace his money into the residuum. (Ib.)

Collection of draft—Proceeds—Tracing.

(U. S. D. C., 1916.) Complainant drew a draft for over $6,000 for payment for a shipment of live stock, which was forwarded to an insolvent bank for collection. The debtor agreed to take up the draft by giving his notes to the insolvent bank. Notes of the debtor to the amount of $6,000 were given, and the bank pledged such notes, with others, to a correspondent bank, which paid over the amount of the loan. At all times thereafter the defendant bank had on hand cash in excess of the amount of the draft. *Held* that, as the assets of the bank were increased in the sum of $6,000, complainant is entitled to priority in payment out of the cash on hand to the amount of $6,000; and as the debtor

Collection of draft—Proceeds—Tracing—Continued.

took up the remainder of the draft by a shifting of credits which did not increase the assets of the bank, complainant is not entitled to priority as to the amount of its claim in excess of $6,000. (Ib.)

Priorities—Interest.

(U. S. D. C., 1916.) In such case complainant is not entitled to any interest on the amount of his draft. (Ib.)

Priorities—Stay.

(U. S. D. C., 1916.) In such case, as there might be others entitled to priorities out of the cash turned over to the receiver, the receiver of the insolvent bank will be given a period of 30 days in which to call to the court's attention such priorities. (Ib.)

WHAT NECESSARY TO IMPRESS DEPOSIT WITH A TRUST—TRUST FUNDS—PURSUIT OF—EVIDENCE.

Deposit of proceeds of forged notes.

(U. S. C. C. A., 1916.) Where plaintiffs sought to hold defendant banks for funds, resulting from sale by cashier of one of banks of forged notes to plaintiffs, evidence held insufficient to trace funds and establish trust. (State Bank of Winfield *v.* Alva Security Bank; Second National Bank of New Hampton *v.* Alva Security Bank, 232 Fed. Rep., 847.)

Constructive trusts—Trust funds.

(U. S. C. C. A., 1916.) Where a bank's funds with reserve agents and other banks were classified as cash and sight exchange, plaintiffs can not establish a trust in such fund, where they could not identify their money as being in any particular account. (Ib.)

SPECIAL DEPOSITS OF TRUST FUNDS—COMMISSION OF TRUSTEE.

Special deposits—Commission as trustee.

(U. S. C. C. A., 1915.) A trust company, receiving a deposit of $15,000 on the agreement to pay semi-annual interest at its rate on special deposits, and to pay the principal to the depositor's three children when they arrived at 21, held it merely as a special deposit, and was not entitled to a commission for holding and disbursing the amount; nor was it entitled to a commission on a subsequent deposit which it received in trust upon the same terms. (Davis Trust Co. of Elkins, W. Va., *v.* Smith, 226 Fed. Rep., 410.)

Trust companies—Collections—Commission—Reasonable amount.

(U. S. C. C. A., 1915.) A trust company receiving two bonds of the par value of $1,000 to collect the coupons and apply the money according to the conditions of previous special deposits, after deducting a reasonable sum for the execution of the trust, and subsequently receiving 25 $1,000 bonds on the same conditions, and collecting on the bonds the sum of $20,000, was entitled to a commission of 5 per cent on the sum collected. (Ib.)

Trust companies—Deposit of stock—Commission.

(U. S. C. C. A., 1915.) A trust company receiving stock of a corporation to be held on the same conditions as interest-bearing bonds which it had also received and held in trust, receiving commission on the interest collected, where the stock paid no dividends, was entitled to no commission for merely holding it. (Ib.)

DIGEST OF DECISIONS RELATING TO NATIONAL BANKS.

[The following Federal cases were reported in vols. 241 to 244, United States Reports, and vols. 235 to 243, Federal Reporter.]

AGENT OF SHAREHOLDERS.

Bills and notes—Right of action—Representative capacity.

(U. S. C. C. A., 1916.) Plaintiff may sue, in his representative capacity as agent for the shareholders of a bank, on a note payable to plaintiff, "agent for the shareholders" of that bank, though those words would be construed as merely descriptio personæ in a suit by plaintiff as an individual. (Fleitman *v.* McKinnon, 238 Fed. Rep., 98.)

Pleading—Amendment at trial—Statute.

(U. S. C. C. A., 1916.) Under Rev. St. § 954 (Comp. St. 1913, § 1591), authorizing a court at any time to permit either party to amend any defect in the pleadings, the court can at the trial of a suit by plaintiff, as agent for shareholders, on a note payable to him as such agent, permit plaintiff to amend the complaint, so as to allege delivery to, presentation, notice, and demand by, indebtedness to, and prayer for judgment in favor of plaintiff in his representative capacity, instead of as an individual; those amendments, if necessary, being merely matters of form, which could not have surprised defendant. (Ib.)

COLLATERAL SECURITIES.

Rights and Liabilities of Holders of Collateral.

Pledges—Liability of parties—Indorser before delivery.

(U. S. C. C. A., 1917.) Under Negotiable Instruments Act Tenn. (Acts 1899, c. 94) § 63, providing that a person placing his signature upon a note, otherwise than as maker, drawer, or acceptor, is deemed an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity, an indorser before delivery is liable only as indorser, not as joint maker; and the payee of a note given by one corporation and indorsed by an individual and another corporation, without anything to show that the indorsers were bound in any other capacity, cannot retain collateral pledged to secure that note, with the right to retain it to secure any other obligation, to secure notes given by the other corporation, even if it could do so in case the two corporations were joint makers. (First National Bank of Memphis Tenn. *v.* Towner, 239 Fed. Rep., 433.)

Corporations—Powers—Lending credit.

(U. S. C C. A., 1917.) A corporation organized to buy, gin, manufacture, and sell cotton, cotton seed, and its products, and empowered to borrow money and issue notes or bonds on the faith of the corporate property, but whose powers were limited by a provision that by no implication or construction should it be deemed to possess any powers except those expressly given or necessarily implied from the nature of the business for which the charter is granted, has no implied power to lend its credit to another corporation. (Ib.)

Loans—Personal liability—User of money.

(U. S. C. C. A., 1917.) Where money loaned by a bank to one corporation was used for another corporation, both corporations being controlled by the same stockholder, such use did not make the latter corporation a debtor to the bank, since, when the money was loaned, it became the absolute property of the first corporation, and the rule of equity allowing money to be followed applies only where the money has the character of a trust fund. (Ib.)

Collateral security—Bona fide purchaser—Knowledge of title.

(U. S. C. C. A., 1917.) Where the controlling stockholder of two corporations authorized a bank to retain the bonds of one as security for the debts of the other, the bank cannot claim the bonds against the creditors of the latter after bankruptcy as a bona fide purchaser from the stockholder, notwithstanding his claim that he owned the bonds, where the bank had full knowledge of the entire transaction, and knew that such claim of ownership was based on a supposition that the controlling stockholder owned both corporations, since it could not take advantage of that clear mistake of law. (Ib.)

Pledges—Bona fide purchaser—Consideration—Debt of another.

(U. S. C. C. A., 1917.) The acceptance of a new note for the antecedent debt of a corporation is not consideration for the pledge of bonds of another corporation, which had no authority to lend its credit, by the controlling stockholder of both corporations, since it did not move to the corporation issuing the bonds, and the bank cannot claim to be a purchaser of those bonds for value. (Ib.)

Rights of trustee—Cancellation of bonds—Fraud.

(U. S. C. C. A., 1917.) A trustee can, for the benefit of the creditors of a bankrupt corporation, have canceled the bonds of the corporation, and a trust deed securing them, held by one to whom they had been pledged for a debt which had been paid, and who was retaining them as security for the debt of another corporation, for which they could not be held, though there was no fraud alleged, and the bank in good faith believed that it was entitled to hold them. (Ib.)

Discount—Nature of transaction—"Loan."

(U. S. C. C. A., 1916.) A transaction whereby a bank indorsed to another without recourse a number of notes under an agreement that the indorsee would credit the indorser with the amount of the notes and interest less the agreed discount, and that whenever any of the notes fell due the account was to be charged with the amount and the note sent to the indorser for collection, was a "loan" with collateral security, not a sale of the notes. (Merchants National Bank of Mandan et al. *v.* First National Bank of Duluth, 238 Fed. Rep., 502.)

Pledge—Statute—"Disposing."

(U. S. C. C. A., 1916.) Rev. Codes, N. D. § 4639, subd. 8, prohibiting a bank association, in selling or disposing of loans made on real estate security, from guaranteeing the payment or collection thereof, and providing that a contract guaranteeing such payment shall not be binding on the bank, does not apply to a pledge of a note secured by real estate mortgage to secure a loan to the bank, since "disposing," as used in the statute, means to part with, to alienate. (Ib.)

Authority of cashier—Estoppel.

(U. S. C. C. A., 1916.) Where a bank had without question received and applied to its own use money loaned by another bank on security of notes indorsed by its cashier, it can not question the cashier's authority to agree that the amounts of those notes when due should be charged against it. (Ib.)

Transfer of assets—Liability for debts.

(U. S. C. C. A., 1916.) Where the stockholders of a State bank organized a national bank which took over the assets of the State bank for a consideration of one dollar and its agreement to pay the deposits, time certificates, cashier's checks, and certain bills payable of the State bank, and the State bank returned to its principal stockholders the amount of the assessment levied against all the shares a few years before which had all been paid by the principal stockholder, and the sum so returned was used by him to repay the loan of the money necessary to organize the national bank and to purchase additional stock in the national bank, the transfer of the assets rendered the national bank liable for the amount of a loan made to the State bank secured by a note pledged as collateral. (Ib.)

Warehousemen—Uniform Warehouse Act.

Bankruptcy—Representative position of trustee—Statute.

(U. S. C. C. A., 1916.) In proceedings relative to the bankruptcy of a firm of cotton factors by virtue of Bankruptcy Act, § 47a (2), as amended by Act

June 25, 1910, c. 412, § 8, 36 Stat. 840 (Comp. St. 1913, § 9631), the trustee represented unsecured creditors with the same force and effect as if they had, on the date of the filing of the petition in bankruptcy, levied executions upon the cotton stored by the firm in a warehouse. (Interstate Banking and Trust Co. *v.* Brown et al., In re Lesser Ely Cotton Co., 235 Fed. Rep., 32.)

Warehousemen—Uniform warehousing act—Supersession of common and statutory law.

(U. S. C. C. A., 1916.) Uniform Warehousing Act Tenn. (Acts 1909, c. 336), intended to cover the subject of the respective rights of holders of warehouse receipts and creditors of the depositors, has superseded all existing common or statutory law on the subject. (Ib.)

Pledges—Validity against execution levying creditors—Delivery.

(U. S. C. C. A., 1916.) It is a general rule that a pledge, not followed by delivery, actual or symbolical, is invalid against execution levying creditors of the pledgor. (Ib.)

Factors—Pledges—Uniform warehousing act—Strict construction.

(U. S. C. C. A., 1916.) Uniform Warehousing Act Tenn. (Acts 1909, c. 336), giving factors the right effectively to pledge the consignor's interest, which did not formerly belong to them, will be strictly construed. (Ib.)

Warehousemen—Uniform warehousing act—Strict construction.

(U. S. C. C. A., 1916.) Uniform Warehousing Act Tenn. (Acts 1909, c. 336), recognizing the power of the depositor of goods in warehouse to pledge warehouse receipt so as to give a better title than he had and to disregard those rights which under the State's policy would otherwise accrue to the execution creditor, will be strictly construed. (Ib.)

Warehousemen—Warehouse receipt—Statute.

(U. S. C. C. A., 1916.) Under Uniform Warehousing Act Tenn. (Acts 1909, c. 336), § 2, prescribing what every warehouse receipt must embody, receipts reading "Received in warehouse for the account of Lesser-Ely Company two hundred bales of cotton. Same to be held subject to the order of the Lesser-Ely Cotton Co. D. W. McLemore & Co., Warehousemen. No. Bales, 200"—was insufficient to come within the protection of the act as failing to describe the cotton for purposes of identification as required by clause F of section 2. (Ib.)

Warehousemen—Uniform warehousing act—Negotiable receipt.

(U. S. C. C. A., 1916.) Uniform Warehousing Act Tenn. (Acts 1909, c. 336), § 5, providing that a receipt stating that the goods will be delivered to the bearer or to the order of any person named in such receipt, is a negotiable receipt, and that no provision shall be inserted in the negotiable receipt that it is nonnegotiable, such provisions if inserted being void, does not convert into a valid statutory negotiable receipt a paper which fails to contain all the requisites of a statutory receipt, but sections 4 and 5 must be read in connection with section 2, cl. (d), providing that every warehouse receipt must embody the statement whether the goods received will be delivered to the bearer or to a specified person, or to a specified person or his order. (Ib.)

Words and phrases—"Fungible goods."

(U. S. C. C. A., 1916.) "Fungible goods" are those of which each unit is fully equivalent to each other unit, an equivalency which may be inherent or may result from an agreement which may be expressed or implied from custom. (Ib.)

Warehousemen—Fungible goods—Warehouse receipt—Uniform warehousing act.

(U. S. C. C. A., 1916.) Under Uniform Warehousing Act Tenn. (Acts 1909, c. 336) § 23, providing that if authorized by agreement or custom, a warehouseman may mingle fungible goods with other goods of the same kind and grade, etc., where cotton warehousemen in the city had long been in the habit of issuing receipts which banks of the city and adjacent cotton country had been in the habit of treating as good for loans of $50 per bale, all of the bales of cotton in a warehouse of varying values did not become pro tanto fungible goods, so that holders of the warehouse receipts became tenants in common of the entire mass. (Ib.)

Factors—Pledges—Right of consignors.

(U. S. C. C. A., 1916.) Where the consignors of cotton to a firm of factors did not participate in an arrangement whereby the firm stored the cotton in a warehouse, taking blanket warehouse receipts which it pledged for loans in accordance with a custom of the vicinity, the consignors (having no knowledge of the custom permitting such blanket receipts) were not bound by estoppel by the pledges for the factors' debts accompanied by neither actual nor symbolical delivery, since estoppel can not bind those not parties to an arrangement, and who never did anything on the faith of which another has acted. (Ib.)

Warehousemen—Pledges—Rights of creditors of factors.

(U. S. C. C. A., 1916.) General creditors of a firm of cotton factors, not parties to the arrangement and without knowledge thereof, which stored cotton in a warehouse, taking blanket receipts and pledging them to secure loans by banks, were not estopped by the pledge of the receipts. (Ib.)

Execution—Execution creditor's superiority of lien—Tennessee law.

(U. S. C. C. A., 1916.) It is the policy of Tennessee law that an execution creditor gets a lien superior to other prior liens which may be perfectly good as between lienor and lienee, but which have not been preserved against execution creditors in some manner provided by law. (Ib.)

Warehouseman—Warehouse receipts—Validity.

(U. S. C. C. A., 1916.) The rule that warehouse receipts are valid and enforceable both at their inception and thereafter, because intended to cover property which could always be identified, can not extend to a case where no separate receipt covers all the property, but where the result is reached only by the aggregate of many independent receipts. (Ib.)

COLLECTIONS.

Title to Claims Deposited with Bank for Collection and Liability of Holder for Proceeds.

Authority of banks—Collection.

(U. S. C. C. A., 1917.) Where a bank received notes for collection only, it was without authority to extend the maturity of the notes or sell them, in the absence of express authority. (Peoples Bank of Plaquemine *v.* Erwin Undercurator et al. (two cases), In re L. Danos Planting & Mfg. Co., 238 Fed. Rep., 791.)

Collections—Sale of notes—Authority—Proof.

(U. S. C. C. A., 1917.) Notes secured by a mortgage were deposited with a bank for collection only. The bank disposed of the notes to third persons, and they came into the possession of the maker, who pledged them with the bank. Thereafter the maker became bankrupt, and on bankruptcy sale the bank bought in the property mortgaged to secure the notes, tendering such notes in payment. *Held*, that as it was to the disadvantage of the holder of the notes, who deposited them with the bank, for such notes to be negotiated, instead of paid, he holding other notes, as the value of the security would have been increased by such payment, the bank could not use such notes in defraying the purchase price, without proving its authority to sell the notes. (Ib.)

Bills and notes—Holders for value—Deposit—Nature—Right of bank.

(U. S. C. C. A., 1917.) A bank credited to the account of its depositor a check drawn on another bank and permitted the depositor to draw out the full amount thereof. The check was dishonored by the drawee bank for want of funds and returned to the first bank, which charged the amount against its depositor's account. At that time the account according to the books of the bank, was sufficient to meet the check but it in fact consisted only of credits given for the deposit of other checks, which thereafter proved not to be good. *Held*, that the bank was not merely a holder for collection, but a holder for value, so that it could sue thereon under Revisal N. C. 1905, sec. 2206, free from defenses available to prior parties. (Standard Trust Co. of New York et al. *v.* Commercial Nat. Bank et al., 240 Fed. Rep., 303.)

Deposits for collection—Rights of bank.

(U. S. D. C., 1917.) A corporation having a deposit in a bank which held its overdue notes for an amount exceeding the deposit, indorsed checks payable to it, and mailed them to the bank with intent that they should be collected and credited to its account. Subsequently a receiver for the corporation was appointed, and still later the bank with knowledge of the receivership received the checks, credited them to the corporation, subject to the right to charge them back if not paid, collected them, and credited the amount on the notes. *Held*, that as against the receivers the bank was entitled to the amount collected; the corporation having lost control of the checks before the receivership. (Chapman *v.* Mills & Gibb. In re Merchants' Nat. Bank of Providence, R. I., 241 Fed. Rep., 715.)

Deposits for collection—Rights of bank.

(U. S. D. C., 1917.) The regulations of the Post Office Department, whereby under certain circumstances the department in its discretion may return a mailed communication to the sender, did not affect the rights of the bank; the sender having intended that the mailed matter should go forward without interruption, and not having sought to recall it, but having disabled itself from recalling it. (Ib.)

Deposits for collection—Rights of bank.

(U. S. D. C., 1917.) That the corporation had never before deposited checks payable to it in such bank, but had made its deposits in the form of its own checks on another bank did not affect the rights of the bank, nor did the fact that it took the bank some days to collect the checks. (Ib.)

Notes payable at bank—Payment—Payee as agent of holder.

(U. S. C. C. A., 1917.) That notes by their terms were made payable at the payee bank did not make such bank the collecting agent of a bank to which they were indorsed and transferred before maturity. (Colorado Title & Trust Co. *v.* Childers et al., 241 Fed. Rep., 631.)

Payee as agent of holder.

(U. S. C. C. A., 1917.) On the issue of whether a payee bank at which notes secured by a chattel mortgage were payable was the agent of a bank to which it transferred the notes, without the maker's knowledge, with authority to receive payment, evidence held not to warrant a directed verdict for the maker, though raising a strong presumption that he had a right to believe that it was such agent. (Ib.)

Deposit—Conditional or absolute deposit.

(U. S. C. C. A., 1917.) A depositor and his bank may agree that checks or drafts on other banks, which he deposits, shall immediately become the property of the bank, or that the bank shall hold them and continue the credit to him only on condition that they are paid in the regular course of business. (Security Nat. Bank of Sioux City, Iowa, *v.* Old Nat. Bank of Battle Creek, Mich., 241 Fed. Rep., 1.)

Deposit—Absolute deposit.

(U. S. C. C. A., 1917.) A customer, who deposits checks or drafts on other banks with his bank, which gives him credit in his general account subject to check, thereby transfers the title to the checks or drafts, and renders the bank his debtor to the amount thereof, in the absence of an agreement to the contrary. (Ib.)

Deposits—Absolute deposit—Evidence.

(U. S. C. C. A., 1917.) Where four checks on other banks were accepted by the depositor bank and placed to the credit of the depositor, subject to its check, without any special agreement, and the depositor bank honored checks on the account to an amount exceeding the account, aside from the checks deposited in payment of notes held by the bank for collection, which notes it canceled and delivered to the depositor, the checks deposited became the absolute property of the bank, notwithstanding the testimony of the bank officers that they intended to give a credit for them conditioned on payment in due course. (Ib.)

Honoring checks—Estoppel.

(U. S. C. C. A., 1917.) A bank, which honors or pays a check of a depositor in the mistaken belief that his credit is larger than it in fact is, or in the hope or mistaken belief that checks which it has credited to his account will be paid, is estopped as against the owner of the check from revoking or avoiding such payment, since the bank may know the state of its own accounts, which the owner of the check can not know, and since any other rule would result in intolerable delay, uncertainty, and confusion in commercial transactions. (Ib.)

Payment of notes—Acceptance of check of maker.

(U. S. C. C. A., 1917.) Where a bank, to whom notes of a depositor have been sent for collection, accepts the depositor's check in payment thereof, cancels the notes, and surrenders them to the depositor, and draws and mails its draft for the proceeds of the notes, less its commission, there is an absolute payment of the notes, which, as against the payee, the bank can not revoke, so as to be relieved of liability on its draft. (Ib.)

Agency for collection—Notes payable at bank.

(U. S. C. C. A., 1917.) When a bank at which notes are payable accepts an agency from the owner to collect them it is bound to preserve for him every right he would have had if another party had accepted and performed with reasonable diligence the duty of such agent, and can not defeat an action on its draft, which could not be defeated by another agent who had made the collection under similar circumstances. (Ib.)

Negligence in Making Collections.

Collections—Action for negligence—Evidence—Loss.

(U. S. C. C. A., 1917.) In an action by a bank to whom a draft was payable against its correspondent bank to whom it indorsed the draft for collection to recover damages for the latter's negligence in notifying the payee bank that the draft had been accepted by the drawee, when in fact acceptance had been refused, and in failing to protest the draft and to notify the payee bank for ten days thereafter, during which time a cargo of lumber which the payee might have attached was shipped by the drawer, evidence that the drawer was insolvent at the time and largely indebted to the drawee, and that if the lumber had been attached the drawee could have filed a petition in bankruptcy against the drawer, as was done within a short time, is not admissible to show that the payee bank lost nothing because of its correspondent's negligence, since it can not be assumed that the drawer, though insolvent, could not have secured the money to meet the draft in some way. (American Nat. Bank *v.* Bank of Bandon, 240 Fed. Rep., 624.)

Payment of checks—Breach of duty—Liability.

(U. S. C. C. A., 1917.) In an action against a bank for damages caused by its breach of duty as agent to collect a check drawn upon it which there were sufficient funds to meet, prima facie proof that the check reached the town in which the bank was located on Friday evening justifies an inference that it came into the hands of the bank next morning so as to be entitled to payment in preference to other checks presented and paid on Monday and which the bank claimed were presented before the check in controversy, and it was error to direct a verdict for defendant at the close of plaintiff's evidence. (Standard Trust Co. of N. Y. et al. *v.* Commercial Natl. Bank et al., 240 Fed. Rep. 303.)

Liability of bank—Acceptance for collection.

(U. S. C. C. A., 1917.) Where a bank to which a check drawn against it had been sent dishonored the check and had it protested, there was sufficient evidence that it had accepted the check for collection, and the bank can not deny that it had thereby made itself the holder's agent. (Ib.)

Actions—Failure to pay check—Question for jury.

(U. S. C. C. A., 1917.) In an action against a bank for its breach of duty as an agent to collect a check drawn upon it, where the bank answered that it had first paid other checks which exhausted the account, the circumstances attending the payment might raise a question for the jury as to whether the bank had discharged its duty toward the holder of the check in suit, even if the other checks were presented at the same time or even before the check in suit, so that it was error to direct a verdict for defendants at the close of plaintiff's evidence. (Ib.)

Limitation of actions—Three-year statute—Breach of bank's duty.

(U. S. C. C. A., 1917.) An action against a bank for breach of its duty to collect a check and against another bank which took over the assets of the former is barred as against the latter bank by the North Carolina three-year statute of limitations (Revisal, 1905, sec. 395), where not commenced until five years after the transaction and four years after the transfer of the assets. (Ib.)

Surrender of Collateral Before Making Collection.

(U. S. Sup. Ct., 1916.) Where a bank holding a draft for collection, with instructions to deliver documents attached only on payment, permitted drawee to take possession of goods covered by the documents on his agreeing to deposit the proceeds thereof as sold, such action on the part of the collecting bank constituted a payment in law of the draft if the value of the goods was not less than the amount of the draft. (Russo-Chinese Bank *v.* National Bank of Commerce, 241 U. S. R., 403.)

(U. S. Sup. Ct., 1916.) Such action of the collecting bank amounted to a misappropriation of the property and liability to account for its value immediately arose. (Ib.)

(U. S. Sup. Ct., 1916.) Collecting bank became invested with ownership of goods and could not be excused from obligation to account by declaring that goods had disppeared without its knowledge; the relation of principal and agent existed and, as agent, collecting bank was obligated to act in good faith to protect rights of owner of draft. (Ib.)

(U. S. Sup. Ct., 1916.) Even if bank, sending draft for collection, suffers no loss on account of guaranty from original owner, it may, in view of its relation to commercial paper, demand, as principal, an accounting from its corespondent, and resist an action to recover back money received upon the draft. (Ib.)

DEPOSITS.

General Deposits.

GENERAL DEPOSITS THE RELATION THAT OF DEBTOR AND CREDITOR.

Deposits—Rights of depositors.

(U. S. C. C. A., 1917.) Deposits are not the property of the depositors, but of the bank receiving them; the relation of a bank and its depositors being that of a debtor and creditor, so that deposits and investments are equally assets of the bank. (Anderson *v.* Farmers' Loan & Trust Co., 241 Fed. Rep., 322.)

Deposit of checks—Effect.

(U. S. D. C., 1917.) Where checks indorsed in blank are deposited with a bank, and an immediate credit is entered in the passbook to the depositor, the checks at once become the property of the bank, but the bank's right to the checks depends upon the depositor's immediate and unconditional right, not merely as a favor, to draw upon the deposit, and, if the depositor did not have such right until collection, the bank did not become the owner; hence a bank does not become the owner of checks deposited with it, where the passbook expressly declared that deposits of checks should not be drawn against until collected. (In re H. & L. Jarmulowsky. Ex parte Bortz. Ex parte Attie Bros., 243 Fed. Rep., 632.)

Deposit of checks—Effect.

(U. S. D. C., 1917.) Where the passbook of a depositor declared that deposits of checks should not be drawn upon until collection, the bank does not become the owner of checks deposited with it, unless such rule is expressly waived and the depositor given the right to draw at once, though the depositor may be allowed to draw on such deposits as a matter of grace. (Ib.)

Deposits—Rights of depositor.

(U. S. D. C., 1917.) Where private bankers, at the time they received deposits of checks, knew of their insolvency, and such checks were not collected until after possession of their assets was taken by the bank examiner, the receiver, appointed by the bankruptcy court, can not, the checks having been subsequently collected, retain the proceeds as against the depositors. (Ib.)

APPLICATION OF DEPOSIT ON CLAIM.

Application of deposit to debts due bank.

(U. S. C. C. A., 1916.) The right of a banker to charge up to a depositor without his order the amount of his note, or other obligation to pay, before it is due, is conditioned on the latter's insolvency. (Clearwater County et al *v.* Pfeffer, 236 Fed. Rep., 183.)

INSOLVENCY AND RECEIVERS.

Powers of Receiver to Dispose of Assets and Compound Claims.

(U. S. Sup. Ct., 1917.) Defendant, as receiver of a national bank, contracted on its behalf, with the approval of the Comptroller of the Currency, for the purchase of certain realty, used some of the bank's money in payments on the price, and, under apparent authority from the court, sold and assigned the contract for cash paid the bank. The assignee acted secretly for the defendant in taking the contract, and thereafter assigned it secretly to him as an individual. Defendant resigned as receiver, and subsequently the contract was fully performed and the real property became vested in a corporation whose shares for the most part were issued to the defendant. In a suit brought by his successor to regain the property for the bank, *Held:* (1) That the transaction was a gross breach of defendant's duty as receiver; (2) that he was estopped to claim that the purchase of the property was beyond the powers of the bank, Case *v.* Kelly, 133 U. S. 21, distinguished; (3) that delay of the suit for 16 years after the making of the contract and 14 years after defendant's resignation as receiver was not laches, in view of the finding that his successors in the receivership had no knowledge or equivalent notice of the fraud. The seven-year statute of limitations of Washington, Remington & Ballinger's Ann. Codes and Statutes, sec. 789, does not apply when the claim of title accompanying possession is not made in good faith. 221 Fed. Rep. 322, affirmed. (Baker et al. *v.* Schofield, Receiver of the Merchants' National Bank of Seattle, 243 U. S., 114.)

Actions by Receivers.

DEFENSES TO SUITS BY RECEIVERS.

Bills and notes—Consideration—Legality—Fraud.

(U. S. D. C., 1915.) Where, to enable bank officials to conceal the true financial condition of the bank, defendant without consideration executed his note payable to the bank to be held by it in lieu of worthless notes, it being agreed that defendant's note might be discharged by a return of the worthless notes then delivered to defendant, the transaction is fradulent, and the note is unenforceable in the hands of the bank. (Yates Center Nat. Bank *v.* Lauber, 240 Fed. Rep., 237.)

Receivers—Rights of.

(U. S. D. C., 1915.) A receiver of the assets of an insolvent bank has no greater right in obligations payable to the bank than the bank itself. (Cutler *v.* Fry, 240 Fed. Rep., 238.)

Bills and notes—Actions—Illegal transaction.

(U. S. D. C., 1915.) A note, executed by defendant for accommodation and without consideration to enable bank officials to conceal their defalcations from depositors and governmental inspectors, is tainted with fraud; so, the rights of no innocent purchaser for value having intervened, it can not be enforced by the bank or its receiver, though the transaction was such that defendant must have known that the purpose of the note was to conceal the bank's financial condition. (Ib.)

Bills and notes—Legality of consideration.

(U. S. D. C., 1915.) A note, executed without consideration pursuant to a scheme of the president of a bank to enable him to conceal his defalcations and the bank's true condition, being tainted with illegality, can not be enforced by the bank. (Yates Center Nat. Bank *v.* Schaede, 240 Fed. Rep., 240.)

Actions Against Receivers.

RECOVERY OF TRUST FUNDS.

(U. S. C. C. A., 1916.) Complainant deposited for collection with the bank for which defendant became receiver certain school district warrants. The bank collected the same in three installments, in each case depositing the checks received to its credit in a different correspondent bank. Between the time of such deposits and its failure, some months afterwards, it overdrew its accounts with two of such correspondents for purposes not shown. In the third correspondent bank it maintained a deposit at all times until its failure, the amount at that time being the smallest, and less than the collection deposited.

Held, that the collections constituted a trust fund, recoverable by complainant from the receiver, in so far as it could be traced into his hands, and that in the case of the third bank complainant was entitled to recover the amount remaining in the account at the time of the failure, but that in the case of the other two deposits nothing was recoverable, although the bank at the time of closing and at all times prior thereto had cash on hand greater in amount than the collections; there being no presumption that the collections ever went into such cash fund. (Titlow et al. *v.* McCormick, 236 Fed. Rep., 209.)

DEPOSIT OF MUNICIPAL FUNDS.

Depositaries—Bonds—Amount—Insufficiency—Effect.

(U. S. C. C. A., 1917.) Pierce's Code Wash.,1912, tit. 77, secs. 681, 683, require municipalities to designate one or more banks in the county where the city is located as a depositary or depositaries of funds required to be kept by the city treasurer, but provide that, before any such designation shall entitle the treasurer to make deposits in such bank, the bank so designated shall file with the comptroller or town clerk a surety bond in the maximum amount of the deposits, or shall deposit bonds with which to secure the same. A city having negotiated a sale of bonds to raise funds to be expended upon its water system, the treasurer delivered the bonds to the bank designated as the city depositary, and which had given a bond in the amount of $10,000, with instructions to forward and collect the draft. The bank, though the proceeds from the bonds greatly exceeded $10,000, permitted the same to be placed to its credit by its correspondent, giving the treasurer credit on its books for the amount. *Held*, that as the bank knew of the purpose for which the bonds were to be sold, and was not an authorized depositary, it was guilty of a violation of the law, rendering it liable as a trustee for such funds. (United States Nat. Bank of Centralia et al. *v.* City of Centralia, 240 Fed. Rep., 93.)

Insolvency—Trust funds—Liability.

(U. S. C. C. A., 1917.) Where a bank, having become liable as a trustee for moneys wrongfully commingled with its own funds, became insolvent and a receiver was appointed, the trust may be impressed upon funds so misappropriated to the extent that they can be traced, either in their original or substituted form, into funds which came into the possession of the receiver; the cestui to that extent being entitled to a preference over other creditors. (Ib.)

Trust funds—Evidence—Sufficiency.

(U. S. C. C. A., 1917.) In a suit against the receiver of an insolvent bank, which, without authority of law, permitted the proceeds of a draft for the purchase price of municipal bonds deposited for forwarding and collection to be credited to its account by its correspondent, evidence held insufficient to show that any such proceeds, either in the original or substituted form, were represented by funds which came into possession of the receiver, and hence no trust could be imposed upon such funds. (Ib.)

Trust funds—Receivers.

(U. S. C. C. A., 1917.) A bank, authorized only to collect a draft for the purchase price of city bonds, allowed its correspondent to deposit the funds to its credit, though such deposit was in violation of law; the bank not having given bond to secure a deposit for the same. The correspondent applied a portion of such proceeds on the bank's overdraft. *Held*, that there being no showing that any of such proceeds came into the hands of the receiver, such application by the correspondent furnishes no basis for giving the municipality priority in funds received by the receiver on the theory of a trust, for it must be assumed that the correspondent dealt with the proceeds of the bonds on the understanding that the bank had complied with the law. (Ib.)

LIQUIDATION.

National bank—Liquidation—Effect.

(U. S. C. C. A., 1917.) Liquidation by a national bank under Rev. St., secs. 5220, 5221 (Comp. St. 1913, secs. 9806, 9808), does not terminate the existence of the bank as a legal entity which can sue and be sued, and therefore an action against it is not barred within three years after liquidation by Revisal N. C., 1905, sec. 1200, limiting the right to sue a corporation to three years after its dissolution. (Standard Trust Co. of New York et al. *v.* Commercial Nat. Bank et al., 240 Fed. Rep., 303.)

Pledges—Parol evidence—Admissibility.

(U. S. C. C. A., 1916.) Where the property and securities of a defendant bank were transferred to another bank under a written instrument providing that the transferee should discharge the debts and obligations of defendant, evidence of a parol agreement, whereby defendant agreed to indemnify the transferee should the assets be insufficient to discharge all debts and liabilities, is admissible to show that the instrument was not a sale but a pledge; equity looking to the substance and not the form. (Western Underwriting & Mortgage Co. *v.* Valley Bank, 237 Fed. Rep., 45.)

Sales—Instrument—Construction.

(U. S. C. C. A., 1916.) By written agreement, defendant bank transferred its assets to another bank, which agreed to discharge the debts and liabilities of defendant bank. Individuals named as parties of the second part, who signed the contract guaranteed at the end of three years, should the assets be insufficient to discharge all debts and liabilities, to indemnify the transferee; it being further agreed that, should the guarantors pay any such deficiency, the transferee would deliver to them all assets not reduced to cash. About a year later, the defendant bank executed a note for a large sum and delivered it to the transferee bank as evidence of the indebtedness then existing, and subsequently, the indebtedness having been reduced, a note for a lesser amount was given. *Held,* that the contract was not one of sale, but was a conveyance to enable the transferee to pass title to the assets of the defendant bank and dispose of them for the payment of debts, and therefore, defendant bank being bound to reimburse its transferee, one who subsequently purchased the stock of defendant bank can not complain of the execution of the notes. (Ib.)

Stockholders—Rights of.

(U. S. C. C. A., 1916.) Where defendant bank, which was in difficulties, transferred its assets to another institution, which agreed to pay its debts and liabilities, one who subsequently purchased stock of the defendant bank could not, the debts having exceeded the assets, reclaim assets remaining before he had paid the amount of indebtedness for which defendant was liable to its transferee. (Ib.)

NEGOTIABLE PAPER.

Bills and notes—Holder in due course—Evidence.

(U. S. C. C. A., 1917). Evidence that negotiations of attorneys for sale to plaintiff of a note would naturally have informed it that they were acting for H., and the fact that the form of indorsement thereon by defendant bank, after that of H., was: "Pay to the order of any bank or banker. All previous indorsements guaranteed"—authorizes a finding that plaintiff was not a holder in due course, on the theory that it was put on inquiry, which would have disclosed that defendant bank was only a forwarding agent. (First National Bank of Graham, Va., *v.* Weitzel, 239 Fed. Rep., 497.)

Bills and notes—Accommodation indorsement—Evidence.

(U. S. C. C. A., 1917.) That defendant was an accommodation indorser of the note sued on may be shown by transactions occurring out of plaintiff's presence; it being shown to be chargeable with notice. (Ib.)

Bills and notes—Nature of bill—Completion.

(U. S. D. C., 1917.) A bill made in the form of a check, even if valid, is incomplete, and not commercial paper at all, until it has been indorsed and delivered to some person other than the drawer. (United States *v.* Chase Nat. Bank, 241 Fed. Rep., 535.)

Bills and notes—Forged bills—Liability.

(U. S. D. C., 1917.) An Army officer, detailed to the Quartermaster's Department, and authorized to draw upon funds placed by the Treasury Department of the United States at his disposal, was assisted by a sergeant. While the officer was temporarily absent upon leave, the sergeant took one of the regulation drafts of the Treasury Department, filled it in to the order of the officer, and forged the latter's name as drawer. Having forged the indorsement of the officer's name in blank, he cashed the check over the counter of a bank, which indorsed the check to defendant, which received payment from the Treasury Department. The forgery being discovered, suit was instituted against defendant to obtain a refund of the amount so paid. *Held,* that as the check was ineffective as commercial paper until indorsement of the name of the drawee, who was also the drawer, and as any holder may fill a genuine bill with the names of others and forge their indorsements, without affecting his rights or the drawee's obligation, the United States can not recover from defendant the amount paid on the bill. (Ib.)

OFFICERS.

POWERS OF AND REPRESENTATION OF BANK BY OFFICERS.

Representation by officers—Ratification of acts.

(U. S. C. C. A., 1917.) That the president of a bank, in exchanging notes with another bank, had no authority to agree to reexchange on demand, did not defeat the right of the other bank to recover its note or the proceeds, since if thebank adopted the act of its president, and thus got possession of the note, it adopted the entire transaction, while, if the president did not act for it, it had no right to the note or its proceeds. (England *v.* Commercial Bank of New Madrid, Mo., 242 Fed. Rep., 813.)

Effect of acts—Ultra vires.

(U. S. C. C. A., 1917.) That the contract was ultra vires did not defeat the right to recover the note or its proceeds, since, while the courts will not sustain an action on the unlawful contract, they strive to do justice so far as can be done by permitting property or money parted with on the faith of the unlawful contract to be recovered back or compensation to be made for it. (Ib.)

Bills and notes—Transfer—Consideration.

(U. S. C. C. A., 1917.) Where the note transferred to one of the banks was never the property of the other, and moreover was worthless, there was no consideration passing to the first bank for its note, and it was entitled to the return of the note or its proceeds. (Ib.)

Powers of cashier—Issuance of drafts.

(U. S. C. C. A., 1917.) The Missouri negotiable instruments law (Rev. St. Mo., 1909, sec. 10102 et. seq.) provides that an acceptance must be in writing and signed by the drawee, that the drawee is allowed 24 hours after presentation in which to decide whether or not he will accept the bill, but that where he "destroys the same, or refuses within 24 hours after delivery, or within such other period as the holder may allow, to return the bill accepted or non-accepted to the holder, he will be deemed to have accepted the same." The president and manager of a mercantile corporation, who was also cashier of the bank in which it was a depositor, made a time draft on the bank in its behalf in favor of a holder of the corporation's note, requesting that it be sent direct to the bank for acceptance. This was done, with a request that it be accepted and returned at once. A few days later the payee again wrote, asking to be informed by return mail whether the draft would be returned. It was not returned, but the bank, by the cashier, sent its own draft on a correspondent bank for the amount, which was received by the payee, and the note, which was signed by solvent sureties, was surrendered. Some two and one-half years afterwards a receiver for the bank brought suit to recover the money paid on its draft. *Held*, that the action of the bank amounted to an acceptance, which made it the principal debtor on the draft, and that it was bound by the payment. (Citizens' Trust Co. *v.* Abston, Wynne & Co., 242 Fed. Rep., 392.)

Board of directors of national bank authorized to grant cashier authority to sell stock of corporation which bank had acquired.

(U. S. Sup. Ct., 1917.) The board of directors of a national bank have power under the national bank act to clothe the cashier with authority to sell corporate shares which have been acquired by the bank as the result of a loan made upon the shares as security. Whether the rules adopted by the board of directors of a national bank to govern its business do or do not empower the cashier to sell corporate shares which the bank has acquired as the result of loans upon them as collateral is a question involving the interpretation of the rules as applied to the circumstances of the transaction, and not a question concerning the meaning of the national bank act upon which this court may assume jurisdiction to review a State court's judgment. Writ of error to review 168 California, 263, dismissed. (Union National Bank et al. *v.* McBoyle et al., 243 U. S., 26.)

Liability to depositor—Transfer without authority.

(U. S. C. C. A., 1917.) The cashier of a bank, corresponding in the name of the president, who was his father, borrowed from a correspondent bank in another city a sum of money on the joint note of himself and his father secured by collateral, a portion of which was forged by the cashier. Thereafter the cashier made a deposit slip, showing a deposit in his bank by his father of the amount of the loan by check on the correspondent bank. On being informed that his bank's account with the correspondent bank had been overdrawn, he instructed the latter to place the proceeds on the note then standing to the credit of his father to the bank's credit, which was done, and the amount was carried to the bank's credit for a month. On being informed by the president of the resignation of the cashier, the correspondent bank, without instruction, charged the amount of the note against the bank and credited the president's personal account with it, and thereafter charged the note against that credit. The receiver of the depositor bank brought action against the correspondent bank to recover that amount. *Held*, that the receiver was entitled to recover, there being no mistake or misunderstanding shown as to the account, since a bank can not discharge its liability to account with the depositor to the extent of the deposit, except by the payment to him or to the holder of a written order from him. (Harriman Nat. Bank *v.* Seldomridge, 240 Fed. Rep., 111.)

Representation by officer—Knowledge of officer—Interest adverse to bank.

(U. S. C. C. A., 1917.) The knowledge by a bank cashier of the forgery by him of collateral for a loan, the proceeds of which were credited to the bank, is not to be imputed to the bank, since it was to the cashier's interest to conceal the forgery. (Ib.)

Appeal and error—Review—Direction of verdict—Motion by both parties.

(U. S. C. C. A., 1917.) Where both parties moved for direction of a verdict. there was no substantial question of fact to be decided, and, if the law was correctly applied by the trial judge, the judgment must be affirmed. (Ib.)

Bills and notes—Accommodation makers—Rights of.

(U. S. C. C. A., 1916.) One signing a note for the accommodation of another, if compelled to pay it, may ordinarily recover the amount paid from the one for whose accommodation the note was made. (Leonard *v.* State Exchange Bank of Elk City, Okla., 236 Fed. Rep., 316.)

Acts of officers—Liability on note.

(U. S. C. C. A., 1916.) Notes signed by the officers to obtain a loan for a bank constitute legal obligations of the bank, where the money was received by it, and all parties understood the nature of the transaction. (Ib.)

Subrogation—Principal and surety—Rights of.

(U. S. C. C. A., 1916.) Where officers of a bank executed notes for the accommodation of the bank and were compelled to pay them, the officers, being only sureties and the bank the real party in interest, are subrogated to the rights of the holders. (Ib.)

Bills and notes—Validity—Legality of objection—Relief of parties.

(U. S. C. C. A., 1916.) Officers of the defendant bank, to obtain a loan for it without impairing its credit, executed their own notes. On maturity the notes were paid by plaintiff, one of the officers. The parties to the transaction intended to conceal it from the State bank commissioner. Rev. Laws Okl. 1910, § 269, provides that every officer or agent of any bank doing business under the laws of the State, who shall unlawfully and knowingly subscribe to or make any false report or false entries in the books of the bank, or knowingly subscribe or exhibit any false writing or paper, with intent to deceive any person as to the bank's condition, shall be deemed guilty of a felony and punished by a fine or imprisonment or both. *Held*, that, as the act prescribes a specific penalty and does not declare void notes made with intent to deceive as to the condition of the bank, the notes executed by the officers were valid and enforceable against the bank in the hands of the holder, and having been paid by plaintiff, who was subrogated to the holder's rights, he could enforce them against the bank. (Ib.)

Acts of officers—Notes.

(U. S. C. C. A., 1916.) In such case, before payment of the notes, the officers, who were the sole stockholders, transferred their stock, and the transferees in turn disposed of the stock. *Held* that, though the last purchasers did not know of the nature of the transaction and the bank's liability, the bank was liable for repayment of the loan, having received the full consideration and being considered a separate entity for such purposes; this being particularly true where the last purchasers had received a written guaranty protecting them against all loss and damage by reason of any transactions or acts of the bank or its officers prior to the date of purchase. (Ib.)

Acts of officers—Accounting.

(U. S. C. C. A., 1916.) Where the cashier of a bank, who was president of a lumber company and authorized to draw checks for the lumber company, directed entries charging the account of the lumber company with a sum of money to be made on the books of the bank, but no check for the amount was drawn, the cashier must be held as acting for the bank in his capacity as cashier, and not as president of the lumber company. (Citizens Trust Co. *v.* Mullenix, In re Pemiscot Lumber Co., 235 Fed. Rep., 875.)

Actions—Evidence.

(U. S. C. C. A., 1916.) In a proceeding where a bank asserted, as against the estate of a bankrupt lumber company, a claim for a sum of money charged on its books against the bankrupt which had been taken by the cashier of the bank, who was the president of the bankrupt and authorized to draw checks on its account, *held*, under the evidence, that the bankrupt was not bound; no check having been discovered. (Ib.)

Right to subrogation.

(U. S. C. C. A., 1916.) Where a bank paid drafts to which were attached notes of a bankrupt lumber company, secured by liens, and marked the notes paid, the bank, having been under no duty to pay the drafts and having no interest to protect, was not subrogated to the liens securing the notes. (Ib.)

OFFICERS, CIVIL LIABILITY OF.

Liability of Directors for Mismanagement.

Officers and directors—Liability to creditors.

(U. S. C. C. A., 1917.) It is no defense against the liability of officers and directors of a national bank for permitting large overdrafts in violation of the by-laws that the practice was customary with other banks. (McCormick *v.* King et al., 241 Fed. Rep., 737.)

Liability of directors.

(U. S. C. C. A., 1917.) The statutory liability of directors of a national bank, as prescribed in Rev. St., sec. 5239 (Comp. St. 1916, sec. 9831), is undoubtedly the measure of the right of recovery against them for a loss resulting solely from their violation of the express provisions of the staute; but that does not exclude their common-law liability for negligence in the management of the business of the bank, in violation of their oath of office, which results in loss to its creditors and stockholders. (Ib.)

Liability of directors.

(U. S. C. C. A., 1917.) That a director of a national bank, at the time of his appointment and throughout his directorship, resided 200 miles distant, and never attended a directors' meeting, nor gave any attention to the business of the bank, but relied entirely on those in active charge, does not relieve him from liability for losses resulting from their gross mismanagement. (Ib.)

Duties and liabilities of directors.

(U. S. C. C. A., 1917.) Where the managing officers of a national bank allowed certain depositors to continuously overdraw, taking notes for the overdrafts without adequate security, until the indebtedness in each case exceeded the limit fixed by the statute, and were permitted by the directors to continue such course until the bank became insolvent, the liability of the directors is not limited to that prescribed by Rev. St., sec. 5239 (Comp. St. 1916, sec. 9831), for knowingly violating or permitting the violation of the provisions of the statute, but is measured by the rule of the common law, which requires active and diligent performance of their duties, and they are liable, not only for the excess of such loans above the legal limit, but for the entire loss thereon, with interest. (Ib.)

Degree of Care Required of Directors.

Liability of directors.

(U. S. D. C., 1915.) Under national bank act (Rev. St., sec. 5239 [Comp. St. 1916, sec. 9831]), providing that if the directors of any national banking association shall knowingly violate or knowingly permit any of its officers, etc., to violate any of the provisions of that title, every director participating therein shall be personally liable, the test of civil liability is whether the directors "knowingly" violate, or "knowingly" permit the violation of the statute. (Bailey et al. *v.* Babcock et al., 241 Fed. Rep., 501.)

Liability of directors.

(U. S. D. C., 1915.) Under common-law principles, directors of a national bank are not answerable for mistakes or errors of judgment, however serious, if they act in good faith and no dishonesty appears. (Ib.)

Liability of directors.

(U. S. D. C., 1915.) National bank directors must bring to the discharge of their duties reasonable and ordinary care and diligence in conducting the affairs of the corporation and are answerable for the results of negligence. (Ib.)

Powers.

(U. S. D. C., 1915.) While a national bank has no power to carry on a manufacturing, mining, or trading business or to engage in a speculative enterprise, and can not do so indirectly by the taking of stock, it may, in some cases, advance money to further an enterprise for the sole purpose of enabling it ultimately to secure a debt owing to it in some form. (Ib.)

Liability of directors.

(U. S. D. C., 1915.) A bankrupt partnership was indebted to a national bank. H. and S., one of the partners, were interested in certain timber lands, and the bank advanced money to buy the timber purchased, and bought the bonds of a lumber company to which the timber was conveyed, and financed the lumber company. The lumber company's stock was divided between H., S., and the bank, but it was all to be held by the bank until advances were repaid out of dividends; and S.'s shares were also to be held until the partnership debt was paid. The directors entered into the project to recoup the bank for the partnership debt, and it was their intention to turn over all of the stock to S. after the bank was paid. They acted in good faith. They caused a cruise to be made of the timber, which was substantially correct, and did not pay an excessive price therefor as the market then stood, but because of expensive operating expenses, much of the timber proving defective and depressed business conditions, the enterprise caused loss to the bank. *Held*, that if the transaction was ultra vires, it was not clearly so, and the directors were not personally liable. (Ib.)

Liability of directors.

(U. S. D. C., 1915.) While the directors would be liable for any loss occasioned through their negligence, the question of negligence was to be determined from the facts, as they presented themselves at the time the transaction was entered into and not as illumined by subsequent events. (Ib.)

Liability of directors.

(U. S. D. C., 1915.) The directors were not guilty of negligence, but merely of an error of judgment not rendering them liable, especially as the fact that they sought to make no personal profit raised a strong presumption that they used their best judgment and skill. (Ib.)

Liability of directors.

(U. S. D. C., 1915.) Though the corporate bonds were secured by a mortgage the transaction did not amount to a loan within Rev. St., sec. 5137 (Comp. St. 1916, sec. 9674) forbidding loans on real estate or the prohibition against loans in excess of 10 per cent. of the capital and surplus and, if it was a loan in violation of the statute, it was not a violation knowingly and intentionally rendering the directors liable. (Ib.)

Liability of directors.

(U. S. D. C., 1915.) The purchase of corporate bonds by a national bank for 90 per cent of their face value, if usurious, did not impose personal liability upon the directors under Rev. St., sec. 5239 (Comp. St. 1916, sec. 9831), where no damages were sustained thereby. (Ib.)

Actions to Enforce Liability.

District in which suit must be brought—Defendants in different districts.

(U. S. D. C., 1917.) A suit for joint negligence and misconduct of national bank directors, being of a transitory nature, under Judiciary Act March 3, 1911, c. 231, § 52, 36 Stat. 1101 (Comp. St. 1913, § 1034), may, in a State having more than one Federal court district, in each of which a defendant lives, be brought in either. (Dudley *v.* Hawkins et al., 239 Fed. Rep., 386.)

Liability of directors—Bill by receiver.

(U. S. D. C., 1917.) Bill by receiver of national bank against directors *held* sufficient to state civil liability, under Rev. St., § 5239 (Comp. St. 1913, § 9831), for knowingly violating or permitting violation of the national banking laws. (Ib.)

Action against national bank directors a Federal question.

(U. S. Sup. Ct., 1917.) An action under Rev. Stats., section 5239, against a director of a national bank for damages sustained by an individual in consequence of violations of the national bank act, necessarily involves a Federal question. (Chesbrough *v.* Woodworth, 244 U. S., 73.)

What not reversible error.

(U. S. Sup. Ct., 1917.) The court finds no reversible error in the views of the evidence or legal conclusions reached by the Circuit Court of Appeals in sustaining a judgment recovered under Rev. Stats., section 5239, 221 Fed. Rep. 912, affirmed. (Chesbrough *v.* Woodworth, 244 U. S., 73.)

(U. S. Sup. Ct., 1917.) Finding a verdict and judgment excessive, the Court of Appeals gave the party who had recovered them his option to submit to a reversal or obtain an affirmance by remitting part of the judgment. The party having acted on the latter alternative. *Held*, that his cross writ of error complaining of the reduction must be dismissed. Cross writ of error to review 221 Fed. Rep. 912, dismissed. (Woodworth *v.* Chesbrough, 244 U. S., 79.)

OFFICERS, CRIMINAL LIABILITY OF.

Conversion of deposits—"Special deposit"—"General deposit."

(U. S. C. C. A., 1916.) An indictment, alleging that defendant, the president of a national banking association, abstracted and converted its funds in violation of Rev. St. § 5209 (Comp. St. 1913, § 9772) averred the abstraction and conversion of a deposit made for the sole use and benefit of the depositor, charging that the property consisted of moneys, funds, and credits of the national banking association, that the depositor was a depositor and creditor of the association, and that defendant intended to injure and defraud such association and the depositor. *Held*, that as, where money or its equivalent is deposited in a bank without special agreement, the law implies that it is to be mingled with other funds, and the relation of creditor and debtor is created, the deposit being general, while a special deposit is a delivery of property, securities, or money for the purpose of having the identical thing safely kept and returned to the depositor the indictment is not bad, as charging the conversion and abstraction of a special deposit instead of the conversion of funds of a national banking association, which is the offense denounced; the allegation that the deposit was for the depositor's sole use and benefit evidently being intended to indicate that only the depositor was authorized to withdraw the funds. (Sheridan *v.* United States, 236 Fed. Rep., 305.)

Offenses—Statute.

(U. S. C. C. A., 1916.) Rev. St. § 5209 (Comp. St. 1913, § 9772), denouncing the offense of conversion or abstraction of the moneys or property of a national banking association by an officer or agent, declares that one violating the section shall be deemed guilty of a misdemeanor and shall be imprisoned not less than five nor more than ten years. Pen. Code, § 335 (Act March 4, 1909, c. 321, 35 Stat. 1152 [Comp. St. 1913, § 10509]), provides that all offenses which may be punished by death or imprisonment for a term exceeding one year shall be deemed felonies, and all other offenses shall be deemed misdemeanors. *Held* that as the offense denounced by section 5209 is an infamous crime, the provision for punishment was not repealed by the Penal Code, defining misdemeanors as punishable by a term not exceeding one year; the fact that the offense was classed as a misdemeanor not changing its nature. (Ib.)

Criminal Law—Indictment—Objections.

(U. S. C. C. A., 1916.) Unless objections to the form of an indictment are pointed out by demurrer or otherwise taken advantage of on trial, such objections cannot be urged after verdict, unless they affect the substantial rights of accused. (Ib.)

Offenses—Indictment.

(U. S. C. C. A., 1916.) An indictment charged that defendant was the president of a national banking association; that he did willfully and unlawfully abstract and convert to his own use, benefit, and advantage certain moneys, funds, and credits of the bank of the amount and value of $5,000, a more particular description of which was to the grand jury unknown, from and out of the moneys, funds, and credits of the association, and held by the same as a deposit for the sole use and benefit of a depositor and creditor of the bank, by means of an instrument designated a memorandum check, without the knowledge and consent of the banking association, and with the intent to injure and defraud the association, the depositor, and the creditor. Rev. St., sec. 5209 (Comp. St. 1913, sec. 9772), declares that any officer or agent of a national banking association who shall convert or appropriate any money of the association with intent to defraud shall be guilty of an offense. *Held*, that the indictment was not open to attack because the property was described as certain moneys, funds, and credits of the association of specified amount in dollars; a more particular description to the grand jury being unknown. (Ib.)

Offenses—Indictment.

(U. S. C. C. A., 1916.) Such indictment sufficiently charged the manner of the alleged abstraction and conversion, and, having alleged that the money was abstracted without the knowledge and consent of the association, it was unnecessary to allege that it was done without the knowledge or authority of the directors. (Ib.)

Offenses—Indictment.

(U. S. C. C. A., 1916.) The indictment was sufficient, though charging that the abstraction was done by means of a memorandum check; for the means of abstraction are immaterial. (Ib.)

Offenses—Indictment.

(U. S. C. C. A., 1916.) In such case, the indictment, which alleged that the money taken by defendant was converted to his own use and benefit, and to the use and benefit of another, is not open to attack on the ground that it was ambiguous and uncertain as not showing what part was received by either of the parties; for if the money was willfully and unlawfully abstracted, without authority and with intent to defraud, it was immaterial that defendant used any portion thereof. (Ib.)

Offenses—Indictment.

(U. S. C. C. A., 1916.) In such case, the indictment need not allege that the money was abstracted without the knowledge or consent of the depositors; that being a matter of defense to be shown by defendant. (Ib.)

Indictment and information—Sufficiency—Bill of particulars.

(U. S. C. C. A., 1916.) Where an indictment sufficiently charged all of the essential facts to constitute the offense, defendant, if desirous of other details must demand a bill of particulars. (Ib.)

Criminal law—Trial—Instructions.

(U. S. C. C. A., 1916.) The evidence showed that defendant, the president of a national banking association, who had charge of loans, abstracted funds from the account of a depositor and converted the same to his own use, although it appeared that he executed in favor of the depositor a promissory note, which was never delivered, but was retained in the possession of the bank. An instruction that an officer of a national bank, who has full charge of making loans, has the right to lend any portion or all of the money deposited in the bank by depositors on general checking accounts, without first obtaining permission of the directors, was refused. *Held*, that the instruction was properly refused, not being applicable to the facts of the case. (Ib.)

Indictment—Variance.

(U. S. C. C. A., 1916.) An indictment, charging conversion and abstraction of the funds of a national banking association, with intent to defraud the association and the depositor whose account was charged with the defalcation, alleged that the abstraction was made by means of a memorandum check. The evidence showed that defendant, the president of the bank, who made the abstractions which were charged to the accounts of several depositors, in each case made memorandum checks, charging the depositors with the amount of their deposits, that in one case the memorandum check was deposited to the account of a third person, while in another it was deposited to the account of defendant, and that notes for the amount of the unauthorized loans were executed. *Held*, that there was no variance between the indictment and proof. (Ib.)

Offenses.

(U. S. C. C. A., 1916.) Where the president of a national banking association converted and abstracted funds of the association by charging the depositors' accounts with amounts of purported loans which were unauthorized by the depositors, and then crediting the amounts of the loans to his own account, or that of other persons, the president must be deemed guilty of the offense of abstraction or conversion of the moneys or property of a national banking association denounced by Rev. St. § 5209 (Comp. St. 1913, § 9772); every man being presumed to intend the legitimate consequences of his acts. (Ib.)

Offenses—Embezzlement.

(U. S. C. C. A., 1916.) In such case, as the deposits were made with the bank and not with the president, the fact that the president had control of the bank and dictated its policy did not render the offense embezzlement, instead of unlawful conversion and abstraction of the funds of the association, as charged. (Ib.)

Criminal law—Review—Harmless error—Evidence.

(U. S. C. C. A., 1916.) In such case, evidence that the account of the one to whom the president lent the money charged to have been abstracted was in overdraft at the time of the loan, while possibly immaterial, was not prejudicial. (Ib.)

Criminal law—Evidence—Other offenses.

(U. S. C. C. A., 1916.) In a prosecution against the president of a national banking association for unlawfully converting and abstracting funds of the association, where his method of procedure was to charge depositors' accounts with the amounts of his conversions, evidence of similar offenses or transactions other than those charged in the indictment was admissible to show the intent with which the abstractions were made. (Ib.)

Offenses.

(U. S. C. C. A., 1916.) In a prosecution for unlawfully converting and abstracting the funds of national banking association with intent to defraud, where the defendant charged the amounts of his appropriations against the accounts of depositors. *Held*, that the question whether the depositors authorized the procedure, intending to make loans, was, under the evidence, for the jury. (Ib.)

POWERS.

In General.

POWER TO CREATE A PENSION FUND.

Power to create pension fund.

(U. S. C. C. A., 1916.) The stockholders of a national bank have the incidental power to create a pension fund to be shared by officers and employees. (Heinz *v.* National Bank of Commerce in St. Louis, 237 Fed., Rep., 942.)

Consideration for contract.

(U. S. C. C. A., 1916.) A contract by the directors of a national bank to pay a retiring president a sum of money in part consideration of his waiver of participation in a pension fund created by the bank in which he had the right to share held not without consideration. (Ib.)

Contracts in restraint of trade.

(U. S. C. C. A., 1916.) An agreement by the retiring president of a bank not to enter into the employment of any other bank or trust company in the same city for a term of less than a year is not invalid as against public policy. (Ib.)

Power to Act as Trustee When Permit is Granted by Federal Reserve Board Under Federal Reserve Act.

(U. S. Sup. Ct., 1917.) Implied power of Congress to confer particular function upon a national bank is to be tested, not by nature of function viewed by itself, but by its relations to all functions and attributes of bank considered as an entity; necessity or appropriateness of function should be considered with reference to situation to which it relates; and, as to what is necessary or appropriate, a court should not substitute its discretion for the discretion of Congress. (First National Bank of Bay City *v.* Fellows, Attorney General of the State of Michigan, ex rel., Union Trust Company et al., 244 U. S. R., 416.)

(U. S. Sup. Ct., 1917.) Circumstance that a function is of class subject to State regulation does not prevent Congress from authorizing national bank to exercise it; nor would it lie with the State power to forbid this. (Ib.)

(U. S. Sup. Ct., 1917.) A business not inherently such that Congress may empower national banks to engage in it may nevertheless become appropriate to their functions if, by State law, State banking corporations, trust companies, or other rivals of national banks are permitted to carry it on. (Ib.)

(U. S. Sup. Ct., 1917.) Under section 11 (k), act of December 23, 1913, establishing Federal Reserve Board, supreme court of State may entertain proceedings in nature of quo warranto, at instance of its attorney general, to test whether conduct of bank in acting as trustee, etc., is "in contravention of State or local law." (Ib.)

(U. S. Sup. Ct., 1917.) Section 11 (k) of the act of December 23, 1913, establishing the Federal Reserve Board, in authorizing board to permit national banks, when not in contravention of State or local law, to act as trustees, executors, administrators, or registrars of stocks and bonds under rules and regulations to be prescribed by board, is not objectionable as conferring legislative power or otherwise obnoxious to Constitution. 192 Mich., 640, reversed. (Ib.)

SHAREHOLDERS.

Assessments.

ASSESSMENT OF SHAREHOLDERS—LIABILITY OF TRUSTEES.

(U. S. Sup. Ct., 1916.) Defendant and another, executors, seeking in good faith to follow a testamentary direction to invest a sum in "interest bearing securities," on certain trusts, caused to be transferred to themselves as trustees certain national bank shares belonging to the estate. Thereafter, their final account as executors, explaining this transaction and reporting the estate wholly distributed except for these shares, was approved by the proper court of Wisconsin. The bank afterwards becoming insolvent, suit was brought by the receiver to recover the amount of an assessment levied upon the shares by the Comptroller of the Currency, the bill seeking to hold the defendant (who had received a larger amount as legatee), under a Wisconsin law making distributees liable for debts of estates in certain cases. *Held* (1) That whether or not the shares were "interest bearing securities," the transfer was not void. (2) Title being in the trustees, the estate was not liable for the assessment, and consequently defendant could not be held as a distributee under the Wisconsin statute. At common law executors have implied authority to pass title to personal assets of the estate—a rule which has not been modified in Wisconsin. Section 2091, Wisconsin Statutes, 1913, providing that conveyances made by trustees in contravention of express trusts shall be absolutely void, does not apply to personal property. 219 Fed. Rep., 663, affirmed. (Williams, as Receiver of the First National Bank of Mineral Point, Wisconsin, *v.* Cobb, 242 U. S. R., 307.)

TAXATION.

Internal revenue—Taxation—Liability of bank.

(U. S. C. C. A., 1917.) War revenue act, Oct. 22, 1914, c. 331, sec. 3, subd. 1, 38 Stat. 745, declares that bankers shall pay $1 for each $1,000 of capital used or employed, in estimating capital and surplus undivided profits shall be included, the amount of such annual tax being computed on the basis of the capital and undivided profits for the preceding year, and that every person, firm, or company, and every incorporated or other bank, having a place of business where credits are opened by the deposit of money or currency, subject to be paid or remitted upon draft, check, or order, or where money is loaned, shall be deemed a banker. A trust company, chartered to do a banking as well as a trust company business, which was authorized to discount commercial paper and accept drafts, and which held investments to an amount exceeding its capital, surplus, and undivided profits, opened a so-called capital investment account, to which bonds and mortgages were debited to an amount exceeding the capital, surplus and undivided profits. The trust company, while doing a trust-company business, also did a considerable banking business. *Held*, that when a trust company is organized, obtains subscription for capital stock, and then opens its doors and begins business, its assets comprise all its property, and it is liable for taxation upon that portion of its capital and surplus actually employed in the banking business, regardless of its artificial methods of designating the employment of such property. (Anderson *v.* Farmers' Loan & Trust Co., 241 Fed. Rep. 322.)

Internal revenue—Taxation—Assessment.

(U. S. C. C. A., 1917.) The collector of internal revenue, having been informed by the officers of a trust company, that it was engaged in a banking business, may, without requiring a further return, when the one made by officers failed to disclose the amount of the company's capital and surplus used in the banking business, proceed in accordance with Rev. St., sec. 3176 (Comp. St. 1916, sec. 5899), to assess the tax imposed on such property by war revenue act, 1914, sec. 3, subd. 1. (Ib.)

Internal revenue—Assessments—Validity.

(U. S. C. C. A., 1917.) Though the return did not furnish a basis for the assessment, the collector's assessment against a trust company engaged in the banking business under war revenue act, 1914, sec. 3, subd. 1, is prima facie valid. (Ib.)

Internal revenue—Assessments—Validity.

(U. S. C. C. A., 1917.) For a trust company doing a banking business, assessed under war revenue act, 1914, sec. 3, subd. 1, to recover the amount of an assessment on the ground that it was imposed on funds not used in the banking business, the trust company has the burden of showing that the tax was not in fact due. Proof of irregularity in the method of assessment is not sufficient. (Ib.)

Internal revenue—Taxation—Assessment.

(U. S. C. C. A., 1917.) The tax imposed by war revenue act, 1914, sec. 3, subd. 1, upon bankers for capital used in the banking business, is a franchise tax, and is not subject to attack on the ground that it is a direct tax not apportioned. (Ib.)

TRUSTS.

What Necessary to Impress Deposit with Trust.

Deposits—Liability for trust funds.

(U. S. D. C., 1916.) The secretary of complainant corporation received checks payable to complainant or order in payment of rents due the company. His only duty in connection with such checks was to appropriately indorse and deposit the same to complainant's account in its designated depository bank. A number of such checks he indorsed by himself as secretary without authority and deposited to his own personal account in defendant bank, where he also deposited money of his own. Upon this account he drew checks, some of which were to defendent in payment of notes given for money borrowed for his personal use. *Held*, that the defendant was chargeable with notice that the checks so deposited were the property of complainant, and not of the depositor, and that so much of the deposit account as was made up of their proceeds was a trust fund; that, while it had the right to presume that checks given by the depositor for personal obligations were not intended to be paid from such fund so long as the account was sufficently large, it was liable to complainant for money which it had itself received with reason to know that it came from the trust fund. (Santa Marina Co. *v.* Canadian Bank of Commerce, 242 Fed. Rep., 142.)

Deposits—Liability for trust funds.

(U. S. D. C., 1916.) In such case, where the trust was one created ex maleficio, there could be no presumption that deposits subsequently made by the depositor of his own funds, and perhaps checked out to others than defendant, were replacement of the depleted fund, so as to exonerate defendant from liability. (Ib.)

Equity—Limitation of actions—Laches.

(U. S. D. C., 1916.) Complainant, having no other business than the care and rental of its buildings, and which therefore permitted its rentals, beyond the amount required for current expenses, to accumulate in bank until it desired to make a considerable payment on its mortgage indebtedness, was not chargeable with laches because it did not for three or four years discover the discrepancy between its bank balance and the reports made monthly by its secretary; nor was it barred of relief by Code Civ. Proc. Cal., sec. 338, which imposes a limitation of three years on actions for fraud or mistake, but provides that the cause of action shall not be deemed to have accrued until the discovery of the fraud or mistake, where suit was commenced promptly on such discovery. (Ib.)

Payments—Applications.

(U. S. D. C., 1916.) Where a corporation obtained judgments against a defaulting officer on an indebtedness for a part of which it afterwards brought suit against defendant, it had the right to credit any sum collected by execution on the judgments first on the part of the indebtedness for which defendant was not liable. (Ib.)

DIGEST OF DECISIONS RELATING TO NATIONAL BANKS.

[The following Federal cases were reported in vol. 245, United States Reports, and vols. 244 to 250, Federal Reporter. Five State cases, one each from Kentucky, Oklahoma, Oregon, Pennsylvania, and Vermont, are also given.]

CHECKS.

Checks—Deposits.

(U. S. C. C. A., 1918.) In the absence of any special agreement between the depositors and a bank, title to checks deposited will pass to the bank, and it becomes merely a debtor for the amount thereof. (In re Jarmulowsky et al. Petition of Wilson. Petition of Bortz. 249 Fed. Rep., 319.)

Deposit of checks—Effect.

(U. S. C. C. A., 1918.) Whether there was any special agreement taking a deposit of checks out of the general rule, under which title would have passed to a bank and it would have become a debtor to the depositors for the amount thereof, is a question of fact. (Ib.)

Bills and notes—Indorsement—Effect.

(U. S. C. C. A., 1918.) Where checks deposited were indorsed in blank, any lawful direction might be written over the blank indorsement. (Ib.)

Collections—Proceeds.

(U. S. C. C. A., 1918.) When a bank, collecting checks as agent for a depositor, gets the money on the checks, the relation of debtor and creditor arises. (Ib.)

Deposit of checks—Effect.

(U. S. C. C. A., 1918.) Where their passbooks provided that deposits of checks should not be drawn upon until collected, the checks so deposited belonged to the depositors until collection, even though they were indorsed in blank and commercial depositors were allowed to draw on deposits of checks, for the banker might have written any lawful direction above the blank indorsement, and the privilege in favor of commercial depositors, which was without consideration, might have been withdrawn at any time; so, where the checks were not collected until after a receiver took charge of the affairs of the banker, the depositors were entitled to the proceeds as against the receiver. (Ib.)

COLLECTIONS.

Pledges—Loss of title.

(U. S. C. C. A., 1918.) A pledgee of promissory notes, residing in a city other than that where the notes are payable, does not, the notes being payable at the bank of the pledgor, lose title by sending them to the pledgor for collection, where the pledgor received them for that purpose only, unless they are assigned in due course, for value, before maturity, and without notice to a bona fide purchaser. (Stockyards Nat. Bank of St. Paul, Minn., *v.* First Nat. Bank of Towner, N. D., 249 Fed. Rep., 421.)

Bills and notes—Bona fide purchase of property of pledgor—Rights.

(U. S. C. C. A., 1918.) Plaintiff, which had received notes as collateral for a loan made to a bank at a distant city, transmitted the notes, which bore a blank indorsement on the back, to the pledgor bank for collection. The bills receivable register of the pledgor bank showed that all such notes had been erased, while the collection register showed that the notes were held by the pledgor bank for collection for plaintiff. *Held*, that a purchaser of the property of the pledgor bank, not being a bona fide purchaser within the law merchant, was not entitled to the notes as against plaintiff, for due diligence would have disclosed plaintiff's ownership. (Ib.)

Evidence—Bank registers.

(U. S. C. C. A., 1918.) Where a pledgee of notes delivered them to the pledgor bank for collection, and the bank transferred its assets to defendant, who collected the same, the exclusion of the bills receivable register and the collection register of the pledgor bank, in an action by the pledgee to recover against the purchaser, was error. (Ib.)

Evidence—Judicial notice.

(U. S. C. C. A., 1918.) That every bank keeps bills receivable registers and collection registers is so well known that courts may take judicial notice of the fact (Ib.)

DEPOSITS.

Certificate of deposit—What constitutes.

(U. S. C. C. A., 1917.) Plaintiff and her husband had on deposit in a State bank a sum of money in excess of $15,000. On that date, in a conference between plaintiff and her husband and the cashier, it was agreed that $10,000 should be thereafter payable to plaintiff, whereupon an entry was made in one of the ordinary passbooks of the bank on the pages at the top of which were the words: "In account with ———, Avoca, Texas." "Avoca State Bank, Dr. in acc't with ———, Cr." At the left-hand side were the words, "April 1st amount $10,000.00 described on following page," while on the opposite page were the words, "Amount at interest at the rate of 8 per cent per annum interest payable monthly to the credit of" plaintiff, and following which was a notation, "Interest paid April 1st," signed by the cashier without the addition of the word "cashier" after his name. Thereafter, the bank became financially embarrassed, and a special agent named by the commissioner of banking of Texas took possession, and as a result defendant agreed, in consideration of the delivery of the assets of such bank, to assume and pay all depositors the balances due them as shown by the books of such bank, also all unpaid certificates of deposit, cashiers' checks, etc. *Held* that, though the books of the bank did not show plaintiff's claim, yet the passbook, being signed by the bank and by the cashier, amounted to a certificate of deposit, and the plaintiff was entitled to recover thereon against defendant. (Citizens National Bank of Stamford, Tex., *v.* Pigg et al, 246 Fed. Rep., 902.)

Certificate of deposit—Action on—Parties.

(U. S. C. C. A., 1917.) In such case, as defendant assumed the debt of the bank to plaintiff and took over the assets to which she had a right to look for payment under a contract made by a State officer for her credit, she was entitled to sue at law without the intervention of a trustee. (Ib.)

Certificates of deposit.

(U. S. C. C. A., 1917.) In such case, the statement that the amount of $10,000 was at interest was sufficient to show a consideration for the obligation of the bank to pay it. (Ib.)

Certificate of deposit—Action on—Pleading.

(U. S. C. C. A., 1917.) In such case, as the certificate of deposit was signed by the bank, although the notation as to interest was signed by the cashier, liability was fixed by the signature of the bank, and no allegation was necessary to show that the cashier who did not add to his name the word "cashier" signed the interest notation in his official capacity. (Ib.)

Contracts—Impeachment.

(U. S. C. C. A., 1917.) Where, a Texas state bank being in financial difficulties and in the charge of a special agent of the commissioner of banking, defendant another state bank, entered into an agreement with the special agent to assume the liabilities of the embarrassed institution in consideration of the transfer of its assets, defendant can not thereafter defeat an action by a creditor of the embarrassed bank on the ground that the special agent had no authority to make a contract; defendant not undertaking to return the assets and restore the embarrassed institution to its former condition. (Ib.)

Presumption of debts—Evidence.

(U. S. C. C. A., 1917.) In such case, evidence of subsequent agreements made between defendant and the directorate of the embarrassed institution are inadmissible to affect its liability to a creditor of the embarrassed institution (Ib.)

Actions—Evidence.

(U. S. C. C. A., 1917.) In such case, evidence of deeds of trust made by certain directors of the embarrassed bank to secure defendant in repayment of losses arising out of the transaction is admissible in an action by the holder of a certificate of deposit payment of which defendant assumed. (Ib.)

FORGED OR ALTERED PAPER.

United States—Acceptance of bill—Repudiation.

(U. S. C. C. A., 1918.) The United States can no more repudiate its acceptance, and recover what its Treasurer paid on a bill with the drawer's name forged, than can a private person. (United States *v.* Chase Nat. Bank, 250 Fed. Rep., 105.)

Bills and notes—Forged bills—Bill payable to bearer.

(U. S. C. C. A. 1918.) Where a sergeant, who assisted a disbursing officer of the Army, forged the officer's name as drawer and indorser of a draft made payable to the order of such officer, a bank, which received the draft in due course from the institution which cashed it, did not guarantee the forged indorsement of the officers name, for under Negotiable Instruments Law, N. Y. (Consol. Laws, N. Y., c. 38) sec. 28, subd. 3, such draft was payable to bearer, as it was payable to the order of a fictitious or nonexisting person, and such fact was known to the sergeant, who made it so payable. (Ib.)

INSOLVENCY AND RECEIVERS.

Receivers' Liability for Taxes on Assets.

Receivers—Authority of—Instructions.

(U. S. C. C. A., 1917.) Receivers are officers of the court, and may properly ask instructions concerning the administration of the property in their charge, and so it is their duty, if they believe a tax to be unlawful, to apply for instructions whether to pay the same. (Scott Collector of Internal Revenue *v.* Western Pacific Railroad Co., 246 Fed. Rep., 545.)

Receivers—Instructions—Enjoining taxes.

(U. S. C. C. A., 1917.) Despite Rev. St. § 3224 (Comp. St. 1916, § 5947), declaring that no suit for the purpose of restraining the assessment or collection of any tax shall be maintained, receivers, as officers of the court, may, where they deem the property or income from the property in their charge not to be subject to tax, as contended by collecting officials, apply to the appointing court for instructions as to payment. (Ib.)

Internal revenue—Income taxes—Property in charge of receiver.

(U. S. C. C. A., 1917.) Act Oct. 3, 1913, c. 16, § 2, A to N, inclusive, 38 Stat. 166, making detailed provision for the imposition and collection of income taxes from individuals and corporations, joint-stock corporations, or associations organized for profit and having a capital stock represented by shares, omitted the word "receivers." Prior to the adoption of such statute it had been held, under Corporation Tax Act Aug. 5, 1909, c. 6, § 38, 36 Stat. 112, which also omitted reference to receivers, that excise taxes could not be imposed upon a receiver of a corporation. *Held*, in view of such construction, and of the fact that Income Tax Act Sept. 8, 1916, c. 463, pt. 2, § 13, subd. "c," 39 Stat. 771 (Comp. St. 1916, § 6336m), provided for payment of income taxes by corporate receivers, that no income tax could be assessed on income collected by receiver of an insolvent corporation, the reference in Act Oct. 3, 1913, § 2, subds. "d" and "e," to receivers showing that the term was used with respect to receivers of individuals. (Ib.)

INTEREST AND USURY.

Usury—President of bank—Liability of bank.

(Okla. Sup., 1918.) Where the president of a bank, having full power to make loans for the bank takes more than the legal rate of interest, the bank is liable for usury, although the president charges the excess over the legal rate as commission and retains it as his individual property. (McCarthy *v.* Liberty National Bank, 7 Okla. Appellate Court Reporter, 226.)

Usury—Change of bank.

(Okla. Sup., 1918.) Where a bank is reincorporated as a national bank under a new name, but the personnel, officers, management, and business remains the same, the new bank is liable for usury charged and collected by the old bank. (Ib.)

LIQUIDATION.

Voluntary liquidation—Transfer of business and assets—Construction of contract.

(U. S. Dist. C., 1917.) A resolution of the directors of the Commercial National Bank provided for its liquidation by and consolidation with the American National Bank of the same city, and the transfer of its business and all of its assets to the American to secure the latter for all advances made in the payment of the liabilities of the Commercial, which it was to assume. It was also to liquidate the assets of the Commercial, without charge for its services, and account to the stockholders for any surplus. By a complementary resolution of its directors, the American agreed to accept the proposal if, "in the estimation of the officers" of the American, the assets of the Commercial were sufficient in value to protect and secure it for payment of the debts of the Commercial. The transfer was made and accepted by the American, and afterward a memorandum contract was entered into between the two banks, reciting that it was to carry out the purposes of the resolutions of their respective directors. By this contract the American agreed to pay the indebtedness of the Commercial, which was definitely stated, and hold its assets as security, and to liquidate the same in accordance with the prior resolutions. The Commercial agreed to secure a ratification of the liquidation by its shareholders, which was done and approved by the Comptroller. *Held*, that the contract must be construed as a whole, and in the light of the resolutions which it was intended to carry out, and which measured the rights and obligations of the parties; that, so construed, it created no relation of debtor and creditor between the two banks, but was in effect a purchase by the American of the business and assets of the Commercial, in consideration of the payment of its debts and the accounting for the excess of assets, if any. (American National Bank of Macon *v.* Commercial National Bank of Macon et al., 246 Fed. Rep., 721.)

Liquidation agent—Authority.

(U. S. Dist. C., 1917.) A loan to a liquidation agent of a national banking association cannot make stockholders individually liable under Rev. St. § 5220 (Comp. St. 1916, § 9806), and section 5151. (American National Bank of Macon *v.* Commercial National Bank of Macon, 248 Fed. Rep. 187.)

Liquidation contracts—Ratification by stockholder.

(U. S. Dist. C., 1917.) The directors of defendant national bank recommended by resolution that it was expedient to go into voluntary liquidation, under Rev. St. §§ 5220, 5223 (Comp. St. 1916, §§ 9806, 9810), providing that any association may go into liquidation and be closed by the vote of its shareholders owning two-thirds of its stock, and declaring that an association which is in good faith winding up its business for the purpose of consolidating with another shall not be required to deposit lawful money for its outstanding circulation, and that the question of a consolidation with complainant bank by a sale of the assets of the bank should be submitted to stockholders. Though the directors of the defendant bank had authorized its officers to transfer to complainant all of its assets as cash or as collateral for its notes, the assets had been turned over, but no notes had been taken indicating any indebtedness. Defendant's stockholders ratified the resolution of the board of directors, transferring and assigning the assets of their corporation to complainant. Complainant by resolution assumed defendant's debts, and authorized its directors to contract with the directors of defendant, or such liquidating agent as might be appointed. *Held*, that as the contract submitted to and ratified by the stockholders was plainly a sale, and created no debt, and all of the stockholders did not participate in the ratification, they cannot be held liable individually as stockholders by complainant, which assumed the obligations of the defendant bank, particularly as a loan to a liquidating agent could not make the stockholders individually liable. (Ib.)

Dissolution—Stockholders.

(U. S. Dist. C., 1917.) In such case, the acts and conduct of the directors of defendant cannot bind the stockholders, who had a right to rely on a written resolution of liquidation; the acts of the directors not being a practical construction by the stockholders. (Ib.)

Construction—Acts of parties.

(U. S. Dist. C., 1917.) In such case, a subsequent stockholder's resolution authorizing the sale of a portion of the property of defendant national bank, had two years after they ratified the agreement with the directors, is not admissible as the construction of a contract between the two banks. (Ib.)

NEGOTIABLE PAPER.

Bonds—"Negotiable instruments"—What constitutes.

(U. S. C. C. A., 1917.) Bonds issued by an irrigation district under Act, Cal., March 7, 1887, section 15, providing for election for submitting question of bonds, and declaring that such bonds shall be negotiable in form, are "negotiable instruments." (Rialto Irr. Dist. *v.* Stowell. Stowell *v.* Rialto Irr. Dist., 246 Fed. Rep., 295.)

Alteration of instruments—"Material alteration"—Filling blank—"Material particular."

(Vt. Sup., 1917.) A renewal note having a blank line before the words "after date" was delivered, but the old note was not surrendered because the payee was told that the note was given to prevent protest of the old one, but that if it was desired to run the note through the books of the payee bank the blank could be filled in. A few days short of four months after the note was given the cashier inserted the words "four months" in the blank, canceled the old note, and entered the new one in its stead on the books of the bank. *Held,* that the insertion of the words in the blank was not a "material alteration," rendering the note unenforceable, in view of negotiable instruments act (Laws 1912, No. 99), section 14, providing that if the instrument is wanting in any material particular, the person in possession thereof has prima facie authority to complete it by filling in the blanks therein; the term "material particular," as used, not meaning such as may be necessary to make the instrument a negotiable note, but including any particular proper to be inserted. (Howard Nat. Bank *v.* Arbuckle, 102 Atlantic Rep., 477.)

OFFICERS.

Bonds of Officers.

Indemnity bond—Construction of policy.

(U. S. C. C. A., 1918.) Under surety bond guaranteeing plaintiff against losses on account of defalcations of employes. *Held,* despite rider extending provisions of bond to losses occurring previous to bond, and not covered by bond issued by another company, defendant was liable only for one aggregate sum, though losses during each period amounted to that sum. (Maryland Casualty Co. *v.* First Nat. Bank of Montgomery, Ala., 246 Fed. Rep., 892.)

Indemnity bond—Construction of policy.

(U. S. C. C. A., 1918.) Where surety bond for given term was renewed, *Held,* that defendant, though liable to amount of principal sum for defalcations occurring during first term, might be held liable in that sum for defalcations occurring during second term. (Ib.)

Indemnity bond—Statement of losses.

(U. S. C. C. A., 1918.) Statement of losses by national banking association through defalcations of employee held sufficient, stating with sufficient particularity to sustain judgment against insurer the losses sustained. (Ib.)

Powers of and Representation of Bank by Officers.

Transactions between banks—Representation by officers.

(U. S. C. C. A., 1918.) Officers of bank A executed their individual notes to each other, which they indorsed and, attaching a guaranty by the bank, discounted them with a correspondent bank, B. Although bank A did not own nor indorse the notes, it was agreed that their proceeds should be placed to its credit by bank B, and that the greater part of such credit should remain untouched until the notes were paid. The greater part of the amount of the notes was subsequently charged to the account of bank A. The only entry of the transaction on its own books was the charge of the amount of the deposit to bank B, and the same amount was placed to the credit of the individual officers or others designated by them. The guaranty of the notes was not authorized by the directors of bank A, and sufficient appeared in the transaction to charge bank B with notice that it was for the personal benefit of the makers of the notes and not of their bank. *Held* that, on a subsequent settlement, bank B could not enforce such charges against bank A, which derived no benefit therefrom, on the principle that, where one of two parties must suffer from the fraud of a third, the loss must fall on him who by his imprudence or cooperation enabled such third party to commit the fraud. (Wagner et al. *v* Central Banking & Security Co., 249 Fed. Rep., 145.)

Representation of bank by officers—Indorsement or guaranty.

(U. S. C. C. A., 1918.) An officer of a bank without express authority from the directors has no power to bind the bank by an accommodation indorsement or guaranty, and an attempted guaranty of notes that the bank has never owned is illegal, unless for the benefit of the bank in the conduct of its business. (Ib.)

Representation of bank by officers—Individual interest of officer.

(U. S. C. C. A., 1918.) There is a dead line between the area of official representation of a bank by its officers and the area of their personal interest, and when they cross that dead line, to the knowledge of one with whom they are dealing, they leave behind all power of representation. (Ib.)

Knowledge of officials—Imputation to principal.

(U. S. C. C. A., 1917.) Where the president of a bank introduced a stockman to plaintiff, another bank, which was the metropolitan correspondent of the one of which he was president, and induced plaintiff to make loans to him on chattel mortgages, the notes being signed, not only by the stockman, but by the president, the president's knowledge that funds deposited in the bank of which he was an official to the credit of the stockman were the proceeds of sales of mortgaged cattle is not, by reason of his official position, imputable to the bank of which he was president, so as to impress such funds with a trust in favor of plaintiff; it appearing that the president induced the stockman to dispose of the mortgaged cattle without notifying plaintiff, or delivering the proceeds, and was a party to a scheme, with reference to the disposition of the cattle, which, if not criminal, was fraudulent and bordering thereon. (Interstate Nat. Bank of Kansas City, Mo., *v.* Yates Center Nat. Bank of Yates Center, Kan., et al., 245 Fed. Rep., 294.)

Liability of bank—Representations of president.

(U. S. C. C. A., 1917.) Regarding liability of a bank for fraudulent representations of its president in sale to plaintiff of stock of the bank owned by Y., requiring restoration of plaintiff to his prior situation, the president was acting for it, and not for Y., his acts, with the approval of its governing board, being for the purpose of complying with the direction given it by the comptroller of the currency to reduce Y.'s indebtedness to it, and Y., when approached, stating that, if the bank would advance money to redeem such stock which he had pledged, and would sell it and apply the proceeds on his indebtedness to it, he would sell other securities and reduce his indebtedness with the proceeds; and this though after such sale was made Y. failed to keep his agreement as to further sales and reduction of his debt. (Salter *v.* Williams et al., 244 Fed. Rep., 126.)

Rescission of stock purchase—Insolvency—Double liability.

(U. S. C. C. A., 1917.) Double liability under Rev. St., section 5151, of a holder of full-paid stock in a national bank, does not prevent the stockholder, after insolvency of the bank and appointment of a receiver, rescinding his purchase thereof for fraudulent representations of the bank's president acting for it in the sale of the stock; the stockholder paying his assessment under such statute, and disclaiming intention to sue for its recovery. (Ib.)

Rescission of stock purchase—Insolvency—Subscriber to stock.

(U. S. C. C. A., 1917.) A purchaser of fully paid stock of a national bank is not a subscriber to its stock, liable for an uncompleted contract of subscription, as regards his right to rescind, after insolvency of the bank, the purchase, for fraudulent representations of its president, acting for it, though it loaned him part of the money for the purchase, and he is still indebted to it therefor. (Ib.)

Rescission of stock purchase—Insolvency—Priority of claims.

(U. S. C. C. A., 1917.) No liability to creditors of a national bank preventing, a purchaser of stock therein may, after appointment of a receiver for it, rescind his purchase for prior fraud of the bank, with right to redress out of the funds in the receiver's hands like that of an ordinary creditor whose claim was contracted before the receivership. (Ib.)

Authority of vice president—Usual course of business—Antagonistic interest.

(U. S. C. C. A., 1917.) While the vice president of a bank intrusted with the general transaction of its business has authority to bind it in any matter which in due course of business falls under the authority of an executive officer of a bank, yet if the transaction with him is so out of the usual course of business as to put on notice the one dealing with him that he is using the bank's name and credit in his own business, or that he is representing his own or any antagonistic interest, he stands before the person dealing with him stripped of his representative capacity, and powerless to bind the bank. (First Nat. Bank of Sutton, W. Va., et al., *v.* Drovers' & Mechanics' Nat. Bank of Baltimore, Md., 244 Fed. Rep., 135.)

Fraud of vice president—Usual course of business—Antagonistic interests.

(U. S. C. C. A., 1917.) D., treasurer of F., a bank, as such applied to B., a bank, for a loan to F., and on forged resolution of F.'s directors authorizing borrowing, B discounted note of D. to F. indorsed by D. in name of F., taking as collateral a note indorsed by payee and another, then by D. individually, and thereafter by him in the name of F. After F. had merged in N., a bank which assumed certain of F.'s liabilities, but not the discounted note, of which it did not know, D., who had become vice president of N., on forged resolution of N.'s directors, authorizing payment in such manner, procured B. to take in payment of the note a note of D. to N. indorsed by him in its name, the discount being paid by check drawn by D. as vice president to himself individually, and by him indorsed. *Held,* as regards liability of N. on the substituted note, that the transaction was so out of the usual course and so showed the antagonistic interests of D. as an individual and as treasurer of F. and as vice president of N. as to put B. on notice. (Ib.)

Trust companies—Knowledge of agent—Imputable to principal.

(U. S. C. C. A., 1918.) Where a trust company, which was trustee under a mortgage securing bonds, conducted the usual business of such an institution by departments having to do separately with banking, trusts, mortgages, etc., knowledge of a teller in the banking department of the mortgagor's default in the payment of interest coupons on the bonds secured is imputable to the trust company as trustee. (Browning *v.* Fidelity Trust Co., 250 Fed. Rep., 321.)

Acts of cashier—Liability of bank therefor.

(U. S. C. C. A., 1918.) Where the cashier of defendant bank represented to plaintiff, who had previously rediscounted paper for defendant, that a note was part of the assets of the defendant, and plaintiff discounted the note, defendant, having received the proceeds, can not escape liability on the ground that the note did not in fact belong to it. (Meyer & Chapman State Bank *v.* First National Bank of Cody, 248 Fed. Rep., 679.)

OFFICERS' CIVIL LIABILITY OF.

Directors—Liability.

(U. S. C. C. A., 1918.) Until some special necessity for action on their part is brought to their attention, directors of a national bank are entitled to rely on the cashier to guard against deficiencies in methods of bookkeeping which would enable subordinate employees to appropriate the bank's funds, and need not interfere independently. (Dresser *v.* Bates. Gale. et al. *v.* Same. Bunker et al. *v.* Same, 250 Fed. Rep., 525.)

National bank directors—Authority.

(U. S. C. C. A., 1918.) A by-law, adopted by the first board of directors of a national bank, requiring semiannual examinations by a committee of the board, may, in the absence of circumstances showing that it was inconsistent with good judgment and prudence, and without charging them with negligence, be waived by a later board; the by-law having been adopted before the amendment of 1874 (Act June 20, 1874, c. 343, 18 Stat., 123) to the National Banking Act (Act June 3, 1864, c. 106, 13 Stat., 99), which permits directors to allow incidental powers necessary to carry on the business to be exercised by officers or agents. (Ib.)

Insolvency—Liability of directors.

(U. S. C. C. A., 1918.) Though the by-laws of a national bank provided for semiannual examinations by a committee to be appointed by the board of directors, whose duty it should be to examine into the affairs of the bank, count its cash, and compare its assets and liabilities with the balance on the general ledger, the failure of directors to regularly make such examinations, coupled with the fact that in those examinations made the cashier's ledger was accepted as showing the amount due depositors, can not be deemed negligence, rendering the directors liable for the defalcations of a bookkeeper, where there was nothing to put the directors on inquiry, and the bookkeeper so skillfully concealed his peculations that he deceived the national bank examiners. (Ib.)

Directors—Liability—Negligence.

(U. S. C. C. A., 1918.) The question whether the directors of a national bank were negligent in failing to discover defalcations by a bookkeeper must be determined in view of the circumstances surrounding the directors at the time of their alleged negligence, rather than by reference to the situation afterwards discovered and exposed by expert accountants. (Ib.)

President—Liability.

(U. S. C. C. A., 1918.) It is the duty of the president of a national bank, who practically manages the institution, to use reasonable diligence to know the character and habits of the bank's employees, and where he was warned that a bookkeeper, who in fact was stealing the bank's funds, was leading a fast life, and should be watched, his failure to make any inquiry, in view of the fact that there were other suspicious circumstances, which could hardly have escaped his notice, was negligence, rendering the president liable for the bookkeeper's subsequent peculations. (Ib.)

Notice—What constitutes.

(U. S. C. C. A., 1918.) Where the president of a national bank, who managed the institution, was warned that a bookkeeper was leading a fast life, and should be watched, he is, the notice and other circumstances being sufficient to attract attention and call for an inquiry, chargeable with knowledge of everything to which the inquiry might have lead. (Ib.)

President—Liability.

(U. S. C. C. A., 1918.) Where the president of a bank, who was also one of the largest stockholders and a director, assumed management of the institution, and the other directors acquiesced, he is liable for a negligent failure to inquire into the habits and acts of an employee against whom he had been warned, even though the president received no compensation for such services. (Ib.)

Insolvency—Liability of directors.

(U. S. C. C. A., 1918.) Where national bank directors, when they discovered an apparent shrinkage in deposits, were advised by the cashier that it was due to business conditions, they can not, having had no reason to believe that a bookkeeper was despoiling the bank, be deemed negligent in failing to investigate the books, which would have shown that the apparent reduction in deposits was the result of the bookkeeper's manipulations and intended to cover his peculations. (Ib.)

Directors—Liability.

(U. S. C. C. A., 1918.) The failure of defendant, a director of a national bank, to act on a statement made to him by the president of another institution that it was reported an officer of defendant's bank was frequenting bucket shops and living pretty fast, can not, where no name was mentioned, be deemed negligence on the part of defendant, rendering him liable for the peculations of a bookkeeper of his institution, which were being carried on at that time. (Ib.)

Repayment of loans—Acceptance of bank's stock.

(U. S. C. C. A., 1917.) A bank, although without power to purchase its own stock, may lawfully accept such stock in repayment of a loan which the directors deem precarious. (Noyes *v.* Wood et al., 247 Fed. Rep., 72.)

Illegal purchase of stock—Liability of directors.

(U. S. C. C. A., 1917.) Evidence *held* insufficient to establish the good faith of the directors of a bank and exonerate them from personal liability for misappropriating the bank's funds, where, although it was without power under its charter to purchase its own stock, its funds were in fact used, although indirectly, to pay for the stock of a stockholder. (Ib.)

Misappropriation of funds—Purchase of stock from capital.

(U. S. C. C. A., 1917.) A writing by which a member of a partnership, whose business was taken over by a newly organized bank, agreed to take stock in the bank for his share of the firm's assets, *held* to bind him as a stockholder, and a transaction by which he was paid cash in lieu of the stock, after he had served as cashier of the bank and knew that he was carried on the books as a stockholder, *held* an illegal diversion of the funds of the bank, which a subsequent receiver was entitled to have set aside. (Ib.)

Liability of directors—Adverse interest in transaction.

(U. S. C. C. A., 1917.) The receiver of an insolvent bank *held* entitled to recover from the directors damages sustained by the bank by reason of the purchase from a partnership, of which two of the directors were members, at face value, of assets which proved to be worthless, and which were known by the directors at the time to be of doubtful value. (Ib.)

Liability of directors—Misappropriation of funds.

(U. S. C. C. A., 1917.) The payment by a bank of accrued interest on notes purchased from a partnership, not provided for by the written contract between the parties, *held* an illegal diversion of the funds of the bank, for which the directors participating were liable. (Ib.)

Liability of directors—Misappropriation of funds.

(U. S. C. C. A., 1917.) A bank bought stock of another bank, and at the same time gave an option to another to purchase the stock within a year at the same price. At the end of the year the option was exercised by the holder and another, both of whom were then directors, and with the concurrence of the other directors the stock was transferred to them without the payment of any interest to the bank, which in the meantime had received no dividends on the stock. *Held*, that all the directors participating were liable to the receiver of the bank for legal interest on the investment so carried by it for the sole benefit of the purchasing directors. (Ib.)

Misappropriation by cashier—Liability to depositor.

(Pa. Sup., 1917.) Where a depositor desired to transfer certain funds on deposit in the savings department of a bank to her husband, and the bank's cashier prepared a receipt for an amount which the depositor signed, and entered credit in the pass book of the depositor's husband for an equal amount, and entered on the books of the bank a withdrawal of that amount from the account of the depositor, and withdrew from the bank the amount of the receipt and misappropriated it, the bank was liable to the depositor's husband for such amount. (Gonder et al. *v.* Farmers Nat. Bank of Somerset, 102 Atlantic Rep., 510.)

Misappropriation by cashier—Action—Evidence.

(Pa. Sup., 1917.) In such case the exclusion of defendant's offer to put in evidence its loose-leaf ledger sheet showing the omission of such item was not error, as the bank could not relieve itself from the payment of the money because its officers failed to make a proper entry on its books. (Ib.)

Misappropriation by cashier—Liability.

(Pa. Sup., 1917.) Where a certain amount was withdrawn from plaintiff's account by defendant's cashier without any evidence that he was authorized to make such withdrawal, the jury were properly instructed to allow plaintiff to recover such amount. (Ib.)

Principal and agent—Agency—Evidence.

(Pa. Sup., 1917.) Where the cashier of a bank withdrew a certain amount from a depositor's account, his deposit with the bank's papers of a receipt signed by himself for the plaintiff did not establish his agency to withdraw the amount or justify the submission of the question of agency to the jury. (Ib.)

Misappropriation by cashier—Action—Evidence.

(Pa. Sup., 1917.) The exclusion of the bank's ledger sheet showing the withdrawal of several amounts from a depositor's account by its cashier was not error, as it could not escape payment of the money by showing a charge of such withdrawals to plaintiff without evidence of authority to make such charge. (Ib.)

Witnesses—Privilege—Attorney and client.

(Pa. Sup., 1917.) In action against bank to recover amounts misappropriated from an account by its cashier, testimony of plaintiff's counsel as to his conversation with plaintiff in the presence of the cashier after his relation with bank had terminated was privileged and inadmissible. (Ib.)

OFFICERS' CRIMINAL LIABILITY OF.

Offenses—Evidence—Sufficiency.

(U. S. C. C. A., 1917.) In a prosecution for misapplication of the funds, moneys, and credits of a national bank, in violation of Rev. St. § 5209 (Comp. St. 1916, § 9772), evidence *held* insufficient to sustain a conviction on a particular charge of abstraction of moneys. (McCallum *v.* United States, 247 Fed. Rep., 27.)

Embezzlement—Evidence—Hypothetical charge.

(U. S. C. C. A., 1917.) In a prosecution for misapplication of the funds of a national bank, in violation of Rev. St. § 5209, where the prosecution contended that defendant, the assistant cashier, failed to enter on the proper books $110.80 interest allowed the bank by a correspondent bank, and that, as the cash balance subsequently showed a shortage of $5.53, he must have abstracted the $110.80, the action of the court, interrogating the cashier, a witness for the prosecution, as to a hypothetical case of embezzlement of a deposit not entered on the books, was prejudicial, not being warranted by the evidence and tending to mislead the jury and prejudice them against defendant; this being particularly true as the cash showed a shortage, and, had defendant merely failed to enter the $110.80 interest on the proper book, the cash would not have balanced. (Ib.)

Instructions—Credibility of testimony of accused.

(U. S. C. C. A., 1917.) In a prosecution for missapplication of the moneys, funds and credits of a national bank, in violation of Rev. St. § 5209, declaring that any officer of a national banking association, who embezzles, abstracts, or willfully misapplies any of the moneys, funds, or credits of the association with intent to injure or defraud the association or any other company, body politic or corporate, or any individual person, shall be deemed guilty of a misdemeanor, the court denied requested charges that in order to justify a conviction of defendant, who was assistant cashier of the bank alleged to have been defrauded, the jury must be satisfied beyond a reasonable doubt that defendant intended by his acts to defraud the bank. The general charge instructed the jury on the presumption of defendant's innocence, the necessity of proof of guilt beyond a reasonable doubt, that there was an allegation in the indictment that the acts charged were done with intent to injure or defraud the bank, that the intent charged might be proven by the act done, that one may be presumed to have intended the natural and probable consequences of acts done, though such presumption is rebuttable, and that if a man knows the act he is about to commit will naturally or necessarily have the effect of injuring or defrauding another, and he voluntarily does the act, he is chargeable in law with the intention to injure or defraud. The court then summond up its charge in these words: "So the question for you to determine from all the evidence in this case is whether his intention in these different acts was to injure and defraud, by taking into consideration what the natural effect was and whether willful or lawful." *Held*, the charge minimized too much the testimony of the defendant as to his intent, and restricted the jury in determining his intent too closely to the consideration of the rebuttable presumption of law that one may be presumed to have intended the natural and probable consequences of his acts intentionally done. (Ib.)

Offenses—Indictment.

(U. S. C. C. A., 1917.) An indictment charging a misapplication of the moneys, funds, and credits of a national bank, in violation of Rev. St. § 5209, which contained no averment that a credit which it alleged defendant unlawfully took with the bank ever injured the bank or caused it loss, is defective. (Ib.)

Offenses—Indictment.

(U. S. C. C. A., 1917.) Under Rev. St., sec. 5209, an indictment charging misapplication of the moneys, funds, and credits of a national bank is defective, where it did not charge that the moneys, funds, and credits were misapplied with intent to injure and defraud the banking association or any other company, body politic or corporate, or any individual person. (Ib.)

Criminal law—Review on appeal—Harmless error.

(U. S. C. C. A., 1917.) The admission of evidence is not ground for reversal in a criminal case, where the same facts were afterwards shown by defendant's testimony. (Garanflo *v.* United States. Duncan *v.* Same, 246 Fed. Rep., 910.)

Prosecution—Evidence of intent.

(U. S. C. C. A., 1917.) In a prosecution for willful misapplication of the funds of a national bank by defendants, who were its managing officers, evidence was admissible to show that in their reports to the directors defendants did not mention a large overdraft by a corporation of which they were the principal stockholders. (Ib.)

Pleas in abatement—Irregularity in drawing of grand jury.

(U. S. C. C. A., 1917.) The right to file a plea in abatement for irregularity in drawing the grand jury, months after the indictment was returned, is not absolute, but subject to the sound discretion of the court, and its refusal to rule on such a plea, filed without leave seven months after the indictment was returned, and after two prior pleas had been ruled on, was not error. (Matters *v.* United States, 244 Fed. Rep., 736.)

Evidence—Relevancy.

(U. S. C. C. A., 1917.) On the trial of an indictment charging a violation of the national banking law (Rev. St., section 5209 (Comp. St. 1916, section 9772)), by aiding and inducing the president of a national bank to issue a certificate of deposit without consideration to the bank, which defendant used in part payment of an indebtedness of his own, evidence showing the entire transaction between defendant and his creditor, who was a widow, and tending to show that he attempted to defraud her, was irrelevant to the issue, and its admission was prejudicial error. (Ib.)

OFFSETS.

Bankruptcy—Jurisdiction of bankruptcy court—Adverse claim to property.

(U. S. C. C. A., 1918.) A bank can not acquire the right to set off against an indebtedness to it money deposited by a bankrupt after the filing of the petition against him, so as to require a plenary suit by the trustee for its recovery, but he may proceed by petition for a summary order in the bankruptcy proceeding. (Reed *v.* Barnett Nat. Bank of Jacksonville. In re Long, 250 Fed. Rep., 983.)

Assignments—Actions by assignee—Defenses.

(U. S. C. C. A., 1918.) All defenses and set-offs available against an assignor of a chose in action are available against his assignee. (Wagner et al. *v.* Central Banking & Security Co., 249 Fed. Rep., 145.)

POWERS.

Corporations—Ultra vires note—Right to urge defense.

(U. S. C. C. A., 1918.) In an action by a bank on a note of a corporation indorsed by another, where it was contended that the note was ultra vires, the corporation, having received from the original and primary debtors, who used the note, full satisfaction of the amount, is not entitled to urge the defense of ultra vires. (Burke Brick Co. et al. *v.* First Nat. Bank of Cape Girardeau, Mo. Burke Bros. *v.* Same. Burke et al. *v.* Same, 249 Fed. Rep., 607.)

Power to negotiate loans for others.

(Oreg. Sup., 1917.) National banks have no power to negotiate loans for others. (Pollock *v.* Lumbermen's National Bank of Portland, 168 Pacific Reporter, 616.)

Action against national bank—Defense.

(Oreg. Sup., 1917.) A national bank's want of authority to act as broker in negotiating a loan for another is available as a defense to the bank, in an action against it by the lender, for whom it acted, for damages from its failure to lend on sound security. (Pollock *v.* Lumbermen's National Bank of Portland, 168 Pacific Reporter, 616.)

SHAREHOLDERS.

Right of Shareholder to Inspect List of Shareholders.

Stockholder in national bank may inspect list of stockholders.

(Ky. Appeals, 1913.) A bona fide stockholder in a national bank is entitled to inspect the list of stockholders under the statute and take such memoranda therefrom as he may wish without regard to his motive for making the inspection. But one who is not a stockholder in good faith is not entitled to such inspection, and will not be aided by injunction to obtain it. (Murray et al. *v.* Walker, 156 Ky., 536.)

Assessments.

Stockholders—Double liability.

(U. S. C. C. A., 1917.) Where a person, with full knowledge of the fact, becomes a record shareholder in a national banking association, the double liability imposed by Rev. St., section 5151, continues until by his act he removes his name from the record, and a transfer of his shares without a change in the corporate records does not free him from liability. (Williams *v.* Vreeland, 244 Fed. Rep., 346.)

Shareholders—Liability—"Ratification."

(U. S. C. C. A., 1917.) Where a person becomes and for a time continues to be a registered shareholder in a national banking association without knowledge of that fact, he does not incur the double liability imposed by Rev. St., section 5151, unless he approves the transfer by a ratification which implies an intended approval with full knowledge, and until such ostensible shareholder does or assents to some act of the party creating the alleged relation, no estoppel can arise. (Ib.)

Shareholders—Prima facie liability.

(U. S. C. C. A., 1917.) Proof that defendant was a shareholder of record in a national banking association and that she did nothing to remove her name establishes a prima facie case of the liability to assessment for the double liability imposed by Rev. St., section 5151. (Ib.)

Suit against stockholder—Burden of proof—Shifting of burden.

(U. S. C. C. A., 1917.) Where a bank receiver suing to enforce an assessment against a shareholder makes out a prima facie case, the burden of proving nonliability shifts to the shareholder. (Ib.)

Shareholders—Liability—"Ratification."

(U. S. C. C. A., 1917.) Where a husband without her knowledge transferred to his wife on the books of a national banking association stock owned by him the wife's indorsement of a check payable to the husband and indorsed by him, which was drawn in payment of a dividend declared before the transfer, does not amount to a ratification rendering her liable as a shareholder; the check not indicating that she was the holder of the shares. (Ib.)

Stockholders—Liability—Evidence—"Ratification."

(U. S. C. C. A., 1917.) In suit by the receiver of a national bank to enforce an assessment against defendant, who appeared on the books of the association as a shareholder, where defendant denied liability on the ground that the shares had been transferred to her by her husband without her knowledge, and that she had never ratified the transaction, the fact that defendant, at the request of of her husband, who, in answer to questions, merely informed her that he had made a mistake, indorsed a power of attorney on the back of the certificates to such stock, did not, where she was not informed that the certificates were in her name, establish a ratification of the transfer, rendering defendant liable as a shareholder, and a contrary finding was warranted. (Ib.)

Evidence—Presumptions.

(U. S. C. C. A., 1917.) Where a wife indorsed certificates of bank stock which had been transferred on the books of the banking association to her by her husband without knowledge, there is a presumption of law that she knew the nature of the transaction. (Ib.)

Evidence—Presumptions—Effect.

(U. S. C. C. A., 1917.) A presumption stands in lieu of evidence of the fact, and may support a finding if not rebutted. (Ib.)

Appeal and error—Review—Verdict.

(U. S. C. C. A., 1917.) Where the presumptions and evidence are conflicting, a verdict of the jury thereon is conclusive. (Ib.)

Trial—Binding instruction—Effect of request.

(U. S. C. C. A., 1917.) A prayer by each party for binding instructions in his favor is equivalent to a joint request for a finding of fact by the court, and does not amount to a submission without the intervention of a jury within Rev. St., sections 649, 700 (Comp. St. 1916, sections 1587, 1668); hence the direction of a verdict by the court is conclusive. (Ib.)

Comptroller has discretionary power to withdraw assessment.

(U. S. Sup., 1917.) Comptroller of Currency has discretionary power to withdraw assessment on shareholders before it is paid, or when partly paid. (Korbly *v.* Springfield Inst. for Savings, 245 U. S. R., 330.)

When second assessment is void.

(U. S. Sup., 1917.) Where sums paid by savings banks to receiver of national bank in which they held shares were intended to be applied against their liabilities under National Bank Act, to enforce which an assessment was then outstanding, second assessment, exceeding difference between their statutory liabilities and amounts so paid, is void. (Ib.)

TAXATION.

Taxation—National banks—"Capital stock."

(U. S. Dist. Ct., 1917.) Rev. St. § 5219 (Act June 3, 1864, c. 106, § 41, 13 Stat. 111, as amended by Act Feb. 10, 1868, c. 7, 15 Stat. 34 [Comp. St. 1916, § 9784]), empowers states to tax shares of stock of national banks by including them in the valuation of the personal property of the owners, subject to the restriction that shares owned by nonresidents shall be fixed in the city or town where the bank is located. Act Dec. 23, 1913, c. 6, 38 Stat. 251, providing for Federal Reserve Banks, by section 2 (Comp. St. 1916, § 9786), requires national banks to accept its provisions under penalty of forfeiture of franchise, and provides the percentage of subscriptions to the stock of Federal Reserve Banks, while section 7 (section 9791) declares that Federal Reserve Banks, including the capital stock and surplus therein, shall be exempt from taxation. *Held* that, as the "capital stock" of a corporation differs from the shares of stock and is the property or funds contributed by stockholders as a basis for the business, section 5219 was not modified by Act Dec. 23, 1913, and taxes assessed against an Ohio National bank under Gen. Code, Ohio, §§ 5408, 5410, 5411, 5412, 5672, on account of the bank's ownership of shares of stock in a Federal Reserve Bank, are collectible, and no exemption can be allowed because the capital stock of the Reserve Bank is exempt. (First National Bank of Cincinnati *v.* Durr County Auditor et al., 246 Fed. Rep., 163.)

DIGEST OF DECISIONS RELATING TO NATIONAL BANKS.

[The following Federal cases were reported in vol. 246-248, United States Reports, and vols. 251 to 258, Federal Reporter. One State case from North Carolina is also given.]

COLLECTIONS.

Sale of stock for customer—Liability for fraud of customer.

(U. S. C. C. A., 1919.) A bank *held* not liable in tort for the sale, for account of a customer, of shares of stock owned by plaintiff, where plaintiff had indorsed the certificates in blank and forwarded them to the customer as a broker for sale, and there was no evidence that the bank had knowledge or notice of his ownership. (Snowden *v.* Marine Natl. Bank of Pittsburgh, 256 Fed. Rep., 350.)

DEPOSITS.

Deposits in court—Public moneys of United States.

(U. S. C. C. A., 1919.) Moneys in court deposited in a designated depositary of the United States are not public moneys of the United States. (Chatham & Phenix Natl. Bank of the City of New York *v.* Guaranty Trust Co. of New York, 256 Fed. Rep., 90.)

Deposits in court—Deposits of money by Federal court—Interest.

(U. S. C. C. A., 1919.) An order by the Secretary of the Treasury requiring depositary banks to pay interest on daily balances on all deposits by government agencies, including courts, does not authorize a court to order a bank to pay interest on a deposit by its clerk to a party to a suit. (Ib.)

EXTENSION OF CHARTER.

Renewing charter of national banks—Withdrawal of stockholder—Notice.

(U. S. C. C. A., 1919.) Under Act July 12, 1882, § 5, providing that a stockholder, not assenting to amendment of articles of a national banking association, extending its existence, may give notice to directors of desire to withdraw, whereupon he shall be entitled to receive the value of his shares, ascertained by appraisers selected by him and the directors, notice to the president, unless shown to have been communicated to the directors, is insufficient. (Conway *v.* First National Bank of Rome, Ga., 256 Fed. Rep., 277.)

Renewing charter of national banks—Withdrawal of stockholder—Notice.

(U. S. C. C. A., 1919.) Resolution of directors of national bank, authorizing president to apply to Comptroller of Currency for approval of amendment of its charter extending its existence, did not authorize him to receive or waive notice for them, under Act July 12, 1882, § 5, from a nonassenting stockholder, of desire to withdraw. (Ib.)

Renewing charter of national banks—Withdrawal of stockholder—Notice.

(U. S. C. C. A., 1919.) Under Act July 2, 1882, § 5, as to notice of desire to withdraw, which a stockholder, not assenting to amendment of articles of national banking association extending existence, is authorized to give "within 30 days from date of the certificate of approval," notice can be given only when and after the amendment has been approved by the Comptroller. (Ib.)

Renewing charter of national banks—Withdrawal of stockholder—Notice.

(U. S. C. C. A., 1919.) That letter of stockholder, in answer to request of president for consent to disposition of certain assets, preparatory to examination by Comptroller, as preliminary to renewal of charter, stating that he had bought his stock with intention to liquidate it, and was not in position to carry it permanently, was not intended as the formal notice of desire to withdraw, required by Act July 12, 1882, § 5, to be given by stockholder not assenting to extension of existence of national banking association, is apparent from the language used. (Ib.)

Renewing charter of national banks—Withdrawal of stockholder—Notice.

(U. S. C. C. A., 1919.) That letter by stockholder to president of national banking association, relative to disposition of certain assets preliminary to extension of existence, was not intended to be treated, even by the stockholder, as a substitute for the formal notice of desire to withdraw, required by Act July 12, 1882, § 5, is apparent from subsequent efforts of stockholder to ascertain when the notice must be given, and his actual attempt to give it. (Ib.)

Renewing charter of national banks—Withdrawal of stockholder—Notice—Estoppel.

(U. S. C. C. A., 1919.) Want of authority of president of national banking association to represent it in respect to notice of desire to withdraw, which stockholder not assenting to renewal of its charter must, under Act July 12, 1882, § 5, give to the directors, prevents the bank being estopped to deny sufficiency of notice too late under the statute, but within the time that the president is claimed to have told the stockholder's representative that it could be given, especially when this was in a casual conversation, and the president did not assume to act for the bank, and had no reason to believe he was talking to a representative of the stockholder. (Ib.)

Renewing charter of national banks—Withdrawal of member—Notice—Information as to time.

(U. S. C. C. A., 1919.) The directors of a national banking association, to whom, within 30 days after approval by Comptroller of Currency of amendment of its articles extending its existence, a nonassenting stockholder must give notice of desire to withdraw, entitling him to receive from the bank the appraised value of his shares, are under no duty to give information of the approval, in the absence of request. (Ib.)

INSOLVENCY AND RECEIVERS.

Insolvency—Claims.

(U. S. D. C., 1918.) On insolvency of national bank and appointment of receiver, creditor becomes equitable cestui que trust in assets in proportion that his claim bears to total amount, and his right to participate may not be diminished by claims arising subsequently to insolvency; right to participate being determined as of date of insolvency. (In re United Grocery Co., 253 Fed. Rep., 267.)

General deposit—Relationship of "Debtor and creditor."

(U. S. D. C., 1918.) A general deposit of money in a checking account with a bank created simply the relation of "debtor and creditor" between the bank and the depositor. (Ib.)

Liability of Receivers Under Sec. 5209.

Section 5209 Revised Statutes does not apply to receivers of national banks appointed by the Comptroller of the Currency under Revised Statutes, section 5234.

(U. S. Sup. Ct., 1918.) Receiver of national bank appointed by Comptroller of the Currency is officer of the United States, not agent of the bank. (U. S. *v.* Weitzel, 246 U. S., 533.)

Statutes not to be extended by intendment.

(U. S. Sup. Ct., 1918.) Statutes creating and defining crimes are not to be extended by intendment upon the ground that they should have been made more comprehensive. (Ib.)

Note.—Sec. 5209 was amended on Sept. 26, 1918, making receiver liable for all violations of this section.

INSURANCE.

Insurance—Burglary insurance—Risks insured.

(U. S. C. C. A., 1919.) A bank's burglary insurance policy, covering loss (*a*) by abstraction from its locked safe by force; (*b*) by damage to money, securities, safe, and furniture caused by forcible entry or attempted entry into the safe or premises; and (*c*) loss by robbery (1) from within the banking inclosure; (2) from an officer or employé transferring money between the inclosure and safe; and (3) from within the safe, by compelling an officer or employé to unlock the safe, *held* to cover losses from safe only when the safe is closed and locked and entrance is effected by either "cracking" the safe or forcibly compelling an officer or employé to open it, and not to cover loss where money was taken from an open safe. (Franklin State Bank *v.* Maryland Casualty Co. Same *v.* United States Fidelity and Guaranty Co., 256 Fed. Rep., 356.)

Insurance—Burglary insurance—Breach of warranty—Error in description of equipment.

(U. S. C. C. A., 1919.) Although false statement in schedul of bank's burglary insurance policy that insured's safe was locked by both combination and time lock might be deemed merely an "error in description of equipment," which would reduce the indemnity, in case of loss, yet the statement, "All combination and time locks will be continued to be regularly used during the currency of the policy," was a promissory warranty, breach of which avoided the policy. (Ib.)

Insurance—Breach of warranty—Effect—Contributing to loss.

(U. S. C. C. A., 1919.) Breach of insured's warranty will avoid his policy, though such breach does not contribute to the loss. (Ib.)

INTEREST AND USURY.

Holding back part of loan as deposit is usury.

(N. C. Sup. Ct., 1919.) Where a national bank loans money at the highest rate of interest and holds back 20 per cent of the amount loaned on general deposit and not subject to the borrower's check, charging interest on the entire amount, the transaction is usurious. In an action by the bank on the notes given by the borrower, it was held that the bank could recover only the principal amount of the loan and not the interest agreed upon by the parties. It was also held that the borrower was not entitled to counterclaim in this action for the penalty of twice the amount of the usurious interest paid and that this could be recovered only by a separate and independent action against the bank. (Planters' National Bank of Virginia *v.* Wysong & Miles Co., 99 S. E. Rep., 199.)

LIQUIDATION.

Liquidation of national banks—Suit against stockholders.

(U. S. C. C. A., 1918.) Contract for consolidation between two national banks by which one agreed to voluntary liquidate and transfer all its assets to the other, which agreed to act as its liquidating agent and to pay all claims against it, construed, and, as acted upon by the parties, held to create the relation of debtor and creditor between them, which would support a suit against the stockholders of the liquidating bank on the insufficiency of its assets to pay its debts. (American Nat. Bank of Macon *v.* Commercial Nat. Bank of Macon et al., 254 Fed. Rep., 249.)

OFFICERS.

Bonds of Officers.

Principal and surety—Fidelity bonds—Renewals—Avoidance for breach of warranties.

(U. S. C. C. A., 1919.) A surety company, which executed a bond, insuring the fidelity of a bank cashier, and annual renewals thereof, each "subject to all the covenants and conditions" of the original bond, and made in consideration of a written statement by the bank that the cashier was not then in default, which statements were by the original bond made warranties, *held* not liable for defaults occurring after the original term, where it was shown that the cashier was in default during such term, and that all renewal statements to the contrary were false. (Green *v.* Interstate Casualty Co., 256 Fed. Rep., 81.)

Powers of and Representation of Bank by Officers.

Discharge—Money obtained by means of a material false statement in writing.

(U. S. C. C. A., 1919.) Credit extended to a bankrupt by a bank through its cashier, who knew that the bankrupt was then insolvent, and who was acting solely in his own and the bankrupt's interest, was fraudulent and voidable, and the bank was not bound by its cashier's fraud, and could claim that the money was obtained by means of a material false statement in writing as to money not checked out, where the directors of the bank examined note signed by bankrupt and false financial statement attached thereto, and relying thereupon, approved the loan. (Bank of Commerce & Savings *v.* Matthews, 257 Fed. Rep., 292.)

Questions of fact—Remanding case.

(U. S. C. C. A., 1919.) On appeal from an order discharging a bankrupt over an objection that the bankrupt had obtained money by means of a materially false statement in writing, where it was found that the master had erred in finding that the false statement was not relied upon by the bank in extending the credit, and it appeared the master had made no finding as to whether the statement in writing was known to be false by the bankrupt, a finding by the trial judge from the printed record that the bankrupt did not read the statement or know its contents will not be allowed to stand, and the order of discharge will be reversed, so that the uncontradicted testimony of the bankrupt to such effect can be heard and its truth decided upon an observation of the witness, as well as upon his testimony. (Ib.)

Corporations—Representation by officer—Bank checks—Indorsements.

(U. S. C. C. A., 1918.) Indorsements of checks by a corporation's secretary are all in effect in the name of payee corporation by its secretary, though, in some, "Company" is abbreviated to "Co.," and "Secretary" to "Secy.," or "Sec." (Santa Marina Co. *v.* Canadian Bank of Commerce, 254 Fed. Rep., 391.)

Corporations—Secretary—Authority to indorse checks—Evidence.

(U. S. C. C. A., 1918.) Evidence *held* to show that secretary of corporation, with knowledge and consent of its president and board of directors, was authorized to indorse checks payable to it, as for five years he did. (Ib.)

Bills and notes—Checks—Negotiability—"General indorsement."

(U. S. C. C. A., 1918.) Checks with "general indorsement," defined by Civ. Code Cal. § 3112 as one by which no indorsee is named, are negotiable instruments. (Ib.)

Corporations—Authority of secretary—Indorsing checks.

(U. S. C. C. A., 1918.) Authority of secretary of a corporation to indorse in blank checks payable to it was not limited by the mere fact that its president and board of directors supposed he deposited them with its bank. (Ib.)

Checks—Deposits.

(U. S. C. C. A., 1918.) Secretary of corporation having authority to indorse in blank checks payable to it, title to checks so indorsed passed on delivery to his bank, when tendered by him to it for deposit to his own account, unless it had timely notice that he had no title, or it acted in bad faith in receiving them. (Ib.)

Deposits—Estoppel.

(U. S. C. C. A., 1918.) A corporation, which gives its secretary authority to indorse in blank checks payable to it, is estopped to recover of his bank, which acted in good faith in receiving them for deposit to his account. (Ib.)

Appeal and error—Matters reviewable.

(U. S. C. C. A., 1918.) Appeal from decree by plaintiff alone brings up for review only what was decided adversely to him, and not whether decree, so far as favorable to him, was erroneous. (Ib.)

Certificate of deposit—Issuance for individual debt—Risk of authority.

(U. S. C. C. A., 1919.) One to whom a bank's president, in payment of his individual debt, issued its certificate of deposit, accepted with knowledge thereof, took the risk of the president's authority, depending on whether there had been a contemporaneous deposit, as recited in the certificate; the principle that his general powers would give apparent authority not applying, where he is known to be acting in his own interest. (First Nat. Bank of Sweetwater, Tex., *v.* Rust et al., 257 Fed. Rep., 29.)

Certificate of deposit—Issuance for individual debt—Authority—Burden of proof.

(U. S. C. C. A., 1919.) One to whom a bank's president issued its certificate of deposit in payment of his individual debt, accepted with knowledge thereof, seeking to hold the bank thereon, has the burden of proving the making of the recited contemporaneous deposit, necessary for the authority to issue certificate. (Ib.)

Certificate of deposit—Evidence of deposit.

(U. S. C. C. A., 1919.) A bank's certificate of deposit having been issued by its president in payment of his individual debt, and accepted with knowledge thereof, neither recital in certificate nor statement in letter of president to person receiving the certificate is evidence against bank of deposit having been made, necessary for president's authority to issue certificate. (Ib.)

Statement of bank president—Past transaction.

(U. S. C. C. A., 1919.) Statement of president of bank, to one to whom its certificate of deposit had been issued by its prior president in payment of his individual debt, that its books showed the deposit called for thereby, is not inadmissible against it, in the absence of injury therefrom raising an estoppel; it amounting to an admission that past transactions had occurred and had been evidenced by the bank's books. (Ib.)

Representation of bank by officers—Notice to officers.

(U. S. Dist. Ct., 1919.) Knowledge obtained by an officer of a bank as an individual, and not as an officer of the bank, can not be imputed to the bank, or permitted to operate to its prejudice. (Coleman et al *v.* Shortsville Wheel Co., 257 Fed. Rep., 591.)

Discount of note—Rights against maker and indorser.

(U. S. Dist. Ct., 1919.) A bank, holding the note of a customer for valuable consideration, is not bound by an arrangement between the maker and indorser as to its payment, of which the bank had no knowledge. (Ib.)

Discount of note—Effect of renewal.

(U. S. Dist. Ct., 1919.) The rights of a bank upon a renewal note can not be affected by knowledge which it obtained after it acquired the original note for value and prior to the renewal. (Ib.)

OFFICERS, CIVIL LIABILITY OF.

Liability of Directors for Mismanagement.

Liability of directors for declaring dividends out of capital.

(U. S. C. C. A., 1917.) The liability of directors of a national bank for voting and declaring dividends out of the capital is not absolute, and they are not liable if they exercise reasonable diligence and acted in good faith, in the belief that the dividends were payable from net profits. (Williams *v.* Spensley et al., 251 Fed. Rep., 58.)

Directors—Liability—Dividends.

(U. S. C. C. A., 1919.) In an action by a national bank against a former director to recover, on the theory that a dividend had improperly been declared, held, that the declaration of the dividend, which was at the suggestion of the Comptroller of the Currency to wind up branches of the bank, was not improper, and no liability could be predicated thereon, as practically the whole of the dividend was immediately transferred to the bank by the stockholders. (First National Bank of Fairbanks *v.* Noyes, 257 Fed. Rep., 593.)

Degree of Care Required of Directors.

Directors—Liability.

(U. S. C. C. A., 1919.) Directors of a national bank owe a common-law duty to exercise ordinary care and prudence in the administration of the affairs of the bank, and they should not be shielded from liability for want of knowledge of wrongdoing, if that ignorance is the result of gross inattention; but they can not be held responsible for the wrongful act of other directors, nor to intimately know to whom credits are given. (First National Bank of Fairbanks *v.* Noyes, 257 Fed. Rep., 593.)

Directors—Liability.

(U. S. C. C. A., 1919.) In an action by a national bank against a director to recover for various losses, including improper extension of credits, claimed to have resulted from the director's neglect, evidence held insufficient to show that the director was liable, either at common-law or under the National Banking Act. (Ib.)

Directors—Liability.

(U. S. C. C. A., 1919.) Where a national bank seeks to recover against a director for a loss resulting from the director's violation of a duty imposed by the National Banking Act, proof of something more than negligence is required, and there must be proof that the violation was in effect intentional. (Ib.)

LIABILITY OF DIRECTORS FOR ASSENTING TO EXCESSIVE LOANS.

Equitable estoppel—What constitutes.

(U. S. C. C. A., 1919.) That a director of a national bank signed his name to reports to the Comptroller of the Currency, representing branches maintained by the bank to be separate institutions, held, as the bank knew all the facts in relation thereto, and did not act to its detriment in reliance on the reports, not to estop the director from asserting, in a suit by the bank to recover against him because of excessive loans to a branch, that such branches were part of the bank itself. (First National Bank of Fairbanks *v.* Noyes, 257 Fed. Rep., 593.)

Branch banks—What are.

(U. S. C. C. A., 1919.) In an action by a national bank against a former director to recover on account of excessive loans to alleged separate institutions, etc., held, that such institutions were branches maintained by the bank to purchase gold dust, so statements to the Comptroller showing the condition of accounts between the bank and branches were not notice to the director of loans to the branches, or of loans made to borrowers under authority of the bank. (Ib.)

Directors—Liability.

(U. S. C. C. A., 1919.) A director of a national bank, who was not familiar with banking business, held not negligent because he did not examine into advances made by the bank to branches which it maintained, and no recovery can be had on ground of excessive loans by the branches, where the president and majority stockholders of the bank represented all sums sent to the branches were for purchase of gold dust. (Ib.)

OFFICERS, CRIMINAL LIABILITY OF.

PROSECUTIONS.

INDICTMENTS.

Procedure.

(U. S. Dist. Ct., 1919.) Indictments should not be presented to the grand jury without leave of court, where there appears no real necessity for proceeding without a preliminary hearing before a magistrate or commissioner. (United States *v.* Jenks, 258 Fed. Rep., 763.)

Venue.

(U. S. Dist. Ct., 1919.) An indictment is demurrable which does not set out that the offense charged was committed within the jurisdiction of the court. (Ib.)

Embezzlement—Intent.

(U. S. Dist. Ct., 1919.) Intent to defraud is an essential element of a violation of Rev. St., sec. 5209, as amended by act Sept. 26, 1918, relating to embezzlement, etc., by officer, director, agent, or employee of any Federal Reserve Bank or member bank. (Ib.)

Conspiracy—Venue.

(U. S. Dist. Ct., 1919.) An indictment for conspiracy is not fatally defective, where it alleges the place where the overt acts are charged to have been done, although the venue of the conspiracy is not set out. (Ib.)

To defraud the United States.

(U. S. Dist. Ct., 1919.) One could not be convicted of conspiracy to defraud the United States, consisting in exercising, under a certain circular issued by the Treasury Department, the privilege of converting first Liberty loan 4 per cent bonds into third Liberty loan 4¼ per cent bonds after the time limit set out in the circular had expired, using for that purpose bonds of the United States deposited with the Federal Reserve Bank, unless it be shown that the accused had knowledge of the terms of the circular or of the time within which the conversion privilege could be exercised. (Ib.)

False Entries.

Offenses by officers of national bank—Making false report.

(U. S. C. C. A., 1919.) An indictment against an officer of a national bank, under Rev. St., sec. 5209 (Comp. St., sec. 9772), for making a false entry in a report, is not duplicitous because it charges that the entry was made with intent to injure and defraud the bank and to deceive the Comptroller of the Currency, and any agent appointed to examine the affairs of the bank. (Boone *v.* United States, 257 Fed. Rep., 963.)

Offenses by officers of national bank—Indictment.

(U. S. C. C.A., 1919.) An indictment against the president of a national bank held to properly charge him, not as principal, but as accessory to the making of a false entry in a report to the Comptroller, in that he abetted, aided, counseled, and procured such entry to be made by the cashier. (Ib.)

Offenses by officers of national bank—Trial—Evidence.

(U. S. C. C. A., 1919.) On trial of the president of a national bank, charged with aiding and abetting the making of false reports to the Comptroller, evidence of the condition of his account and his indebtedness to the bank, although as it stood at a later date than the reports, held admissible. (Ib.)

Offenses by officers of national bank—Trial—Sufficiency of evidence.

(U. S. C. C. A., 1919.) Evidence on trial of the president of a national bank for violation of the statute held sufficient to require submission of the case to the jury. (Ib.)

Reversal—Sufficiency of evidence.

(U. S. C. C. A., 1919.) That the evidence in support of the charges in certain counts of an indictment, on which defendant was acquitted, was stronger than that under the single count, on which he was convicted, is not ground for reversal. (Ib.)

Offenses.

(U. S. C. C. A., 1918.) In a prosecution against the president of a national banking association and his successor, under Rev. St., sec. 5209 (Compt. St., sec. 9772), for directing false entries in the books with intent to deceive and for misapplication of funds, evidence held sufficient to sustain a conviction. (Galbreath et al. *v.* United States, 257 Fed. Rep., 648.)

Offenses—Intent.

(U. S. C. C. A., 1918.) In a prosecution, under Rev. St., sec. 5209 (Comp. St., sec. 9772), against the president and another officer of a national banking association for misapplication of funds and for directing false entries in the books, a showing that the false entries were made with intent to deceive, and that the misapplications were made to injure or defraud bank, is essential to conviction. (Ib.)

Offenses—Intent.

(U. S. C. C. A., 1918.) In a prosecution, under Rev. St., sec. 5209 (Comp. St., sec. 9772), against the president and another officer of a bank for making false entries in the books and misapplying funds, evidence held sufficient to carry to the jury the question whether the entries were made with intent to deceive and the misapplications with intent to injure or defraud the bank. (Ib.)

Offenses—Intent.

(U. S. C. C. A., 1918.) An intent to injure or defraud a national banking association by misapplication of funds, which offense is defined by Rev. St., sec. 5209 (Comp. St., sec. 9772), is not inconsistent with the desire for the ultimate success and welfare of the bank, and such intent may, within the meaning of the law, result from an unlawful act voluntarily done, the natural tendency of which is to injure the bank. (Ib.)

Appeal—Presumptions—Judgment.

(U. S. C. C. A., 1918.) Where there is a good count in the indictment, and the evidence is sufficient in law to support it, and judgment is such as might have been imposed upon it alone, the presumption is that it was imposed upon the good count, supported by evidence, and will not be reversed, though there are bad counts, or counts unsupported by evidence. (Ib.)

National banks—Offenses—Evidence.

(U. S. C. C. A., 1918.) In a prosecution under Rev. St., sec. 5209 (Comp. St., sec. 9772), against the president and another officer of the national bank for misapplying funds and making false entries in the books, which practices occurred in connection with loans and advances to a company in which those officers were interested, the admission in evidence of parts of the record in bankruptcy proceedings of such company, showing it was adjudicated a bankrupt on admission in writing that it was entirely insolvent, and that dividends of only 10 per cent were paid, was proper, though the last transaction charged in the indictment occurred six months before the bankruptcy. (Galbreath et al. *v.* United States, 257 Fed. Rep., 648.)

Evidences of other offenses—Remoteness.

(U. S. C. C. A., 1918.) In a prosecution under Rev. St., sec. 5209 (Comp. St., sec. 9772), against the president and another officer of a bank for misapplying its funds and making false entries in the books in connection with loans and advances to a company which became insolvent, evidence of similar transactions occurring two or three years before those set forth in the indictment is admissible, over the objection of remoteness. (Ib.)

Review—Evidence—Secondary evidence.

(U. S. C. C. A., 1918.) The sufficiency of proof of loss of records to warrant the admission of secondary evidence of their contents is primarily addressed to the trial judge, whose findings should not be disturbed, unless plainly wrong. (Ib.)

Secondary evidence—Loss of books.

(U. S. C. C. A., 1918.) In a prosecution against the president and another officer of a bank for misapplication of funds and the making of false entries in the books in connection with loans and advances to a corporation which became bankrupt, testimony by an expert accountant, who had examined the books and records of the company which became a bankrupt, and had made summaries thereof, held admissible on proof of loss of such books and records. (Ib.)

Harmless error—Evidence—Instructions.

(U. S. C. C. A., 1918.) In a prosecution against the president and director of a bank for making false entries and misapplication of funds in connection with loans to a company which became bankrupt, the admission of evidence of the contents of books and records of such bankrupt was not error, where the court charged there was no presumption that defendants knew the contents of such books, and that the evidence could be considered only to the extent it was shown defendants did have knowledge of contents. (Ib.)

Evidence—Secondary evidence.

(U. S. C. C. A., 1918.) In a prosecution against officers of a national bank, who were charged with making false entries, etc., an expert accountant may testify as to summaries which he made of the contents of such books, in connection with loans to a company which became bankrupt and whose books were lost; the fact that the accountant reversed certain items in making his summary not rendering the testimony inadmissible, where the changes were explained by him to the jury. (Ib.)

Misapplication of funds—Intent.

(U. S. C. C. A., 1919.) In a prosecution under Rev. St., sec. 5209 (Comp. St., sec. 9772), where it was charged that defendant, while acting as the cashier of a national banking association, willfully misapplied its moneys, funds, or credits, and such misapplications were effected by the payment of checks drawn on the bank by persons having no money or funds to their credit who were insolvent and financially unable to pay the sums, evidence that defendant, while acting as cashier, obtained money from the bank by discounting a note which he knew to be a forgery, is admissible to show intent. (Apgar *v.* United States, 255 Fed. Rep., 16.)

Trial and its Incidents.

DRAWING OF JURY.

Drawing of jurors—Rule in United States court—Trial of criminal cases.

(U. S. C. C. A., 1919.) In the absence of a rule and order governing the drawing of jurors for the trial of cases in the Federal courts, that matter is in control of those courts, subject only to the restrictions Congress has prescribed and to such limitations as are recognized by the settled principles of criminal law. (Apgar *v.* United States, 255 Fed. Rep., 16.)

Jury—Petit jury—Panel.

(U. S. C. C. A., 1919.) Though district judge who was designated to hold court in an adjoining district entered an order while without the district directing that the panel of petit jurors be drawn, *held* that, as the Judicial Code does not make such an order a prerequisite to the validity of a drawing of the names of those to be summoned to serve as petit jurors, the action of the jury commissioner in following the order amounted to no more than the drawing of jurors without an order, which irregularity the District Court could waive. (Ib.)

Jury—Petit jury—Drawing.

(U. S. C. C. A., 1919.) Where a district judge was designated to hold court in an adjacent district with the powers provided for by Judicial Code, sec. 14 (Comp. St., sec. 981), *held*, under section 19 (section 986), and in view of section 17 (section 984), that an order entered by such judge, while without the second district directing the drawing of petit jurors, was valid, for the order was one which could be made by the judge while in chambers, and it is not necessary that it be made within the territorial limits of the district wherein it was to be effective, as the judge's chambers are considered to be where he is and authorized to be engaged in performing his judicial duties. (Ib.)

APPEAL.

Appeal.

(U. S. C. C. A., 1919.) Where plea in abatement to indictment did not show that the district judge appointing the jury commissioner was without the district at the time he entered the order and the record did not show that fact, the overruling of the plea can not be held erroneous on writ of error. (Apgar *v.* United States, 255 Fed. Rep., 16.)

Review—Harmless error.

(U. S. C. C. A., 1919.) Where defendant was convicted on many counts, and sentenced to a penitentiary term of five years on each count, the terms to be served concurrently, an error in the charge, affecting the conviction as to only one count is harmless and no ground for reversal. (Ib.)

Trial—Instructions.

(U. S. C. C. A., 1919.) The refusal of requested charges fairly covered by the charge given is not error. (Ib.)

TAXATION.

State taxation of the property or shares of national banks determined exclusively by section 5219, Revised Statutes.

(U. S. Sup. Ct., 1919.) The extent to which the States may tax the property of the shares of national banks is determined exclusively by section 5219 of the Revised Statutes. (Bank of California, National Association, *v.* Richardson, Treasurer of the State of California, 248 U. S., 476.)

(U. S. Sup. Ct., 1919.) The object of the section is to avoid withdrawing the financial resources of national banks from the reach of State taxation, and at the same time to protect the banks as Federal agencies from State interference. It therefore, with certain restrictions, permits the shares of the bank to be taxed to the shareholders, and, in the aspect treats the ultimate beneficial interest of the bank and the shareholders as one, subject to but one taxation and by that method only. (Ib.)

Shares of State bank held by national bank, how taxed.

(U. S. Sup. Ct., 1919.) Shares of State bank, when held by national bank, can be reached only by tax upon shares of latter, and are not taxable to bank itself. (Ib.)

Shares of national bank held by another national bank, how taxed.

(U. S. Sup. Ct., 1919.) Shares of national bank, held by another national bank, are taxable only to latter as shareholder, and are not to be included in valuing shares of latter when taxing its shareholders. (Ib.)

DEDUCTIONS.

Bank stock—Exclusion from assets of Federal Reserve Bank stock—Statute.

(U. S. C. C. A., 1918.) Despite Federal Reserve Act Dec. 23, 1913 (Comp. St., secs. 9785–9805), under Rev. St., sec. 5219 (Comp. St., sec. 9784), stockholders of a national bank were not entitled, for purposes of the assessment of state, county, and municipal taxes, to any deduction of the value of their holdings on account of the bank's holdings of Federal Reserve Bank stock. (First Nat. Bank of Cincinnati *v.* Beaman et al, 257 Fed. Rep., 729.)

Liberty bonds—Bank stock—State statutes.

(U. S. Dis. Ct., 1918.) Liberty bonds, declared exempt from taxation by the statute under which they are issued, are indirectly taxed, in violation thereof and its underlying principles, when owned by a bank, by tax under Code Supp. Iowa 1913, sec. 1322, providing that its shares shall be assessed to its stockholders, the value thereof to be based on its capital, surplus, and undivided earnings, and its property not to be otherwise assessed; the bonds being considered in determining the value of the stock, and the bank's property being in truth assessed. (Iowa Loan and Trust Co. *v.* Fairweather, 252 Fed. Rep., 605.)

Internal revenue—Excise taxes—Calculation—Deduction of State taxes.

(U. S. D. C., 1918.) State, county, and municipal taxes paid by a bank under Laws Fla., 1907, c. 5596, sec. 8, constitute a liability of the bank, and not its stockholders, and are to be deducted from the gross income of the bank, to ascertain the net amount on which the 1 per cent. of excise tax under Act Aug. 5, 1909, sec. 38, cl. 2, subd. 4, is to be calculated. (United States *v.* Guaranty Trust and Savings Bank, 253 Fed. Rep., 291.)

TRUSTS.

Trusts—Resulting trust—Payment of purchase money for land.

(U. S. C. C. A., 1919.) One who buys land with money of another as his representative, but takes conveyance to himself, holds the title in trust for such other. (Pollman et al *v.* Curtice et al, 255 Fed. Rep., 628.)

Notice to president.

(U. S. C. C. A., 1919.) A bank, which through its president and managing officer made a loan on land, and the president, who afterward bought the land subject to the mortgage, *held* not bona fide purchasers for value without notice, where the grantor in fact held the title in trust for another, who on purchase of the land a year before paid the consideration, which was known to the president, through whom the negotiations were conducted, and who also knew other facts sufficient to put him on inquiry, and whose knowledge was attributable to the bank. (Ib.)