FEDERAL RESERVE BOARD

WASHINGTON

X-4414

ADDRESS OFFICIAL CORRESPONDENCE TO
THE FEDERAL RESERVE BOARD

September 3, 1925.

Dear Sir:

Under date of August 17 Mr. Wyatt wrote you that he had been advised by Mr. McConkey that the Court of Appeals at Springfield, Missouri, had confirmed the preference obtained by the Federal reserve bank in the Circuit Court in the Bank of Oran case. This office has now received from Mr. McConkey a copy of the opinion in this case, together with a copy of the opinion in the case of the Bank of Poplar Bluff v. Frank C. Millspaugh, which latter case was decided by the Court of Appeals at Springfield, Missouri, at the same time that the Bank of Oran case was decided. The facts in the Bank of Poplar Bluff case were essentially the same as those in the Oran case and the Court decided the Poplar Bluff case and then based its decision in the Oran case upon it. Therefore, the reasoning of the Court upon which the decision in the Oran case rests is contained largely in the Bank of Poplar Bluff opinion. In Mr. Wyatt's absence I am enclosing a copy of each of these opinions for your information.

As stated in Mr. Wyatt's letter of August 17th, in view of the fact that the ruling of the Springfield Court of Appeals is in apparent conflict with that of the Court of Appeals at St. Louis in the case of American Bank v. Peoples Bank, 255 S.W. 943, the Springfield Court certified the Oran case to the Supreme Court of Missouri in order that that court might pass upon the question as to which of the two courts of appeal is correct. Mr. McConkey is hopeful of obtaining a favorable decision from the Supreme Court of Missouri, thus establishing in the State of Missouri the same doctrine as was established in the State of Virginia by the Peters case.

Very truly yours,

George B. Vest,
Assistant Counsel.

Enclosures:

X-4414-a

IN THE SPRINGFIELD COURT OF APPEALS

MARCH TERM, 1925.

Federal Reserve Bank of St. Louis, Respondent)
)
vs) No.3826
)
Frank C. Millspaugh, Commissioner of Finance)
for the State of Missouri, in charge of the)
Liquidation of the Bank of Oran,)
Appellant.)

APPEAL FROM THE CIRCUIT COURT OF SCOTT COUNTY.

Hon. Frank Kelly, Judge.

Bailey & Bailey, of Sikeston, for appellant and Montgomery & Rucker, and Frank W. Hays, all of Sedalia, as Amici Curiae, filed brief in support of Appellant.

James G. McConkey, of St. Louis, for Respondent.

AFFIRMED and Certified to Supreme Court.

BRADLEY, J. - Plaintiff filed its petition in the circuit court seeking to have allowed as a preferred claim a demand against the Bank of Oran which was in the hands of the Commissioner of Finance for Liquidation. The court below allowed the claim as a preferred one, and defendant appealed.

The cause was tried upon an agreed statement of facts in substance as follows: "That the Federal Reserve Bank , is and was at all times herein mentioned, engaged in the business of banking as defined in a certain Act known as the Federal Reserve Act; that the Bank of Oran, Oran, Missouri, is and was at all the times herein mentioned a state banking corporation engaged in the business of banking at Oran, Missouri; that

the Federal Reserve Bank of St. Louis maintained no deposits with nor kept any balance accounts with the Bank of Oran, and the Bank of Oran maintained no deposits with nor kept any balance accounts with the Federal Reserve Bank; that the Federal Reserve Bank, under the Federal Reserve Act and the rulings of the Federal Reserve Board, is required to receive for collection and remittance all items collectable at par and payable in the district of the Federal Reserve Bank when such items are received from a member bank or another Federal Reserve Bank; that all member banks are required to clear at par items drawn on or payable at their bank when the collection is made through the Federal Reserve Bank.

That any non-member bank is permitted, under an agreement acceptable to the Federal Reserve Bank, to have forwarded to it for collection and remittance all items drawn on or payable at such non-member bank; that at all the times herein mentioned there was in existence such an agreement between the Federal Reserve Bank and the Bank of Oran, by which the Federal Reserve Bank agreed to forward through the United States Mail direct to the Bank of Oran all items coming through it for collection; and the Bank of Oran agreed that on the same day the item was received it would either collect and remit the proceeds or return the item, duly protested, the Bank of Oran to have the option of remitting by exchange acceptable to the Federal Reserve Bank or by the shipment of currency insured at the expense of the Federal Reserve Bank; that acting under this agreement, the Federal Reserve Bank did on January 9th and 10th, 1934, respectively, forward by mail to the Bank of Oran its cash letters containing items drawn on or payable at the Bank of Oran, aggregating $2,593.59 endorsed for collection and remittance.

That on January 10th and 11th, 1924, when these respective cash letters were received by the Bank of Oran, it collected the items by charging them to the respective drawer's accounts in the said Bank of Oran, and, immediately, and on the same days drew its drafts on its correspondent, The First National Bank of St. Louis for $1,733.43 and 659.15, respectively, and forwarded such drafts to the Federal Reserve Bank; that the Federal Reserve Bank duly presented the drafts for payment and payment was refused because, in the meantime, the Bank of Oran had closed for business, and was in charge of the Commissioner of Finance for the purpose of liquidation. The drafts were duly protested and remain unpaid; that at the time the Bank of Oran collected the respective items, by charging the several amounts against the respective drawer's balance in the Bank of Oran, each of the respective drawers had more than sufficient funds to his credit in the bank than was necessary to sustain the charge; that at the time the items were collected, the Bank of Oran had in its vaults cash amounting to $4,475.31, and, with its correspondent, the First National Bank in St. Louis, on whom the drafts were drawn, and subject to check, the sum of $14,906.00; that at the time the Bank of Oran was closed and taken over by the Banking Department it had in its vaults, in cash, $2,326.66, and on deposit with the First National Bank in St. Louis subject to check, the sum of $18,239.16.

That of the items listed in Exhibit (A) and on which claim was filed the item of $30.75, drawn by the East St. Louis Cotton Oil Company, in favor of Joe Gerst, and the item of $163.80 drawn by the East St. Louis Cotton Oil Company in favor of B.E. Harber have been satisfactorily adjusted between the drawer and payee, and are to be eliminated from the

$2,310.08 claimed as preferred, leaving a balance of $2,095.53 on which a preference is claimed."

In the Bank of Poplar Bluff v. Millspaugh _____ S.W._____ opinion in which is handed down herewith we ruled upon every proposition involved in the cause now in hand. That case involved the right of a claim against the Bank of Puxico to preference. Therein we discussed the law applicable to the facts at bar. Following the reasoning in that case the judgment in the cause now in hand should be affirmed, and it is so ordered.

As in the case of Bank of Poplar Bluff v. Millspaugh, supra, we deem our rulings and conclusions here in conflict with the holding by the St. Louis Court of Appeals in American Bank v. People's Bank, 255 S.W. 943, and this cause is, therefore, ordered certified to the Supreme Court for final disposition. Cox, P.J. and Bailey, J. concur.

JOHN H. BRADLEY,
Judge.

IN THE SPRINGFIELD COURT OF APPEALS

MARCH TERM, 1925

Bank of POPLAR BLUFF, Appellant)
)
vs.)
)
FRANK C. MILLSPAUGH, Commissioner) NO. 3842
of Finance, and in Charge of the)
Liquidation of the BANK OF PUXICO,)
MISSOURI, Respondent.)

APPEAL FROM THE CIRCUIT COURT OF STODDARD COUNTY

Hon. W. S. C. Walker, Judge.

Oliver & Oliver, of Cape Girardeau, for Appellant.

John A. Gloried, of Poplar Bluff, for Respondent.

REVERSED AND REMANDED WITH DIRECTIONS, AND CERTIFIED TO SUPREME COURT:

BRADLEY, J.- This is an action to have allowed as a preferred claim a demand against the Bank of Puxico which failed and was placed in the hands of the Commissioner of Finance for liquidation. On trial below the claim was allowed as a general claim, but was denied preference. From the judgment plaintiff appealed.

The cause was tried upon an agreed statement of facts which agreed statement in substance is as follows: December 11, 1923, Ethel Reichert had on deposit in the Bank of Puxico $5000. and on that date she drew a draft upon said Bank of Puxico payable to plaintiff bank. This draft was delivered to plaintiff with direction to collect said $5000. from the Bank of Puxico and place it to her credit in plaintiff bank. December 12th plaintiff bank presented said draft to the Bank of Puxico and demanded

immediate payment and said draft was accepted by said Bank of Puxico. The Bank of Puxico failed and refused to pay said draft or any part thereof throughout the 12th, 13th, 14th and 15th of December, although during that time it paid checks, drafts and claims drawn upon it by others. On December 15th the Bank of Puxico drew and mailed to plaintiff its draft dated December 14th for $5000. on the Citizens Trust Company of Gorin, Mo., payable to the order of plaintiff. Said trust company draft was received by plaintiff December 16th, and was forwarded in the usual way and presented to the drawee, the Citizens Trust Company of Gorin on December 19th, but payment was refused. The draft on the trust company was protested, and on December 19th plaintiff was advised by telegram of non-payment. On same day, December 19th, plaintiff again demanded of the Bank of Puxico payment of the Reichert draft drawn on December 11th, and said Bank of Puxico promised to pay it, but did not do so. Again on December 20th and 21st plaintiff demanded payment and each time the Bank of Puxico promised, but failed to pay.

From December 12th when the Reichert draft was first presented and accepted to December 22nd the Bank of Puxico continued to receive deposits, and pay numerous demands amounting in the aggregate to many times $5000. There was in the till of the Bank of Puxico and to its credit in other solvent banks more than $5000. on December 12th when the Reichert draft was first presented and accepted, and that condition continued to exist up to and including December 20th. The books of the Bank of Puxico showed at all times mentioned herein that it had on deposit with the Citizens Trust Company of Gorin more than $5000., but the books of the trust company showed only $640.46, and it is agreed that $640.46 is correct.

December 22nd the Bank of Puxico ceased to do business, but on

December 26th the Commissioner of Finance, or the deputy in charge, charged the account of Ethel Reichert with the $5000. draft drawn by her on December 11th.

The act of the plaintiff bank, under the existing facts, in sending to the Bank of Puxico the Reichert draft was equivalent to designating the Bank of Puxico as the agent of plaintiff to present the draft to itself, collect it, and send the money to plaintiff. In other words the act of the plaintiff bank in sending the Reichert draft to the Bank of Puxico for collection and remittance created between the plaintiff bank and the bank of Puxico the relation of principal and agent. Midland National Bank v. Brightwell, 148 Mo. 358, 49 S.W. 994, 71 A.m. St. Rep. 608; Capital National Bank v. Coldwater National Bank, 69 N.W. (Nebr.) 115, 59 Am. St. Rep. 572; State v. Bank of Commerce, 85 N.W. (Nebr.) 43, 52 L.R.A. 858; State National Bank v. First National Bank, 124 Ark. 531, 187 S.W. 673; Goodyear Tire & Rubber Co. v. Hanover State Bank, 204 Pac. (Kan.) 992; 21 A.L.R. 677; Federal Reserve Bank of Richmond v. Bohannan, 127 S.E. (Va.) 161; Federal Reserve Bank of Richmond v. Peters, 123 S.E. (Va.) 379; Board of Supervisors v. Prince Edward-Lunenburg County Bank, 121 S.E. (Va.) 903; Nyssa-Arcadia Drainage Dist. v. First Nat'l Bank, 3 Fed. (2nd) 648.

Midland National Bank v. Brightwell, supra, the court said: "When a note or draft is sent by one individual or bank to another bank for collection and to remit the proceeds to the sender the relation of principal and agent is created, and not that of creditor and debtor."

When the agent, the collecting bank, has collected the item sent to it for collection and remittance, it holds the proceeds, according to the great weight of authority, prior to remittance, as trustee for the sender,

unless the two banks, the sender and the collecting bank, are transacting business with each other on what is known as the reciprocal accounts method, about which we shall have more to say, infra. If the money is sent in remittance all the authorities agree that the transaction is final, and the forwarding bank's title to the money after it leaves the hands of the collecting bank is superior to all claims against the collecting bank. Federal Reserve Bank of Richmond v. Peters, supra, l.c. 382. The divergence of opinion, when the reciprocal accounts method does not exist, is upon the legal effect of the collecting bank remitting by draft instead of sending the money. Some authorities hold that the act of remitting by draft changes the theretofore relation of principal and agent to that of debtor and creditor. Akin v. Jones, 27 S.W. (Tenn.) 669, 25 L.R.A. 523, 42 Am. St. Rep. 921; Sayles v. Cox, 32 S.W. (Tenn.) 626, 32 L.R.A. 715, 42 Am. St. Rep. 940. Also some authorities hold that where an item for collection is sent by one bank to another in the usual course of business and without instructions that only the relation of debtor and creditor is created. United States National Bank v. Glauton, 92 S.E. (Ga.) 625, L.R.A. 1917 F. 600; Union National Bank v. Citizens Bank, 54 N.E. (Ind.) 97; Peters Shoe Co. v. Murray, 71 S.W. (Tex.) 977.

Also some cases have been ruled because of a reciprocal accounts arrangement between the forwarding bank and the collecting bank. Federal Reserve Bank of Richmond v. Peters, 123 S.E. (Va.) l.c. 382. The reciprocal accounts method and the remittance method are described in Federal Reserve Bank of Richmond v. Peters, supra, as follows: "In order to make collections of checks handled by them banks usually adopt one of two methods, reciprocal accounts, or remittance. Under the reciprocal accounts method, the collecting bank, upon receipt of payment of the checks, gives credit upon its

books to the forwarding bank, and the forwarding bank charges the collecting bank upon its books. They settle from time to time according as the balance accumulates, with the one or the other. Under this method, as soon as the collection is made the relation of the banks is that of creditor and debtor. Under the remittance method the forwarding bank sends the checks to the collecting bank with instructions to collect them and remit immediately. The collecting bank is not authorized to retain the proceeds in its hands, and therefore acts only as an agent for the forwarding bank."

To hold that the principal and agent, when the reciprocal accounts course of business does not exist, is changed to that of debtor and creditor by collecting an item sent for collection and remittance, does not appeal to us as sound reason. Neither is it sound, in our opinion, to hold that the relation of principal and agent is changed to that of debtor and creditor by the mere act of remitting by draft instead of sending the cash. Either holding compels the sender of the item to become a depositor, a creditor, in the true sense of the term, of the collecting bank whether such is desired or not. If an item is sent to an individual for collection and remittance, and he collects, but fails to remit or remits by check or draft and the check or draft, for any reason, is not paid, the individual remains the agent of the sender. We can see no reason why the same rule should not apply to a bank.

We think that the correct and only reasonable and just rule is laid down in 3 R.C.L. p. 633, Sec. 261 where, in discussing the question of title to the proceeds of collections made by banks, this language is used; "These principles must always be borne in mind in considering the question as to the title to the proceeds of collections by banks, as it necessarily follows that, if the title to the paper to be collected passed to the bank, the proceeds of

the collection will belong to it, and the bank will be merely a general debtor of the customer; whereas, if the paper was deposited for collection merely, as title thereto remains in the customer, title to the proceeds will not necessarily pass to the bank. When it is finally determined that a deposit of a check or draft was for collection only and vested no title thereto in the bank, the question still remains as to the title to the proceeds of such check or draft. The question may be said to be simply one of the intention of the parties. If they intended that the proceeds should be remitted immediately upon receipt thereof, or if in any other way it can be shown that the parties intended that the proceeds of the check as well as the check itself should remain the property of the owner, such intention will control and the bank will not take title to the proceeds."

In support of the rule of intention as stated in the text quoted these cases are cited. Capital National Bank v. Coldwater National Bank, supra; State v. Bank of Commerce, supra; Plano Mfg. Co. v. Auld, 86 N.W. (S.D.) 21; Continental National Bank v. Weems, 6 S.W. (Tex.) 802; McLeod v. Evans, 28 N.W. (Wis.) 173; North v. International Sugar Feed Company, 90 S.E. (N.C.) 295.

If the notion that a remittance by draft changes the relation from that of principal and agent to that of debtor and creditor is to be the law in this state, then a forwarding bank sending an item for collection under the remittance method will, in order to protect itself or its customer, be compelled to require remittance in cash.

When the Reichert check was presented by plaintiff to the Bank of Puxico these two facts existed; (1) Ethel Reichert, the drawer of the draft, had on deposit in said Bank of Puxico the sum of $5000; (2) the Bank of

Puxico then had in its till and in other solvent banks sufficient cash to pay this draft. This being true it was the duty of the Bank of Puxico to pay this draft. This cause is in equity, and equity will consider that as done which ought to have been done. Federal Reserve Bank of Richmond v. Peters, supra. Hence we proceed on the theory that the draft was in contemplation of law paid when presented. That is, the Bank of Puxico as agent for plaintiff presented said draft to itself and collected the same, and thereafter held the proceeds as the agent of plaintiff, and in trust for plaintiff. In Federal Reserve Bank v. Peters, supra, we find this language: "It appears from the record that as soon as the draft was sent to the Federal Reserve Bank of Richmond the cashier of the Prince-Edward Lunenberg County bank deducted the amount thereof from the apparent balance due from the Bank of Commerce & Trust upon which the draft was drawn, just as if this amount had already been withdrawn from the latter bank and transferred to the Federal Reserve Bank of Richmond. By this act the cashier intended to set apart such a portion of the balance in the Bank of Commerce & Trusts as was necessary to meet the draft sent to the Federal Reserve Bank of Richmond, as he was obligated to do under his contract. Equity regards that as done which ought to have been done. Under such circumstances the draft on the Bank of Commerce & Trusts was an equitable assignment of the funds to the Federal Reserve Bank of Richmond and we will so adjudge."

We rule that plaintiff's right to a preference should be determined by the same rules of law as would govern, had the Bank of Puxico issued its draft for $5000. at the time the Reichert draft was presented, upon a solvent bank where it then had on deposit a sum sufficient to pay a draft for $5000. and that the only reason why said draft was not paid was the failure

of the Bank of Puxico prior to the presentation of its draft. Such are the facts in Federal Reserve Bank v. Millspaugh, ...S.W....., which we hand down concurrently with the cause now in hand. On principle we think plaintiff in the cause at bar should and does occupy the same status as does the plaintiff in Federal Reserve Bank of St. Louis v. Millspaugh, supra. To hold otherwise would place premium upon the arbitrary conduct of a banker, and permit him, when his bank is limping to its grave, to make fish of one depositor and fowl of another.

We hold that the Bank of Puxico held the $5000. which it should have paid to plaintiff, impressed with the trust imposed by virtue of the relation existing between the plaintiff and the Bank of Puxico, and that this $5000. passed into the hands of the Commissioner of Finance still impressed with the trust.

Relief has been denied in some cases on the theory that the transaction in judgment did not result in augmenting the assets that passed to the receiver or official acting as the receiver of a failed bank. The argument in support of such theory runs about like this; If Ethel Reichert had not drawn her draft on her deposit in the Bank of Puxico, and said bank had failed as it did, it would have failed owing Ethel Reichert $5000. But instead of owing Ethel Reichert $5000. when it failed the Bank of Puxico owed plaintiff bank $5000. evidenced by the draft that it gave plaintiff on the Citizens Trust Company of Gorin. Therefore, there was in effect no difference in the amount of the estate or assets that passed to the Commissioner of Finance; that the assets that passed to the Commissioner of Finance were neither increased nor diminished by the whole transaction. But this argument is not sound. It proceeds upon the theory that the Bank of Puxico simply

owed plaintiff $5000; that only the relation of debtor and creditor existed. Such, however, under the authorities we prefer to follow was not the true relation between plaintiff and the Bank of Puxico. The Bank of Puxico owed plaintiff $5000 because it held $5000 of plaintiff's money as much so as if plaintiff had merely left $5000 with the Bank of Puxico for safe keeping sealed and labeled and not intended for deposit. From the time the Reichert draft was presented and accepted the Bank of Puxico held plaintiff's $5000, and this $5000. passed to the Commissioner of Finance and thereby increased the funds in his hands $5000 above the actual assets of the Bank of Puxico. Federal Reserve Bank of Richmond v. Peters, supra; Goodyear Tire & Rubber Co., v. Hanover State Bank, supra. The fact that this $5000 remained commingled and unseparated from the funds of the Bank of Puxico and passed along with the assets to the Commissioner of Finance does not place it beyond the reach of the arm of equity. Harrison v. Smith, 83 Mo. 210; Midland National Bank v. Brightwell, 148 Mo., 358, supra; Nyssa-Arcadia Drainage Dist. v. First Nat. Bank, supra.

It is our conclusion that plaintiff is entitled to have its claim of $5000 allowed as a preferred claim. As we construe we do not consider our conclusion in conflict with the Midland National Bank Case. The facts in that case as appear in the reported opinion are as follows: "On December 12, 1894, the Midland National Bank sent collection items to the Slater Savings Bank of Slater, Missouri, with instructions to remit in Kansas City exchange. These items aggregated $6,726.44, a large part of which consisted of drafts drawn on the Citizens Stock Bank of Slater, Mo. All of these items were collected by the Slater Savings Bank, either by charging the accounts of depositors against whom the drafts were drawn, after being authorized to do so

by such depositors, and crediting the account of the Midland National Bank (Italics ours) or by a clearing of the day's business with the Citizens Stock Bank. In settlement of the balance for the day against it, the Citizens Stock Bank gave the Slater Savings Bank its draft on St. Louis for $4,134.31. The Slater Savings Bank indorsed this draft and forwarded it, together with its own draft on St. Louis for $2,650, to the Midland National Bank on account of the collection items above mentioned. Neither of these drafts were paid, and both the Slater Savings Bank and the Citizens Stock Bank of Slater failed December 17th, 1894, and their assets are in the hands of their respective assignees. The Midland National Bank has not received payment for any portion of the collection items above mentioned, represented by these drafts for $4,134.31 and $2,650. At the time of the failure of the bank, the assignee found in the vault the sum of $449 in cash. And it is also admitted that said draft of $2,650 was forwarded to plaintiff on December 14th, 1894, when payment was refused and said draft was protested for non-payment, and also that the said defendant as assignee had in his hands at the date of the trial sufficient assets to pay the draft of $2,650 and interest thereon in full."

As appears from the facts in the Midland National Bank Case it is distinguishable from the cause at bar in two controlling features; (1) It would seem from the portion of the statement of facts which we have italicized and certain language on page 367 of the opinion as reported in the 148th Missouri, that the reciprocal accounts method existed between the Midland National Bank and the Slater Savings Bank; and (2) when the Slater Savings Bank drew its draft, and endorsed the one drawn by the Citizens Stock Bank, it did not have sufficient money in its vaults or elsewhere to pay its own

draft or the one it endorsed. Not having any funds with which to pay, there was no payment in fact or law made, and therefore nothing existed upon which a trust could be impressed or claim of an equitable assignment founded. It seems to us that the lack of funds was also one of the decisive features in the Midland National Bank Case.

In American Bank v. Peoples Bank, 255, S. W. (Mo.App) 943 the facts as appear from the agreed statement are as follows: That plaintiff is and was at all times mentioned in the petition a corporation engaged in and doing a general banking business at DeSoto, Jefferson County, Mo. That on the 30th day of December, 1920, and for a long time prior thereto, defendant was doing a general banking business in the same city. That on the 3rd day of January, 1921 (said bank having been closed for business on the evening of December 30, 1920), the bank commissioner of the state of Missouri took charge of the business and affairs of the defendant bank, after which Frank Dietrich was appointed to assist in liquidating the business and affairs of said bank and is still in charge thereof. That it had been the custom for years between the plaintiff and defendant bank to clear or exchange bills and checks which each had received on the other and settle the difference. That on the 30th day of December, 1920 (on which day said People's bank was closed and has not since resumed business,) plaintiff, in the due course of business and for a valuable consideration, had come into possession of and had for collection and settlement a great number of checks drawn by the solvent customers of the Peoples Bank on their accounts in said bank; all of which customers had to the credit of their accounts amounts sufficient to pay said checks, except $878.92, to which amount said checks were overdrafts, and which amount of overdrafts have since been made good and paid

said bank except $229.20. That upon the clearing or exchanging checks on that day the balance due from the defendant bank to the plaintiff bank was $5,414.72. That the plaintiff bank turned over to the defendant bank, in clearing, the checks which it had received against defendant and received from defendant the checks which it had against plaintiff, and the difference made the balance as above stated, for which balance defendant bank delivered to plaintiff a draft on the Central National Bank of St. Louis, which draft was not paid but protested, and the protest fees are $2.65. That the checks so received by defendant from plaintiff were charged out of the accounts of the various depositors who had drawn them. That plaintiff was not and never had been a depositor in the defendant bank. That on said date and on the day the bank closed there was between six and seven thousand dollars in cash in the defendant bank.

That there is now due on account of said balance and protest fees, from defendant to plaintiff, the sum of $5,417.37. That claim for said amount was properly presented in due time to the said deputy bank commissioner for allowance which claim was by him allowed."

On this state of facts the St. Louis Court of Appeals denied a preference. Counsel for plaintiff bank in the cause at bar it would appear are inclined to concede that their contention is in conflict with and contrary to the law as written in American Bank v. People's Bank, supra. Counsel for plaintiff in Federal Reserve Bank of St. Louis v. Millspaugh, supra, says that the case of American Bank v. People's Bank was decided on the theory that the two banks there proceeded under the reciprocal accounts method. If such was the fact then we are not in conflict, but we cannot say from the statement of facts and the opinion in American Bank v. Peoples

Bank that the two banks in that case were doing business with each other under the reciprocal accounts method. It seems that the conclusion we have reached, and the law as we have endeavored to state it, are in conflict with the case mentioned. We have given the cause at bar serious and prolonged consideration and are of the opinion that sound reason, substantial justice and the weight of authority support our conclusion.

The judgment should be reversed and cause remanded with directions to allow plaintiff's claim as a preferred claim as asked in its petition, and it is so ordered. Deeming our statement of the law and our conclusion in conflict with the case of American Bank v. Peoples Bank, supra, by the St. Louis Court of Appeals, this cause is ordered certified to the Supreme Court for final disposition.

Cox, P. J. and Bailey, J. concur.

JOHN H. BRADLEY,

Judge.