DIGEST OF DECISIONS RELATING TO NATIONAL BANKS.

[The following decisions reported in volumes 223 and 224, U. S. R., and volumes 193-197, Fed. Rep., were reported too late to be included in the Digest of Dicisions Relating to National Banks for April, 1912.]

Accommodation Paper.

Accommodation notes—Participation in fraud—Jury questions (U. S. C. C. A., 1912).—In an action on an accommodation note, carried by a bank fraudulently, whether the indorser participated in the fraud, and whether he signed for the accommodation of the bank, or to accommodate its officers, *held* under the evidence jury questions. (Westwater *v.* Lyons, 193 Fed. Rep., 817.)

Power of bank to hold accommodation note (U. S. C. C. A., 1912).—A bank may hold a note for its own accommodation under the ordinary relationship governing accommodation paper. (Ib.)

Parol or extrinsic evidence—Accommodation notes (U. S. C. C. A., 1912).—A national bank having failed to sell an entire issue of stock, which was necessary before it could do business on increased capital, a third person in accordance with an agreement between the officers, gave his note for the price of the remaining shares to a director, who indorsed and delivered it to the bank; the shares being issued in his name. The maker having become insolvent, defendant was induced by such director to execute his accommodation note to the director's uncle, who indorsed it, and it was substituted for that of the first maker. The notes were carried and reported as assets of the bank until its failure; but neither maker paid any interest, the dividends on the stock being applied thereon. The cashier gave defendant a letter assuring him that he would not be held liable on his note. *Held*, that instructions which assumed that the letter was admissible only as evidence of a release by the bank of any liability of defendant if he was innocent in the transaction were erroneous; the letter being also admissible as tending to show that the note was given as an accommodation to the bank. (Ib.)

Instructions to jury on accommodation note (U. S. C. C. A., 1912).—An instruction that if the defendant accommodated the bank, and did not know for what purpose the note was to be used, verdict might be for defendant if the directors authorized the letter, was improper, since he was entitled to a verdict if the note was made for the bank's accommodation innocently. (Ib.)

Collateral Securities.

Conversion of collateral—Right of possession in third person as a defense (U. S. C. C. A., 1912).—It is a complete defense to an action for conversion of property which came lawfully into defendant's possession that it delivered the same to a third person, who was entitled to its possession. (McKinnon *v.* Western Development Co., 196 Fed. Rep., 487.)

Evidence in action for conversion of collateral (U. S. C. C. A., 1912).—Where plaintiff sued defendant bank for the conversion of collateral delivered as security for a loan which the bank agreed to make, but failed to make the loan, defendant could show that the arrangement was made with one of the bank's officers, who agreed personally to advance the money to another bank to make the loan, and did so, and that the collateral was delivered to him. (Ib.)

When bank has general lien on collateral (U. S. C. C., 1911).—Where a note given to a bank for a loan of $20,000 declared that the maker had deposited collateral as security for the payment of the note and every other liability of the undersigned to the bank, direct or contingent, due or to become due, or which might thereafter be contracted or existing, followed by a specific description of the collateral, such collateral was pledged to secure not only the $20,000 note, but also the other indebtedness of the maker to the bank. (Commercial and Savings Bank *v.* Robert H. Jenks Lumber Co., 194 Fed. Rep., 732.)

(U. S. C. C., 1911).—Where an insolvent corporation deposited collaterals with claimant bank as security for its entire indebtedness, the bank on administration of the corporation's estate in equity was entitled to prove its claim for the full amount of its debt and to receive dividends up to the balance due after crediting the proceeds of the sale of the collaterals. (Ib.)

Pledge of bonds with an agreement that part should be exchanged at par for notes held by bank (U. S. D. C., 1912).—Bonds of a corporation were pledged to a bank, with an agreement that part of the bonds should be exchanged at par for notes held by the bank; the corporation paying a difference by check. The check was not cashed, and the notes were not returned. *Held*, in a suit to wind up the corporation, the bonds must be regarded as pledged. (Nichols *v.* Waukesha Canning Co., 195 Fed. Rep., 807.)

Reception of accommodation note secured by collateral liability of bank (U. S. C. C. A., 1912).—A national bank receiving a note of a third person for the debt of its cashier who pledged collaterals attached to the note must be deemed to have contracted to keep the securities for the benefit of the maker, and its failure to do so was a breach of contract. (Skud *v.* Tillinghast, 195 Fed. Rep., 1.)

Execution of accommodation notes for officers of bank—Knowledge of officers imputable to bank (U. S. C. C. A., 1912).—Where an accommodation note was made to a national bank and collaterals were attached thereto to secure the bank for a debt due from its cashier, the president's interest in the transaction was not adverse to the bank, so that his knowledge with respect to the transaction was imputable to the bank. (Ib.)

Bank having received the benefit is liable for the loss of the collateral (U. S. C. C. A., 1912).—Since the bank could not receive the benefit of the note without bearing the burden of the knowledge of its officers that the note was secured by the collaterals, it was liable for the loss of such collaterals. (Ib.)

Rights of receiver of insolvent bank (U. S. C. C. A., 1912).—A receiver of an insolvent national bank stands in the place of the bank as to property equitably belonging to third persons. (Ib.)

Loss of securities available to maker by way of recoupment when sued on note (U. S. C. C. A., 1912.—Where a national bank received a third person's note for the accommodation of its cashier who pledged securities attached to the note, the failure of the bank to protect the securities, whereby they were lost, was available to the maker by way of recoupment when sued on the note by the receiver of the bank. (Ib.)

Action on principal claim—Rights of pledgee (U. S. C. C. A., 1912).—A pledgee in possession of the pledge and entitled to retain the same until his claim is paid need not, as between himself and the pledgor, resort as a general rule to the pledge before suing on the principal claim, though he may be compelled to release the pledge when his claim is satisfied. (Ib.)

Effect of conversion of pledge by pledgee (U. S. C. C. A., 1912).—A pledgee who converts the pledge thereby in effect to the extent of its value discharges the debt, and the same result follows where the pledgee through his fault fails to preserve the pledge. (Ib.)

COLLECTIONS.

GENERALLY.

Collections—Acts within power in connection with (U. S. Supreme Court, 1912).—While a national bank can not act as trustee and hold land for third persons, under 5136, Revised Statutes, it may do those acts that are usual and necessary in making collections of commercial paper and evidences of debt. (Miller *v.* King, 223 U. S., 505.)

Collections—Capacity to act as assignee of judgment (U. S. Supreme Court, 1912).—A national bank, under 5136, Revised Statutes, may be assignee of a judgment to collect and distribute the amount thereof where the assignment is not made merely to enable it to sue in its own name. (Ib.)

Ultra vires acts—Who may raise question—quaere as to (U. S. Supreme Court, 1912).—Quaere: Whether any but the Government can raise the question that a national bank in acting as trustee violates 5136, Revised Statutes. Kerfoot *v.* Bank, 218 U. S., 281. (Ib.)

TITLE TO CLAIMS DEPOSITED WITH BANK FOR COLLECTION.

When depositor entitled to proceeds of collections (U. S. District Ct., 1912).—Where complainant deposited a number of checks and vouchers payable to him in a bank, duly indorsed in blank, and the bank credited plaintiff's account with the amount thereof, but there was no agreement that complainant might draw against them until they were collected, and the bank was notified thereof, the bank prior to such collection and notice did not become the debtor of complainant but was a mere agent to collect, and having passed into the hands of the Comptroller of the Currency before notice by other banks to which the items were sent for collection that the collections had been made and the proceeds credited to insolvent bank's account, and the proceeds of the collections having thereafter been paid to the bank's receiver, complainant was entitled to recover the same as a trust fund from the receiver. (Goshorn *v.* Murray, 197 Fed. Rep., 407.)

When deposit of checks of third parties presents no basis for claim for preference (U. S. C. C. A., 1912).—Checks of third parties on a bank with which they are deposited, which are paid by crediting the bank and charging the drawers on its books, do not increase the cash in the bank and present no basis for a preferential payment to the depositor. (Empire State Surety Co. *v.* Carroll County, 194 Fed. Rep., 593.)

(U. S. C. C. A., 1912).—The deposit of checks of third parties, which are credited to the depositor and used by the bank to pay its debts, bring no money into its cash and lay no foundation for a preferential payment to the depositor. (Ib.)

(U. S. C. C. A., 1912).—Checks of third parties deposited with a bank credited to the depositor and collected through a clearing house do not warrant a preferential payment, in the absence of proof of the actual balance of cash which the bank received through the clearing house, for they may have been, and presumptively were, used in whole or in part to discharge debts of the bank. (Ib.)

Insolvency and Receivers.

(See also Collections—Title to claims deposited with bank for collection and Trusts—Following trust funds—preferences.)

powers of receiver to dispose of assets and compound claims.

When receiver can not compromise claim (U. S. C. C. A., 1912).—It is beyond the power of a receiver of a national bank, who is a party to a decree allowing a preferred claim in a suit between a creditor of the insolvent who is entitled to appeal from the decree and the receiver and the successful claimant, to deprive the creditor of his right to appeal from the decree and this court of its jurisdiction to review it, by compromising it with the successful claimant without the consent of the aggrieved creditor and without any order of the court. Barber Asphalt Paving Co. *v.* Morris, 132 Fed. ,945, 953; 66 C. C. A., 55, 63, 67; L. R. A., 761. (Empire State Surety Co. *v.* Carroll County, 194 Fed. Rep., 593.)

Interest and Usury.

Actions under Revised Statutes, 5198, to recover usurious interest—When period of limitation begins to run (U. S. Supreme Court, 1912).—The two-year limitation in Revised Statutes, 5198, within which an action must be commenced against a national bank to recover double the amount of payments of usurious interest begins to run from the time of payment of the usurious interest, and not from the time of payment of the note. (McCarthy *v.* First National Bank, 223 U. S., 493.)

Usurious contracts prohibited—No statute of limitations to defense of usury (U. S. Supreme Court, 1912).—National banks are prohibited from making usurious contracts, and whenever the debtor is sued on such a contract he may plead the usury and be relieved from payment; as to this defense there is no statute of limitations. (Ib.)

Usurious interest exacted by—Remedies and defenses of debtor (U. S. Supreme Court, 1912).—Where a national bank reserves or deducts usurious interest in advance, the debtor may plead usury, but may not recover double the amount paid under 5198, Revised Statutes. (Ib.)

Usurious contracts—Actions on—When statute of limitations begins to run (U. S. Supreme Court, 1912).—When the debtor actually makes, and the national bank knowingly receives and appropriates, a payment of usurious interest, the cause of action arises and the statute begins to run. (Ib.)

Locus penitentiæ—To whom privilege granted (U. S. Supreme Court, 1912).—There is no locus penitentiæ. That privilege is only granted to those banks which, having charged usury, may by refusal to accept interest when tendered show that they will not carry the illegal contract into effect. (Ib.)

Location of Bank, Change of.

(U. S. District, 1912).—A national bank organized in a village, the name of the village being entered in its organization certificate as the "place" where its banking business is to be carried on, can not, on the subsequent annexation of said village to an adjacent city, remove beyond the limits of said village at date of annexation into the city to which said village had been annexed without the consent of the Comptroller of the Currency and without increasing its capital to an amount equal to that required for the organization of a national bank in said city and complying with all other requirements applicable to national banks in said city. (Murray *v.* First National Bank of Capitol Hill, Okla. Decision overruling demurrer on Oct. 15, 1912, in United States District Court for Western District of Oklahoma; the case not reported.)

OFFICERS, CIVIL, LIABILITY OF.

False statements—Right of action for (U. S. Supreme Court, 1912).—Although the common-law action of deceit does not lie against directors of a national bank for making a false statement, and the measure of their responsibility is laid down in the national banking act (Yates *v.* Jones National Bank, 206 U. S., 158), an action may be maintained in the State court regardless of the form of pleading if the pleading itself satisfies the rule of responsibility declared by that act. (Thomas *v.* Taylor, 224 U. S., 73.)

False statements—Liability of directors—Effect of involuntary character of statement (U. S. Supreme Court, 1912).—The fact that a statement of the condition of a national bank is not made voluntarily, but under order of the Comptroller of the Currency, does not relieve the directors from liability for false statements knowingly made therein. (Ib.)

False statements—Liability of directors—Effect of notice from comptroller to collect or charge off assets (U. S. Supreme Court, 1912).—Notice from the Comptroller of the Currency to directors of a national bank to collect or charge off certain assets is a warning that those assets are doubtful; and to disregard such a notice and represent the assets in a statement to be good is a violation of the law and renders the directors making the statement liable for damages to one deceived thereby. (Ib.)

Liability of officers and directors for false reports (U. S. C. C. A., 1912).—The making and publishing by a national bank of the reports required by statute are not merely for the information of the comptroller, but are to guide so much of the public as may have occasion to act thereon, and one who buys from another stock in the bank in reliance upon a false report of its condition and suffers damage thereby has a right of action against any officer or director who, knowing its falsity, authorizes such report under Revised Statutes 5239, which makes them individually liable for damages sustained by the association, its stockholders, "or any other person." (Chesbrough et al. *v.* Woodworth, 195 Fed. Rep., 875.)

Damages are personal (U. S. C. C. A., 1912).—The damages in such a case are personal with plaintiff, who sues in his own individual right and not in that of the association. (Ib.)

Actions against directors—Issue and proof (U. S. C. C. A., 1912).—Such an action against directors involves no direct issue of negligence, the sole primary issue being whether a defendant caused or permitted to be made a statement of the bank's condition on which plaintiff relied to his injury, and which statement defendant knew was materially false. The liability of the directors is several, and plaintiff may sue one or more, but must make out a sufficient case against each one to authorize a recovery against him, and, in general, the detailed history of the entire transaction and of each defendant's connection with the same is admissible. (Ib.)

When director held to know that statements are false, and to be liable therefor (U. S. C. C. A., 1912).—In such an action, where the falsity of the statement consisted in its including as resources in the loans and discounts paper to a large amount which was worthless, the making and publishing of the statement, which under the general custom are merely the automatic result of the bookkeeping, do not constitute the underlying wrong, and any director who participated in or approved the continued carrying on the books of such paper as assets at its face value to an amount sufficient to affect the standing of the bank and knowing its worthlessness is bound to know that under the prevailing practice the statements will be substantially false, and is responsible therefor. (Ib.)

Director liable if he does not make reasonable personal effort to induce proper action (U. S. C. C. A., 1912).—While the duty of charging off such worthless paper is that of the board of directors as an entity, and in such matter it has a reasonable discretion, when the duty exists and is wholly unperformed an individual director who is engaged generally in the performance of his functions may be personally liable because of his participation in the failure to act by failing to make reasonable personal efforts to induce the proper action. (Ib.)

Evidence in actions against directors (U. S. C. C. A., 1912).—An action against directors of a national bank to recover damages sustained by plaintiff because of the making and publication by the bank of statements including as assets a large amount in worthless notes, in reliance on which statements plaintiff purchased stock at more than its actual value, is not supported by evidence that such notes were for loans to the maker in excess of the 10 per cent permitted by Revised Statutes, section 5200 (U. S. Comp. St. 1901, p. 3494), since that fact does not affect their collectibility, but evidence to show motive, as that defendants were themselves selling their stock at a high price, is material. (Ib.)

(U. S. C. C. A., 1912).—In such an action, the fact that plaintiff subsequently became a director and joined in attesting statements which included as assets some of the same paper was admissible as in the nature of an admission that such paper was not so clearly worthless as to make defendants' acts unlawful, its weight being for the jury. (Ib.)

Action against directors—Measure of damages (U. S. C. C. A., 1912).—The general rule of damages in actions of deceit that one induced by false representations to purchase property at more than its value is entitled to recover the difference between what the property was actually worth and what it would have been worth if the representations had been true, not exceeding the sum paid, is not applicable to an action against directors of a national bank under Revised Statutes, section 5239 (U. S. Comp. St. 1901, p. 3515), by one who purchased stock of the bank in reliance on published statements of its condition which were false, in that they included as assets in the loans and discounts a large amount of worthless paper; since under such section defendants are liable only for knowing violations of the law. In such case the measure of plaintiff's recovery is the difference in the fair market value of his stock if all the paper had been of a character entitling it to be reported as assets, and that sum which would have been its fair market value if the directors, in the exercise of due care and good faith, had charged off the books, and not reported so much of the paper as they knew or had good reason to believe was uncollectible, assuming that defendants participated in or assented to such nonaction. (Ib.)

Officers, Criminal Liability of.

Aiding and abetting—Dates (U. S. C. C. A., 1912).—An indictment for aiding and abetting a national bank clerk to misappropriate the bank's funds contained 10 counts, relying on 10 different transactions, giving the date of the first as of December 1, 1909, the second on December 9, and running through to include December 31. Held, in the absence of a bill of particulars, the jury might select 10 dates out of the whole list of dates involved on which to base a conviction, except as something occurred during the trial to specifically fix the dates. (Kelliher *v.* United States, 193 Fed. Rep., 8.)

Aiding and abetting—Not necessary to allege with particularity (U. S. C. C. A., 1912).—The rule applied that where accused was charged with aiding and abetting a national-bank clerk to misappropriate its funds, in violation of Revised Statutes, section 5209 (U. S. Comp. St. 1901, p. 3497), it was not necessary that the indictment should allege with particularity the nature of the aid or abetting rendered. (Ib.)

"Aid or abet"—Defined (U. S. C. C. A., 1912).—The words "aids or abets," as used in Revised Statutes, section 5209 (U. S. Comp. St. 1901, p. 3497), providing that every person who with intent to deprive a national banking association of its funds aids or abets any clerk or agent in any violation of such section shall be guilty of a misdemeanor, are to be construed according to their natural import, and are satisfied by proof that accused actually participated in such misappropriation, and of concurring acts performed by him to that end. (Ib.)

Misappropriation of funds (U. S. C. C. A., 1912).—Where an indictment for aiding and abetting a national-bank clerk to misapply certain of the bank's funds alleged that the clerk was also a depositor, that he obtained possession of the bank's funds by means of overdrafts, and that he neglected to inform the bank's officers thereof, but, instead, secreted the same by false entries, the indictment sufficiently set out the funds were misapplied by the clerk. (Ib.)

Misappropriation of funds—Knowledge of officer (U. S. C. C. A., 1912).—Where a national-bank clerk misappropriated a large amount of the bank's funds by a system of more than 50 overdrafts, and the Government claimed that accused was an aider and abettor therein, the fact that the bank's officers might have had knowledge of some of the overdrafts did not relieve the transactions of their criminal character. (Ib.)

Aiders and abetters—Accomplice testimony—Corroboration (U. S. C. C. A., 1912).—The rule applied that it is not necessary that an accomplice should be corroborated in every particular in order to sustain a conviction; it being enough, if the corroboration extends to a point sufficient to show that the accomplice has testified truly in some particulars, as to authorize the jury to infer that he has so testified in others. (Ib.)

Aiding and abetting—National-bank funds—Misappropriation—Modus operandi—Knowledge (U. S. C. C. A., 1912).—In a prosecution of accused for aiding and abetting a national-bank clerk to misappropriate its funds in violation of Revised Statutes, section 5209 (U. S. Comp. St., 1901, p. 3497), it was not necessary to sustain a conviction of defendant that the United States prove that he knew the clerk's modus operandi in obtaining the funds. (Ib.)

Misappropriation of funds—Aiding and abetting (U. S. C. C. A., 1912).—Where accused, with knowledge that a national-bank clerk had misappropriated certain of the bank's funds, actually accepted into his own hand what he knew to be moneys of the bank, and used or pretended to use the same for the clerk in gambling, he was guilty of aiding and abetting the clerk, in violation of Revised Statutes section 5209 (U. S. Comp. St., 1901, p. 3497), he shall be guilty of a misdemeanor. (Ib.)

POWERS.

Purchase of stock (U. S. C. C. A., 1912).—Under Revised Statutes, section 5136 (U. S. Comp. St., 1901, p. 3455), defining the general powers of national banks, and conferring no express power to deal in stocks of corporations, a purchase of stock in a corporation by a national bank from one of its officers for the purpose of selling the same at a profit was ultra vires and voidable as between the parties. (Barron *v.* McKinnon, 196 Fed. Rep., 933.)

Purchase of stock an ultra-vires act, but title passes to bank (U. S. C. C. A., 1912).—Though a purchase of corporate stock by a national bank from one of its officers was ultra vires and voidable as between the parties, it was not void, and title passed to the bank which it could transfer to a third person prior to any election by the other party to the original transaction to rescind the sale. (Ib.)

Doctrine of ultra vires (U. S. C. C. A., 1912).—The doctrine of ultra vires rests on the principle that on grounds of public policy courts will not enforce an illegal or ultra-vires contract, and that a defendant may avail himself of the defense in a suit brought to enforce such contract. (Ib.)

Purchase of real estate (U. S. C. C. A., 1912).—A purchase of real estate by a national bank for a purpose other than that specified by Revised Statutes, section 5137 (U. S. Comp. St., 1901, p. 3460), is voidable only and not void. (Ib.)

Loans on its own stock—Purchase and transfer of the stock (U. S. C. C. A., 1912).—Though a national bank has no power to loan money on its own stock as collateral in violation of Revised Statutes section 5201 (U. S. Comp. St., 1901, p. 3494), a loan made in violation of such section is voidable only, and hence the bank, having been compelled to take title to its stock so held as collateral, may convey a good title to a purchaser. (Ib.)

Ultra vires defense of—Statu quo (U. S. C. C. A., 1912).—Where a defense of ultra vires is available on the ground of public policy, the court will strive to do justice between the parties, either by refusing to interfere in rare cases, or by permitting the money or property parted with on the faith of the unlawful contract to be recovered or compensation made therefor. (Ib.)

TRUSTS.

Following trust funds—Preferences (U. S. C. C. A., 1912.)—One who is an equitable owner of a fund for many sound reasons is entitled to no preference over one who is the equitable owner of his fund for one sound reason in payment out of a common fund in which the trustee has commingled them. (Empire State Surety Co. *v.* Carroll County, 194 Fed. Rep., 593.)

(U. S. C. C. A., 1912.)—Where a trustee has commingled in a common fund the moneys of many beneficiaries, it is presumed that the moneys were paid out in the order in which they were paid in, and the beneficiaries are entitled to preferences in the inverse order. (Ib.)

(U. S. C. C. A., 1912.)—For a cestui que trust to maintain a claim of preferential payment, clear proof that the trust property or its proceeds went into a specific fund or a specific piece of property is necessary; proof that it went into the general assets of the insolvent estate being insufficient. (Ib.)

(U. S. C. C. A., 1912.)—Proof that a trustee commingled a trust fund with his own and made payments out of the common fund *held* a sufficient identification of the remainder not exceeding the smallest amount subsequent to the commingling; it being presumed that the trustee regarded the law and neither paid out nor invested in other security the trust fund. (Ib.)

(U. S. C. C. A., 1912.)—It is presumed that promissory notes, bonds, and other property coming into the hands of a receiver of an insolvent were not produced by the use of and are not trust property. (Ib.)

When claim of a cestui que trust to a preference will not be allowed (U. S. C. C. A., 1912).—A claim of a cestui que trust to a preference in payment out of the assets of an insolvent estate will not be allowed over the objection of the receiver, where the claims of the majority of the creditors in amount and in value which the receiver represents are equal to it in law and in equity, although such creditors are content to share ratably with all the creditors and make no claims for preferences. (Ib.)

DIGEST OF DECISIONS RELATING TO NATIONAL BANKS.

[The following decisions relating to national banks are reported in volumes 225-228, U. S. R., and volumes 198-206, Fed. Rep., with the exception of one case taken from the Kentucky reports, one from the N. Y. reports, and one from those of Oregon.]

CHECKS.

Cashier's check—Consideration (U. S. C. C. A., 1912).—Checks of a contractor, employed to construct city waterworks, drawn on defendant bank, having been protested, the bank offered to pay plaintiff, from whom the contractor had purchased supplies, $5,870.74 in cash if plaintiff would wait for the balance until bonds of the city issued to pay for the waterworks, in the hands of the bank for sale, had been sold. A cashier's check for such sum was issued by defendant bank and delivered to plaintiff; but the bonds not having been sold, and the bank never having received anything therefor, payment was refused. Plaintiff's assistant secretary testified that there was no consideration for the cashier's check, except the bank's promise to pay the contractor's checks, and that he did not know of his own knowledge, except what certain correspondence showed, as to whether any of the materials which had been stopped in transit were released on the delivery of the check. *Held*, that the check was without consideration and unenforceable. (Mine & Smelter Supply Co. *v.* Stockgrowers' Bank, 200 Fed. Rep., 245.)

Cashier's check—Action—Evidence (U. S. C. C. A., 1912).—In an action against a bank on a cashier's check, evidence of a prior telegram, sent by the bank to plaintiff, advising it of the payment of a draft for certain cement sold by plaintiff to the contractor, and promising to pay another during the current week, was immaterial. (Ib.)

COLLECTIONS.

Collection of drafts—Mode of payment (U. S. C. C. A., 1913).—A bank, holding a draft for collection, is not authorized to accept anything but money in payment thereof. (Bradley Lumber Co. *v.* Bradley County Bank et al., 206 Fed. Rep., 41.)

Money received—Nature and elements of action (U. S. C. C. A., 1913).—An action for money received will only lie where the defendants have received money, the property of plaintiff, under such circumstances as to be obliged by natural justice, good conscience, right, and equity to refund. (Ib.)

Money paid on false voucher (U. S. C. C. A., 1913).—In an action to recover money which plaintiff had been induced to pay out on a false voucher drawn by its agent, defendants, having changed their position to their prejudice by reason of such payment and without knowledge that the money had been obtained on a false voucher, held not liable to refund in an action for money received. (Ib.)

Collection of drafts—Special verdict—Sufficiency of evidence (U. S. C. C. A., 1913).—Plaintiff bank sued defendant bank to recover back money paid defendant during the Russo-Japanese War as the proceeds of a draft sent by defendant to plaintiff's Port Arthur branch for collection, on defendant's assertion that it had been collected, during or just prior to the investment of Port Arthur, and not remitted, which plaintiff alleged was not the fact, as was ascertained after the close of the war. Defendant alleged in the answer as an affirmative defense that the draft had been collected by plaintiff's Port Arthur branch, and such issue was submitted to the jury for a special verdict, which was returned in favor of defendant. *Held*, that there was sufficient evidence in the record to support such verdict. (Russo-Chinese Bank *v.* National Bank of Commerce of Seattle, 206 Fed. Rep., 646.)

Competency—Course of dealing (U. S. C. C. A., 1913).—On such issue, evidence of the course of dealing between plaintiff's Port Arthur branch and the drawees of the draft, with respect to the manner of payment of similar previous drafts, held competent. (Ib.)

DEPOSITS.

Deposits of Trust Funds.

Corporations—Officers—Breaches of trust (U. S. C. C. A., 1913).—Rules for following trust funds apply for the protection of corporations against breaches of trust by their officers. (Havana Central Railroad Co. *v.* Central Trust Co. of New York, 204 Fed. Rep., 546.)

Corporations—Officers—Misuse of corporate funds (U. S. C. C. A., 1913).—One who receives from an officer of a corporation corporate obligations for his individual use, drawn by himself in his own favor, or who receives from such an officer money or securities of the corporation in payment of the officer's personal debts, does so at his peril, and is put on inquiry to determine whether the officer had authority to make such use of the corporation's property. (Ib.)

Deposits—Relation of bank with corporate depositor (U. S. C. C. A., 1913).—A bank in which corporate funds are deposited is not a trustee, quasi trustee, factor, or agent of the corporation, but its debtor only, and, though the bank is bound to satisfy itself that the officer of the corporation signing checks is authorized to do so, it is not the corporation's agent to determine whether a check drawn conforms to the contract between them, but determines the question at its peril. (Ib.)

Corporations—Corporate deposits—Misuse by corporate officers—Duty to inquire (U. S. C. C. A., 1913).—The treasurer of a corporation having an active deposit account in defendant bank drew checks against the deposit, signed by himself as treasurer, payable to himself or another, and, having indorsed them, deposited them to his individual account in another trust company, which presented them to defendant, which paid them without question. The treasurer had no right to the checks, and his action in drawing them amounted to a criminal appropriation of the corporation's funds. So far as defendant is concerned, however, there was nothing suspicious about the checks, except that they were drawn by the corporation's general fiscal officer to his own order and indorsed by him, and other similar checks had been drawn and paid before, and defendant had no knowledge that the checks were being used for the treasurer's personal benefit. *Held*, that defendant was not charged with notice, from the mere fact that the checks were drawn to the treasurer's own order, that they were being improperly used, and hence was not liable to repay the amount to the corporation. (Ib.)

Corporations—Corporation depositor—Misuse of funds by corporation officer—Bank's liability (U. S. C. C. A., 1913).—Where a bank has knowledge that an officer of a corporation depositor is using a check on the corporation's funds for his personal benefit, e. g., to pay his own debt to the bank, or to deposit it to his personal credit, the bank is then put on inquiry, and, if it fails to make it pays at its peril, not because it is agent of the corporation, but because the bank can not discharge its debts to its depositor, except on the depositor's authorized order. (Ib.)

Corporations—By-laws—Notice (U. S. C. C. A., 1913).—While a bank in which a corporation had a deposit account is charged with notice of the provisions of the corporation's charter with reference to the authority of its officers to withdraw moneys, it is not charged with notice of a by-law requiring a counter-signature on all checks drawn against the corporation's deposit account, not brought to the bank's notice by the corporation; especially where for a considerable period checks had been issued, and paid without question, bearing only the signature of the corporation's general fiscal officer. (Ib.)

Application of Deposit on Claim.

(U. S. C. C. A., 1913.)—In the absence of fraud or collusion a bank has the right to apply a balance of a regular deposit standing to the credit of a bankrupt on the date of the bankruptcy to the payment of notes due it from the bankrupt. (Walsh *v.* First National Bank of Maysville, 201 Fed. Rep., 522.)

Power of Bank to Give Security for Deposit.

Organization and powers of banks (Ky. Appeals, 1913).—Banks can lawfully be organized and authorized to conduct business in this State only upon the terms and conditions and subject to the limitations prescribed by the banking laws. (Commercial Banking & Trust Company, et al, *v.* Citizens Trust and Guaranty Company of West Virginia, 153 Ky. Rep., 566.)

Construction of charter and banking laws (Ky. Appeals, 1913).—The enumeration in the banking laws of the powers of banks excludes all other methods of banking. (Ib.)

Implied powers—Public Policy—Deposits (Ky. Appeals, 1913).—A bank has no implied power to secure by pledge of its assets the deposits of one of its depositors to the exclusion and detriment of the others. Public policy will not tolerate such practice which in the event of financial trouble would enable a bank to protect the favored few at the expense of the equally deserving many. (Ib.)

Banking laws—Construction—Intent (Ky. Appeals, 1913).—The banking laws were contemplated and framed to insure fair and uniform dealings by banks with all of their depositors. (Ib.)

Implied powers (Ky. Appeals, 1913). To enable a bank to exercise a power, not expressly given it by charter or statute, it should be clearly established that such power is necessary to enable it properly to enjoy, use, and carry out its express powers. (Ib.)

Statutes—Construction (Ky. Appeals, 1913).—Where a statute is susceptible of a dual construction, one of which secures equality and equity and the other lead to fraud, that construction insuring fair dealing will be adopted. (Ib.)

Deposits—Guaranty (Ky. Appeals, 1913).—Where by statute a bank is required to secure a public or other deposit before it can receive it, the bank may give such security for its safekeeping and repayment as does not involve a pledge of its assets. (Ib.)

Securities—Pledge—Ultra vires acts (Ky. Appeals, 1913). Under a statute conferring on banks "such powers as may be necessary to carry on the business of banking by discounting and negotiating notes, drafts, bills of exchange, and other evidences of debt," the act of a bank in pledging its liquid assets to secure the deposits of a county treasurer was ultra vires and void. (Ib.)

Escheat of Bank Deposits to State.

Escheat—Property subject—Bank deposits (Oreg., 1912).—Since proceedings under sections 7378, 7379, 7380, L. O. L., for the escheat of bank deposits to the State do not assume the death of a depositor whose deposit is sought to be recovered, nor attempt to administer upon his estate, section 7378, providing that the act shall not affect the deposit of any person known to be living, but shall apply to a deposit of an insane person or person under a legal disability, the statutes do not invade the jurisdiction of the probate courts to administer upon the estates of decedents. (State of Oregon *v.* First National Bank of Portland, 61 Oreg. Rep., 551; 123 Pac., 712.)

Escheat—Nature of proceedings (Oreg., 1912).—Section 7378, L. O. L., provides that the cashier, etc., of every bank shall return to the secretary of state a statement showing the amount to the credit of every depositor who has not made or withdrawn a deposit for more than seven years, the last known place of residence of such depositor, and the fact of his death, if known, and publish copies of such statements in a newspaper, but provides that the act shall not apply to the deposit of any person known to be living, but shall apply to that of an insane person or person under a legal disability, whose relative or guardian shall not have knowledge of such deposit. Section 7379 provides that such deposits shall be deemed to have escheated to the State, and the attorney general shall demand their payment. Section 7380 authorizes the attorney general to commence proceedings against any bank which refuses payment in the same manner as escheat proceedings for the State to recover the property of intestates without heirs; and such deposits, when collected, shall be treated as those of deceased persons which have escheated to the State and may be reclaimed by the original depositors, heirs, or representatives in the same manner. Section 7380 also permits any person claiming the money to intervene and have his claim established and requires notice by publication of escheat proceedings to be given for four successive weeks. *Held*, that the proceeding was quasi in rem, so that no precedent seizure of the escheated property was necessary; and the judgment of escheat discharged the bank from liability to the depositor. (Ib.)

Escheat—Validity of statutes—Escheat of bank deposits (Oreg., 1912).—The statutes were authorized under the power of the legislature to escheat and hold the property of absentee depositors. (Ib.)

Escheat—Property subject—Regulation of bank deposits—"Visitorial power" (Oreg., 1912).—The statutes are not an exercise of the "visitorial powers" prohibited by United States Revised Statutes 5241 (U. S. Comp. St., 1901, p. 3517), providing that no association shall be subject to any visitorial powers other than such as are authorized by the title on national banks or are vested in the courts; the term "visitorial power," as there used, meaning power to control and arrest abuses and enforce due observance of the statutes, under section 5240 (U. S. Comp. St., 1901, p. 3516), providing for the employment of bank examiners, authorized to examine the affairs of every banking association and make a report of the bank's condition to the Comptroller. (Ib.)

Special Deposits.

Special deposits—Relation of parties (U. S. C. C. A., 1912). Balance of a bank deposit made to pay certain outstanding checks *held* a special deposit, which the bank was not entitled to apply to general indebtedness to it. (Continental and Commercial Trust & Savings Bank *v.* Chicago Title & Trust Co., 199 Fed. Rep., 704.)

(U. S. C. C. A., 1912.)—While ordinarily the relation between banker and depositor is that of debtor and creditor, yet if the deposit is made for a specified purpose the bank becomes a bailee of the depositor. (Ib.)

STATE GUARANTY LAWS.

KANSAS.

Equal protection of the law—Impairment of contract obligation—Due process of law—Validity of Kansas bank depositors' guaranty act (U. S. Sup., 1913).—The Kansas bank depositors' guaranty act is not unconstitutional as against national banks either because it discriminates against them in favor of State banks, impairs the obligation of existing contracts, or deprives them of their property without due process of law. (Abilene National Bank *v.* Dolley, 228 U. S. Rep., 1.)

Equal protection of the law—Validity of Kansas bank guaranty act (U. S. Sup., 1913).—The constitutionality of this statute has already been upheld as to State banks in Assaria State Bank *v.* Dolley, 219 U. S., 121. (Ib.)

Competition with—Effect of laws of United States to forbid (U. S. Sup., 1913).—The statutes of the United States where they do not prohibit competition with national banks do not forbid competitors to succeed. (Ib.)

FORGED OR ALTERED PAPER.

United States depositaries—Forged checks (U. S. C. C. A., 1913).—Where a national bank which was a United States depositary paid certain forged checks drawn by a disbursing agent of the Government and on demand by the Government for repayment unconditionally refused to return the money, and made no demand for the checks nor offer to pay on condition that the checks be returned, a tender of the checks to the bank was not a condition precedent to the right of the Government to recover the money. (United States *v.* National Bank of Commerce of Seattle, 205 Fed. Rep., 433.)

Limitation of actions—Checks—Forged indorsements—Payment—Recovery of money (U. S. C. C. A., 1913).—Where a bank on which certain checks with forged indorsements were drawn paid the same, relying on the validity of such indorsements, the bank's right of action against the banks through which it received the checks arose immediately on payment thereof. (Ib.)

Forged checks—Payment—Negligence—Estoppel (U. S. C. C. A., 1913).—Where a defendant bank which was a United States depositary paid certain checks drawn by a Government disbursing agent on which indorsements by fictitious payees had been forged, but defendant and the banks through which it received the checks were both negligent in failing to discover the forgery and in not requiring identification of the payees, defendant could not urge in defense of its liability to refund the money to the Government that it was negligent in failing promptly to discover the fraud. (Ib.)

Checks—Duty to pay—Forgeries (U. S. C. C. A., 1913).—Where a bank holds money of a depositor subject to check, it is bound to pay any valid check of the depositor, but it can not charge against the depositor's account money paid on a forged check or on a check to which the bank has obtained title by a forged indorsement. (Ib.)

Bills and notes—Checks—Indorsement—Forged signature of payee (U. S. C. C. A., 1913).—Where checks were drawn by a Government disbursing agent, the Government was not chargeable with knowledge of the signatures of the payees of the checks, so as to charge it with notice that they were forgeries. (Ib.)

Checks—Payment—Duty of bank (U. S. C. C. A., 1913).—Where Government checks drawn by a disbursing agent are presented to the drawee bank for payment, it is the bank's duty to ascertain whether there is such a person as the payee named in the checks and to know that the person presenting the checks is entitled to receive payment; and if payment is made without investigation, identification, or other precaution, it is at the bank's risk. (Ib.)

Government money—Federal depositaries—United States disbursing agents—Authority—Notice to bank (U. S. C. C. A., 1913).—Revised Statutes, section 5153, provides that all national banking associations designated for that purpose shall be depositaries of public money under such regulations as may be prescribed by the Secretary of the Treasury, and Treasury Department Circular No. 49, section 6, provides that if the object or purpose for which a check of a public disbursing officer is drawn is not stated thereon, or if any reason exists for suspecting fraud, the officer or bank on which the check is drawn shall refuse payment. Department Circular No. 102 declares that any check drawn by a disbursing officer on moneys thus deposited must be in favor of the party by name to whom payment is to be made and payable to order with certain exceptions. *Held* that, where a national bank was a Federal depositary and checks of a disbursing agent were drawn on it, the bank was chargeable with notice of the limitations of the agent's authority to check out the money deposited, and that checks drawn by him on such fund payable to the fictitious payee could not be regarded as

valid checks on the fund payable to the bearer. (United States *v.* National Bank of Commerce of Seattle, 205 Fed. Rep., 433.)

United States—Expenditure of funds—Disbursing agent—Fraud—Notice to Government (U. S. C. C. A., 1913).—Where a Federal disbursing agent having authority to draw checks on a Government deposit for a specified purpose drew checks to fictitious payees, and then by forged indorsements procured the proceeds by depositing the checks in other banks, such agent acted in fraud of his principal, and the United States was therefore not charged with his knowledge. (Ib.)

INSOLVENCY AND RECEIVERS.

Tracing Trust Funds.

Insolvency—Claims—Trust funds—Conversion of securities (U. S. C. C. A., 1913).—A bank of which complainant was a customer while insolvent wrongfully sold certain of complainant's stock deposited with it as collateral, receiving $3,558.75 which it deposited in another bank to its credit in a preexisting open account, May 1, 1909. From May 1 to 8, inclusive, the bank drew drafts on this account in favor of an express company for amounts aggregating $2,807.32, receiving from the express company over its counter the amount of the drafts in cash, and at all times from May 1 to 10, inclusive, the open account, after crediting all deposits and deducting drafts, showed a balance in favor of the insolvent bank always in excess of the proceeds of the stock so sold. On May 11 the account was overdrawn, however, but at all times from February 1 until the bank closed there was more than $3,500 of cash on hand in the bank's vaults, and $15,652.23 in cash came into the hands of a receiver. *Held*, that the proceeds of the stock constituted a trust fund which did not lose its character when mingled with the other moneys of the bank, and, when the deposit was drawn down by the express company drafts, the trust attached to the amount paid by the express company for the drafts pro tanto, and hence there was a sufficient following of the fund to entitle complainant to a preferred claim therefor. (Brennan *v.* Tillinghast, Tillinghast *v.* Brennan, 201 Fed. Rep., 609.)

Trust funds—Loss of trust character—Mingling with other funds (U. S. C. C. A., 1913).—Where the proceeds of stocks wrongfully sold by an insolvent bank constituted a trust fund for the benefit of the owner, they did not lose their trust character by being mingled with other moneys of the bank, provided the owner could trace the money either in its original shape or in substituted form into assets which came into the hands of the bank's receiver. (Ib.)

Trust funds—Mingling with other moneys (U. S. C. C. A., 1913).—Proof that a tort-feasor has mingled trust funds with his own and made payments thereafter out of the common fund, in the absence of anything else appearing, is a sufficient identification of the remainder of that fund coming into the hands of the receiver not exceeding the smallest amount the fund contained subsequent to the commingling as trust property, under the presumption that the trust moneys had not been paid out. (Ib.)

Trust funds—Blending with other funds—Presumptions (U. S. C. C. A., 1913).—Where trust funds are blended with other moneys in a bank account from which there had been drawings from time to time, the presumption that the sums first drawn out were from the moneys which the tort-feasor had a right to expend in his own business, and that the balance which remained included the trust fund, will not stand against evidence to the contrary. (Ib.)

Trusts—Trust funds—Mingling—Transfers (U. S. C. C. A., 1913).—The presumption that a tort-feasor, having mingled trust funds with his own, paid out his own funds, and that the remaining balance included those of the trust, has no application where the evidence shows that the first moneys drawn from the mingled fund by the tort-feasor were not in fact dissipated by him, but merely transferred in a substituted form to another fund retained in his own possession. (Ib.)

Deposits—Reclamation—Insolvency (U. S. C. C. A., 1913).—Where a bank, being hopelessly insolvent, receives a deposit with knowledge that it can not pay its debts and must fail in business, the depositor may rescind for fraud and reclaim the deposit or its proceeds, if traced into the assets of the bank coming into the hands of the receiver. (Ib.)

Insolvency—Deposits—Receipt (U. S. C. C. A., 1913).—Where the officers of a bank at the time they received a deposit from complainant had known for 10 years that the bank was insolvent, but it did not appear but that the officers had reason to believe that by a continuing business the bank might retrieve its fortunes, and that it would be necessary to close, the receipt of the deposit did not constitute such fraud as would

entitle the depositor to rescind and recover the deposit from the bank's receiver for fraud. (Ib.)

Receipt of deposits—Fraud (U. S. C. C. A., 1913).—Complainant, being indebted to a bank which was insolvent for money borrowed, deposited $1,000 with the bank, with the understanding that it would be used in payment of defendant's note at maturity. *Held*, that such deposit was taken by the bank as quasi security for the payment of its debt, and hence a receipt of the deposit, notwithstanding the bank's insolvency, was not fraudulent. (Ib.)

Assignments of error—Scope—Review (U. S. C. C. A., 1913).—Where, in a proceeding to recover certain claims against the receiver of an insolvent bank, complainant's $1,000 note in favor of the bank was allowed as an offset against his preferred claim arising out of the bank's wrongful sale of his collateral consistently with the prayer of the bill, and complainant assigned no error on appeal because the offset was not allowed against his claim as a general creditor under a certificate of deposit, error, if any, in that regard, will not be reviewed. (Ib.)

PROOF AND PAYMENT OF CLAIMS—CLAIMS PROVABLE.

Drafts—Checks—Obligation to pay—Loans (U. S. C. C. A., 1913).—The M. Bank having suffered an impairment of capital, it was arranged that a draft should be drawn on defendant, who was president of plaintiff's bank, individually, to cover the impairment until the danger of governmental examination was over, and that the draft should be made good by the check of a corporation drawn on the M. Bank. The draft was drawn, accepted, and paid through plaintiff's bank; the amount being charged to defendant's individual account, and offset by a credit deposit of the corporation's check for the same amount, which, when presented to the M. Bank for payment, was protested for lack of funds, and on its return defendant directed that it be carried as a cash item of plaintiff's bank, instead of being charged back to his account. *Held*, that the effect of such transaction being to withdraw the amount of the draft from the assets of plaintiff's bank, the credit of the check should have been canceled and the draft charged against defendant's account (Elliott *v.* Peet, 202 Fed. Rep., 434.)

Insolvency—Claims—Reimbursement—Burden of proof (U. S. C. C. A., 1913).—Where the president of a bank, in order to tide over a bank's difficulties, borrowed $50,000, giving both the bank's and his own securities as collateral, the burden was on him to clearly establish the nature and character of his outlays and expenses in securing such loan, in order to recover the same from the bank's receiver. (Ib.)

Set-off and counterclaim—Withdrawal (U. S. C. C. A., 1913).—Where, in an action by a receiver of a bank against its former president to recover an overdraft, defendant claimed as an offset misappropriation of a certificate of deposit by the receiver, but there was no sufficient evidence that the certificate belonged to defendant, he, having submitted his claim to the court, was not entitled as of right to withdraw the same in order that he might relitigate the matter in another case. (Ib.)

PREFERENCES OF INSOLVENCY—PRIORITY OF CLAIMS OF STATE.

States—Prerogatives of sovereignty—Priority of public debts (*U. S. D. C., 1913*).—Montana in adopting, by Revised Codes, Montana, sections 3552, 8060, the common law of England, where not excluded by or inconsistent with constitutional or statutory enactments, adopted the crown's prerogative with respect to public debts, and the State as sovereign is entitled to priority of payment over private creditors of the same debtor. (American Bonding Co. *v.* Reynolds, 203 Fed. Rep., 356.)

States—Priority of claims—Receivership (*U. S. D. C., 1913*).—The prerogative right of a State as a creditor to priority of payment from the assets of a banking corporation is not affected by the fact that a receiver has been appointed for the corporation in a suit brought by the State under statutory authority, since the receivership does not change the title to the property, but merely places it in the custody of the law for the protection of all interested parties. (Ib.)

Subrogation—Surety—Payment of debt to State (*U. S. D. C., 1913*).—A surety who has paid a debt due to a State for which the State as sovereign was entitled to priority of payment from the property of the principal debtor is subrogated to such right. (Ib.)

LIQUIDATION.

Distribution of surplus—Rights of shareholder (*N. Y. Sup., 1912*).—Under national banking act (Rev. Stat., sec. 5139), a retention of shares of stock without a transfer on the books delivered to a purchaser contrary to his agreement held not to charge

him as a stockholder and subject him to any liability for unpaid amount for surplus and organization on the shares. (Jones *v.* Beaver Nat. Bank, 134 N. Y. Sup., 776.)

Distribution of surplus—Rights of shareholder (*N. Y. Sup., 1912*).—Knowledge by a purchaser of bank stock that shares wrongfully issued to him were for the purpose of deceiving the Comptroller of the Currency would not preclude him from recovering the amount of a return dividend on capital, declared in voluntary liquidation on the stock which should have been issued to him. (Ib.)

OFFSETS.

Partial failure of consideration—Set-off (*U. S. C. C. A., 1912*).—A national bank owning an equity in certain real estate, a corporation was organized to take over the same, which executed bonds to the amount of $85,000 and delivered the same to the bank to represent such equity. The Comptroller of the Currency required that the investment be reduced by a sale of $40,000 of the bonds, whereupon the bank's cashier sold $6,000 par value to defendant for $5,000, taking his note, secured by the bonds, as collateral therefor. This was objected to as a makeshift by the bank examiner, who then insisted that the transaction be rescinded, that the bonds be restored to the assets of the bank, and that the directors guarantee payment of $20,000 of the sum represented by them. This was carried out, and defendant's note withdrawn from the bank's assets by the cashier and placed in his personal desk, but was never surrendered to defendant, and on failure of the bank it passed into the hands of plaintiff, its receiver, who brought suit thereon, after having sold the equity in the real estate represented by the bonds held by the bank, without notice to defendant, and without recognizing his interest therein. *Held* that, since it was not within the power of the Comptroller, his receiver, the directors, or all of them, to have deprived the bank of any advantage it had fairly obtained by a sale of the bonds, especially as it affected their own liability, the rescisson was invalid, and that the most that defendant was entitled to in an action at law was a set-off of an amount equal to the value of his interest in the equity, on the theory of partial failure of consideration for the note. (Clark *v.* Tillinghast, 201 Fed. Rep., 77.)

OFFICERS.

Bonds of Officers.

Sureties only liable for term for which bond was given (*U. S. C. C. A., 1912*).—When the term of the president has been fixed, sureties on the bond to answer for the breaches of duty of a president during his legal term are not liable for his breaches under a subsequent appointment after the expiration of his term current when their bond was given. (Rankin *v.* Tygard, 198 Fed. Rep., 795.)

Principal and surety—National bank—Officers—Release of sureties (*U. S. C. C. A., 1912*).—An immaterial alteration of the contract of sureties without their knowledge after they have signed, an alteration which neither changes the legal identity of the contract nor the liabilities of the parties to it, does not release the sureties.

After a bond to indemnify a national bank against the delinquencies of its president, which recited in its first line that he was the principal, had been signed by the president over the word "principal" and by the first surety below that word, and over the word "securities," the principal inserted the name of the surety before the word "principal" in the first line of the bond. While it was in that condition, two other sureties signed below the signature of the first surety and above the word "securities," and thereafter the name of the first surety was erased where it had been inserted in the first line of the bond before the word "principal." *Held*, these alterations were immaterial and did not release the sureties. (Ib.)

Alteration of instruments—Materiality—Presumption and burden of proof (*U. S. C. C. A., 1912*).—The legal presumption is that an alteration apparent on the face of a written instrument was made before its execution, and is therefore immaterial, and the burden is not on the party who offers the instrument in evidence to explain the alteration, but it is on him who assails the instrument to prove that the alteration was made after its execution, and that it is material. (Ib.)

Liabilities on bonds (*U. S. C. C. A., 1912*).—A bond to a bank was conditioned to take effect commencing on the date of its approval by proper authority.

Held, its approval by all the directors of the bank, though not by a majority thereof at a meeting of the board, its receipt, and preservation by an officer of the bank was sufficient to put it in operation. (Ib.)

Election of remedies—Finality of election—Mistake as to remedies (*U. S. C. C. A., 1912*).—Where a wrong has been inflicted, and the victim is doubtful which of two inconsistent remedies is the right one, he may pursue both until he recovers through one. His prosecution of the wrong remedy to a judgment of defeat will not, in the absence of facts creating an equitable estoppel, bar him from subsequently pursuing the right remedy to victory. It was no defense to the action on the bond on the theory that the principal had made a note of $3,000, without authority from the H. Company that the receiver sued the H. Company on the note on the theory that the principal had authority to make it. He could lawfully pursue each remedy until the loss of the bank was restored. (Ib.)

POWERS OF AND REPRESENTATION OF BANK BY OFFICERS.

Term of president (U. S. C. C. A., 1912).—Subject to the free exercise by its board of directors of its power to remove him at its pleasure, a national bank may fix the term of office of its president or other officer, though during that term he is subject to recall by the board under section 5136, United States Revised Statutes. (Rankin *v.* Tygard, 198 Fed Rep., 795.)

Provision requiring two-thirds vote of board to remove ultra vires (U. S. C. C. A., 1912).—A national bank provided by its articles of association and by-laws that its board of directors should elect one of its members president of the association who should hold his office, unless sooner removed by a two-thirds vote of all the members of the board, for the term for which he was elected a director. *Held*, if the restriction of the power of removal to a two-thirds vote was ultra vires and void under section 5136, United States Revised Statutes, the other terms of the provision were valid. (Ib.)

Act of president—Breach of duty (U. S. C. C. A,, 1912).—The act of the president of a national bank in making a note of a corporation by himself as treasurer, crediting the corporation with the amount, paying the corporation and another sums of money thereon, was his act as its president and a breach of his official duty. (Rankin *v.* Tygard, 198 Fed. Rep., 795.)

Authority of president (U. S. C. C. A., 1912).—Where the board of directors of a national bank expressly authorized, or for a reasonable time permitted, the president to participate in the actual management of its daily business affairs, his authority to discount commercial paper and to do other acts within the authority of ministerial officers is ample. (Rankin *v.* Tygard, 198 Fed. Rep., 795.)

Purchase of stock in national bank—False representations—Rescission—Bill (U. S. C. C. A., 1913).—Complainant alleged that in May, 1908, he bought certain shares in a national bank on representations made to him by its officers with reference to its financial condition, and that the representations were known to be false by such officers when made, and that they were made with intent to deceive complainant and induce him to purchase, that he was ignorant of the bank's affairs, and bought the shares because he believed the representations and relied on them, and that the stock was represented to be stock not yet originally issued, but was in fact stock then owned by the vice president of the bank. The bank suspended in March, 1911, and an assessment of $100 a share having been levied by the Comptroller of the Currency, the receiver sued complainant for his proportion of the assessment, which action complainant sought to have perpetually enjoined. *Held*, that the bank's failure before complainant discovered the fraud was no reason why the suit to rescind could not be brought against the bank, though it made it necessary to add the receiver as a party defendant, and that the bill was not demurrable. (Ryan *v.* Mt. Vernon National Bank et al., 206 Fed. Rep., 452.)

When bank estopped to deny liability for president's action (U. S. D. C., 1913).—A bank having received the entire benefit of a loan obtained for it by its president on his personal responsibility, *Held*, estopped to deny the president's authority so to act. (Kendrick State Bank *v.* First National Bank, 206 Fed. Rep., 940.)

Right of creditor bank to set off note given by bank's creditor against debtor bank's deposit (U. S. D. C., 1913).—A note executed by a bank president individually to defendant bank to obtain funds, which were used entirely for the benefit of the president's institution, *Held*, an indebtedness of the bank, and not of the president, so that, on the bank's insolvency, the creditor bank was entitled to set off the note against the debtor bank's deposit and recover the balance. (Ib.)

(U. S. D. C., 1913).—That a loan by defendant bank to the K. bank was evidenced by a note of the K. bank's president to withhold a full statement of the latter's bank liabilities from the bank commissioner was no objection to the right of defendant bank to set off the indebtedness against the K. bank's deposit at the time of its failure. (Ib.)

OFFICERS, CRIMINAL LIABILITY OF.

False Entries.

False entries in reports to Comptroller—Unfilled blanks (U. S. D. C., 1913). The term "false entries," as used in Revised Statutes, section 5209 (U. S. Comp. St., 1901, p. 3497), making it an offense for an officer of a national banking association to make false entries in reports to the Comptroller of the Currency, means untrue statements of items of account by written words, figures, or marks made therein, and was not satisfied by a mere unfilled blank in such report, viz, "Notes and bills rediscounted, ———," when in fact the bank had rediscounted $5,000 worth of its paper. (United States *v.* Herrig, 204 Fed. Rep., 124.)

False entries—Only those persons who knowingly make false entries chargeable and not an officer of the bank who verifies the report (U. S. D. C., 1913).—Under Revised Statutes, section 5209 (U. S. Comp. St. 1901, p. 3497), making it an offense for a person knowingly to make false entries in reports of the condition of national banks to the Comptroller of the Currency, only those persons who knowingly make the false entries are chargeable, and not an officer of the bank, who verifies the bank's report containing a false entry for which he was not responsible. (Ib.)

Aiding and abetting—"Every person" (U. S. C. C. A., 1913).—Revised Statutes, section 5209 (U. S. Comp. St. 1901, p. 3407), denounces a penalty against every president, cashier, teller, clerk, or agent of a national bank who shall falsify reports to the Comptroller of the Currency and every person who, with like intent, aids or abets any officer, clerk, or agent in any violation of such action. *Held*, that the words "any person" as so used were not limited to persons not connected with the banking association, but included officers and agents of the bank itself, so that the president of a national bank could be properly convicted of aiding the cashier in committing the offense described. (Kettenbach et al. *v.* United States, 202 Fed. Rep., 377.)

Indictment.

Indictment—Presentment—Sufficiency of (U. S. Sup., 1912).—An indictment duly found by the Federal grand jury, while in session in a room adjoining the court room with a door opening into the court room, and which is presented in the manner prescribed by the law of the State to the presiding judge in open court while the jurors are still in session and able to see the actions of the foreman, is not void because the grand jury did not in a body accompany the foreman into the court room. (Breese *v.* United States, 226 U. S. Rep., 1.)

Indictment—Presentment—Objection to sufficiency of (U. S. Sup., 1912).—An objection that an indictment was not, under such circumstances, duly presented and publicly delivered, should be taken at the first opportunity and is lost by failure to do so; nor is it saved by permission given, when pleading not guilty, to take advantage upon motion in arrest of judgment of all matters that can be availed of on motion to quash or demurrer. (Ib.)

Indictment—Objections to—Effect of 1025 Revised Statutes (U. S. Sup., 1912).—Section 1025, Revised Statutes, indicates a policy that technical objections to an indictment not presented at the first opportunity are waived and should be construed as extending to the objection raised in this case, the same not being based on a constitutional right. (Ib.)

Pleading—Effect of order saving rights (U. S. Sup., 1912).—An order of the court saving rights to one pleading to an indictment does not create new rights. (Ib.)

Trial—Indictments—Consolidation (U. S. C. C. A., 1913).—Where indictments and all the counts thereof charged accused as president of a specified national bank with acts of the same character and degree of offense, constituting an alleged violation of the national banking act, an order consolidating the indictments for trial and the trial of the same as one case was authorized by Revised Statutes, section 1024. (Norton *v.* United States, 205 Fed. Rep., 593.)

National banks—Officers—Offenses—Misappropriation—Indictment (U. S. C. C. A., 1913).—A count in an indictment against the president of a national bank charged him with misappropriating the property of the bank, to wit, a draft drawn by H. on a specified trust company of the value of $27,125. *Held*, that since the test of the offense is whether the misappropriation was made by accused with intent to injure the bank, the count was not defective for failure to charge that the bank sustained a loss by the transaction. (Ib.)

Indictment and information—Duplicity (U. S. C. C. A., 1913).—Where a count in an indictment against the president of a national bank charged misappropriation of the property of the bank, to wit, a specified draft of the value of $27,125, it was not ren-

dered duplicitous because when the draft was drawn there was substituted in its place three separate notes aggregating the same amount, alleged to be fictitious and worthless, on the theory that because the notes were used as substitutes for the draft three offenses were committed. (Ib.)

Indictment and information—Bank officers—Duplicity (U. S. C. C. A., 1913).—A count in an indictment against a national bank president charged misapplication of the funds by means of moneys and credits withdrawn in the form of cash exchange in the sum and value of $9,000, by means of a check drawn by the B. State bank on the national bank in the sum of $9,000, the State bank having no credit with the national bank, which gave therefor four drafts payable to the customers of the State bank, one for $3,000 and three for $2,000 each. *Held*, that the misapplication charged was the payment of the draft for $9,000 by means of the national bank's drafts and not the ultimate payment of the latter drafts; and hence the count was not duplicitous. (Ib.)

Officers—Offenses—False entries (U. S. C. C. A., 1913).—An indictment against a national bank president charged the making of a false entry in the ledger of the bank by debiting the account of the F. bank with $25,000. It further charged that, by such transaction, the account of the F. bank was reduced by such amount. *Held*, that such indictment was not demurrable in that an entry of $25,000 on the debit side of the account did not indicate that that amount had been received by the national bank as alleged, since, if the sum had been received, the entry would have been in the credit column, for as the sum was taken from the F. bank's credit, it constituted a false entry unless it was paid out on a check or draft of the F. bank. (Ib.)

False entry in report to Comptroller of Currency—Indictment—Sufficiency (U. S. C. C. A., 1912).—An indictment alleging that accused made a false entry in a report to the Comptroller of the Currency of the condition of a national bank at the close of business on a designated date, and that the report showed that the balance due to the bank from another bank on that date was $21,007.97, when in truth and in fact the balance was only $14,895.97, sufficiently charges a violation of Revised Statutes, section 5209, punishing the making of false reports, when attacked by motion in arrest. (Phillips *v.* United States, 201 Fed. Rep., 259.)

"False entry" in report to Comptroller of Currency—Indictment—Issues, proof, and variance (U. S. C. C. A., 1912).—The variance between an indictment alleging that accused made a false entry in a report to the Comptroller of the Currency of the condition of a national bank, so as to show the balance due the bank from another bank as $21,007.97, when in truth and in fact the balance was only $14,895.97, and the proof that the true balance due was $14,947.68, is immaterial; the gist of the offense being the making of a "false entry" knowingly and with intent to deceive, and the exact amount of the balance stated to be due not being material. (Ib.)

GRAND JURY.

Grand jury—Jurors—Qualifications—Taxpayers (U. S. C. C. A., 1913).—Code N. C., section 1722, provides that the commissioners for the several counties, at their regular meeting on the first Monday of June in each year, shall cause their clerks to lay before them the tax returns for the preceding year for their county, from which the commissioners shall select the names of such persons only as have paid tax for the preceding year and are of good moral character and of sufficient intelligence to act as jurors. *Held*, that the absence from the list of taxpayers of the name of a grand juror, and the consequent nonpayment of taxes, did not, of itself, disqualify the juror if it did not appear that his name should have been on the list. (Breese et al *v.* United States, 203 Fed. Rep., 824.)

Grand jury—Qualification of jurors—Taxpayer—Evidence—Findings (U. S. C. C. A., 1913).—On an issue as to whether the name of a grand juror should have been on the tax list, evidence *held* to warrant a finding that he had no property subject to taxation in the preceding year. (Ib.)

Indictment and information—Drawing grand jury—Venire facias—Issuance (U. S. C. C. A., 1913).—Revised Statutes, section 810 (U. S. Comp. St. 1901, p. 627), providing that no grand jury shall be summoned unless the judge orders a venire to issue therefor, was intended only to prevent the expense of having a grand jury unnecessarily summoned; and hence, where an order is entered requiring the clerk and jury commissioner to draw jurors for service at the succeeding term, an indictment found by a grand jury at such succeeding term was not defective because there was no order of the court in terms directing that a writ of venire facias issue therefor. (Ib.)

Indictment and information—Return—Entry (U. S. C. C. A., 1913).—An entry of the return of an indictment properly entitled, and reciting that an indictment for conspiracy to embezzle was returned at the October, 1897, term, and indorsed "A

true bill," with the name of the foreman of the grand jury, and that the cause was ordered transferred to another city, to be tried at the next term of court to be held on the first Monday of November next, etc., while incomplete and informal the defect was one of form only, and the indictment was therefore not fatally defective on the ground that no record entry was made of its return. (Ib.)

EVIDENCE.

Offenses of officers—False entries (U. S. C. C. A., 1913).—In a prosecution of a national bank president for making a false entry in the bank's books relative to the alleged withdrawal of $25,000, charged against the account of another bank, evidence held to justify the jury in finding that the entry was false and that it had not been authorized by the president of the bank against the account of which the amount was charged. (Norton *v.* United States, 205 Fed. Rep., 593.)

Weight of evidence—Duty to credit (U. S. C. C. A., 1913.—The rule that positive, uncontradicted testimony as to a particular fact should control the decision does not apply if the testimony is inherently improbable or the witness is contradicted by physical facts or omissions, or his manner of testifying raises doubts as to his sincerity. (Ib.)

Funds—Misappropriation—Loss (U. S. C. C. A., 1913).—Where a national bank president misappropriated funds of the bank, the criminal character of the transactions was to be determined from the facts existing when they occurred, and if they were then criminal they did not lose their criminal character by the fact that he subsequently made good to the bank the amount so misappropriated. (Ib.)

False entry in report to Comptroller of Currency of condition of national bank—Criminal prosecution—Evidence—Admissibility (U. S. C. C. A., 1912).—On a trial for having made on September 4, 1906, a false entry in a report to the Comptroller of the Currency of the condition of a national bank at the close of business on that date, so as to falsely show the balance due it from another bank, the admission of evidence that accused in October following admitted a shortage in his accounts, and that he thought that most of it was in the account of such bank, to throw light on the question as to whether accused knowingly made the false entry, was not erroneous. (Phillips *v.* United States, 201 Fed. Rep., 259.)

Evidence—Private records (U. S. C. C. A., 1912).—On a trial for making a false entry in a report to the Comptroller of the Currency of the condition of a national bank by showing a false balance due the bank from another bank, the books of the latter bank are inadmissible in evidence, in absence of the testimony of some person who either has some knowledge of the correctness of the entries made in the books, or some knowledge of the original transaction on which the entries were founded; and the mere fact that the laws of the United States make it a crime to make false entries in the books of a national bank does not make the books prima facie evidence of their contents, simply on their being identified as bank books, but their admissibility is determined by the rule governing the admission of entries in private books of account. (Ib.)

Evidence—Condition of books of account—Expert testimony (U. S. C. C. A., 1912).—Expert testimony of a summary of books of account and documents is admissible, where the items are multifarious and voluminous, and of a character to render it difficult for the jury to comprehend material facts; but, before such expert testimony may be given, the books or documents must be public records, or if private books of account or documents, sufficient evidence must first be given to admit the books or documents themselves in evidence, unless the books or documents are admitted to be correct. (Ib.)

Evidence—Other offenses—Similar transactions—Intent (U. S. C. C. A., 1913).—In a prosecution of national bank officers for falsifying reports to the comptroller, etc., evidence of the making of a series of false reports as to the bank's condition to the Comptroller of the Currency, beginning seven years prior to the dates of the reports which were counted on in the indictments, showing a uniform system of falsification similar to the falsification of the reports charged in the indictment, was admissible to show motive or intent. (Kettenbach et al. *v.* United States, 202 Fed. Rep., 377.)

Evidence—Other offenses—Time (U. S. C. C. A., 1913).—No limit is placed on the court's power to admit evidence of a series of prior similar transactions committed by the accused in the ordinary course of his business to show motive or intent, but the period of time within which such matter may be competent is a matter largely within the discretion of the trial court. (Ib.)

Evidence—Other offenses—Limitations—Request (U. S. C. C. A., 1913).—Where alleged evidence of an offense other than that charged in the indictment in part related directly to and tended to support the offense charged, defendants were, at

most, entitled to the granting of an instruction, if requested, limiting the effect of the evidence. (Breese et al. *v.* United States, 203 Fed. Rep., 824.)

Evidence—Other offenses—Intent (U. S. C. C. A., 1913).—In a prosecution of defendants for conspiracy to embezzle and misapply the funds and credits of a national bank, evidence that defendant D., who was treasurer of a church, procured two notes, for $5,000 each, of a series representing a loan secured by a deed of trust (which in fact had not been made), and after placing the notes in the possession of the bank used them as collateral for a discount for the benefit of the bank, was admissible to show fraudulent intent, though it was separate and apart from the offense charged in the indictment. (Ib.)

LIMITATIONS.

Criminal law—Limitations—Overt acts—Conspiracy (U. S. C. C. A., 1913).—Where a conspiracy was formed to embezzle and misapply the funds and credits of a national bank more than three years prior to the indictment, but the offense charged involved overt acts committed within the three-year period, the offense was not barred by limitations. (Breese et al. *v.* United States, 203 Fed. Rep., 824.)

TRIAL.

CONSOLIDATION OF INDICTMENTS.

Trial—Consolidation of indictments—Right to object (U. S. C. C. A., 1913).—Where defendants, charged with falsifying reports to the Comptroller of the Currency, applied for a severance as to them from charges against other defendants, and that all of the indictments involving the applicants be consolidated and tried at the same time, as authorized by Revised Statutes, section 1024, they could not object after conviction that the court erred in consolidating their indictments for trial. (Kettenbach et al. *v.* United States, 202 Fed. Rep., 377.)

Jury—Indictments—Consolidation—Peremptory challenges (U. S. C. C. A., 1913).—Where indictments against two defendants for violating the National Bank Act were consolidated on their application, the consolidated indictments became in legal effect separate counts of a single indictment, and the defendants were therefore only entitled to 10 peremptory challenges, as in the case of a trial under a single indictment. (Ib.)

Indictment and information—Requisites—Certainty—Bill of particulars (U. S. C. C. A., 1913).—Where an indictment against national-bank officers for falsifying reports to the Comptroller of the Currency specificially referred to the entries which were alleged to be false, it was not an abuse of the trial court's discretion to deny an application for a bill of particulars calling for the production of practically all the Government's evidence to sustain the charge and for items from the bank's books; no affidavit or other showing being made to support the application or show that defendants could not have access to the books, etc. (Ib.)

STATEMENTS BY JUDGE.

Appeal—Objections and exceptions—Necessity (U. S. C. C. A., 1913).—Improper remarks, alleged to have been made by the trial judge during the progress of the trial in the presence of the jury can not be reviewed where no objection or exception was taken thereto at the trial. (Kettenbach et al. *v.* United States, 202 U. S., 377.)

Trial—Statements by court (U. S. C. C. A., 1913).—Where, on the trial of bank officers for falsifying reports to the Comptroller of the Currency, the report was blank as to an item of indebtedness to trust companies and savings banks, it was not error for the court to remark, "The report shows blank, and that is reporting nothing as a matter of fact;" it being the court's duty to state the legal effect of leaving a blank unfilled in such a report. (Ib.)

Witnesses—Federal court—Practice (U. S. C. C. A., 1913).—A trial judge in a Federal court is not a mere presiding officer, it being his function to conduct the trial in an orderly way, with a view to elicit the truth and attain justice between the parties, and he being authorized to interrogate witnesses, and to express his opinion on the weight of the evidence and on the credibility of the witnesses. (Ib.)

Witnesses—Cross-examination—Scope (U. S. C. C. A., 1913).—It was not error to exclude questions asked of a witness on cross-examination which were not within the scope of his direct examination, and which were not relevant to the issues in the case. (Ib.)

EXAMINATION OF WITNESSES.

Witnesses—Cross-examination of accused (U. S. C. C. A., 1913).—Where, in a prosecution of a national-bank president for violation of the national banking act, accused had testified in his direct examination that certain notes executed to a trust company had been paid in full with interest, and one of the indictments charged that the notes had never been paid, it was proper to permit the Government to cross-examine accused fully as to the transaction by which a credit was obtained with the trust company to take up the notes. (Norton *v.* United States, 205 Fed. Rep., 593.)

INSTRUCTIONS TO JURY.

Trial—Request to charge—Instructions given (U. S. C. C. A., 1913).—It is not error to refuse requests to charge substantially covered by instructions given. (Kettenbach et al. *v.* United States, 202 U. S., 377.)

(U. S. C. C. A., 1913).—In a prosecution of national-bank officers for making false reports to the Comptroller of the Currency, the court properly charged that defendants might be convicted on proof that the false reports were made in pursuance of a previous arrangement between the clerk who made them and the defendants who instigated them, the statute being applicable to counseling and procuring in advance of the act, and refused to charge that in order to convict it must be proved beyond a reasonable doubt that defendants directed the specific reports complained of in the indictment or made such reports themselves as such request assumed that defendants could be convicted only on proof that they made the reports, or stood by and directed that the specific reports be made by another. (Ib.)

SENTENCE.

Conviction—Sentence—Different offenses—Operation concurrently (U. S. C. C. A., 1913).—A national-bank president, having been convicted under three indictments, was sentenced on one of the counts to a term of imprisonment without the imposition of a fine, to run concurrently with the sentence on the counts of the other two indictments. *Held*, that such sentence was in legal effect a single judgment and sentence, and being supported by the other two indictments, it was immaterial that the evidence did not support a conviction on the third. (Norton *v.* United States, 205 Fed. Rep., 593.)

APPEAL.

Conspiracy—Persons liable—Conviction of less than all (U. S. C. C. A., 1913).—Where three persons were charged with conspiracy to embezzle and misapply the funds and credits of a national bank, and the proof was sufficient to convict two of them, but not the third, the charges against him would be treated as surplusage, and the conviction of the others sustained. (Breese et al. *v.* United States, 203 Fed. Rep., 824.)

Appeal—Findings—Review (U. S. C. C. A., 1913).—A finding of fact by the trial judge will not be reversed on appeal, unless it is plainly wrong. (Ib. Breese et al. *v.* United States, 203 Fed. Rep., 824.)

New trial—Denial—Review (U. S. C. C. A., 1913).—Denial of a motion for a new trial in a criminal case is not reviewable on writ of error. (Kettenbach et al. *v.* United States, 202 Fed. Rep., 377.)

POWERS.

Loans on security of bank's own stock—Validity (U. S. C. C. A., 1913).—The acceptance by a national bank of a pledge of its own stock to secure a loan, although in violation of Revised Statutes, section 5201 (U. S. Comp. St., 1901, p. 3494), is valid, except as against the United States, after the pledge has been executed by a sale. (First National Bank of Lake Charles *v.* Lanz, 202 Fed. Rep., 117.)

DIGEST OF DECISIONS RELATING TO NATIONAL BANKS.

[The following Federal cases were reported from Jan. 1 to Oct. 15, 1914, in vols. 230 to 233, U. S. R., and vols. 208-215, Fed. Rep.]

CHECKS.

Acceptance—Promise to accept.

(U. S. D. C., 1913.) Where plaintiff bank, on presentation to it by the W. Co. of checks on defendant bank, wired defendant, "Will you pay W. Co. checks?" stating the amount, and received a reply: "Forward your checks. They will undoubtedly be taken care of by the company when presented"—whereupon plaintiff advanced the amount of such checks to the W. Co., defendant was liable to plaintiff for the amount of the checks, since it might have put the matter beyond all possibility of doubt, and what it said in addition to "forward your checks" was not in direct answer to plaintiff's telegram. (First National Bank of Dun *v.* First National Bank of Massillon, 210 Fed. Rep., 542.)

Unauthorized payment of checks—Liability to depositor.

(U. S. C. C. A., 1913.) A bank is liable to a corporation depositor for the amount of checks paid which were drawn without the authority of the corporation. (Guaranty State Bank & Trust Co. *v.* Oklahoma Coal Co., 209 Fed. Rep., 350.)

COLLATERAL SECURITIES.

Representation by officer—Liability for conversion.

(U. S. C. C. A., 1914.) Where a bank agreed to make a loan against certain collateral, and received the borrower's note and collateral, it was entitled to turn over the note and collateral to an officer of the bank, who made the loan personally, and, having done so, was not responsible for such officer's subsequent conversion of the collateral. (McKinnon *v.* Western Development Co., 212 Fed. Rep., 702.)

COLLECTIONS.

Deposits—Ownership of checks—Trust for collections.

(U. S. C. C. A., 1914.) Complainant deposited certain checks to the credit of his account in the bank of which defendant was appointed receiver, which checks the bank, before its failure, sent to its correspondents in the city, where the checks were payable. The checks were credited to the bank's account and drafts drawn against such account, which, except for the checks, would not have been sufficient to have paid the drafts. *Held*, that though the checks, pending collection, remained in the hands of the bank as a trustee, with the right to charge them back in case of nonpayment, such relation ceased when the bank closed after collecting the checks and using a part of the proceeds, creating the relation of mere debtor and creditor between complainant and the bank, and hence complainant was not entitled to an accounting as against the bank's receiver on the theory that the checks never became the bank's property but were held by it for collection. (Goshorn *v.* Murray, 210 Fed. Rep., 880.)

LOCATION OF BANK, CHANGE OF.

National banks—Organization.

(U. S. C. C. A., 1914.) There is no right to organize and carry on the business of a national bank except on the conditions and in the manner prescribed by the acts of Congress regulating national banks (Rev. St. U. S., secs. 5134, 5190, 5191 [U. S. Comp. St., 1901, pp. 3454, 3486]; act Mar. 14, 1900, c. 41, 31 Stat. 48 [U. S. Comp. St., 1901, p. 3461]; act May 1, 1886, c. 73, 24 Stat., 18 [U. S. Comp. St., 1901, p. 3462]; act June 20, 1874, c. 343, 18 Stat., 123 [U. S. Comp. St., 1901, p. 3487]; act Mar. 3, 1887, c. 378, 24 Stat., 559 [U. S. Comp. St., 1901, p. 3490], of which all must take notice. (First National Bank of Capitol Hill *v.* Murray, Comptroller of the Currency, 212 Fed. Rep., 140.)

National banks—Control—Comptroller of Currency—Acts—Review.

(U. S. C. C. A., 1914.) Acts of the Comptroller of the Currency within the national banking law conferring on him extensive powers of control and visitation over national banks are not subject to review by the courts. (Ib.)

National banks—Organization—Change of location—Conditions—Comptroller of Currency.

(U. S. C. C. A., 1914.) The national banking acts require the comptroller's certificate of organization of a national bank to state the place where its operations are to be carried on, and declares that its business shall be transacted at an office or banking house at the place specified. The reserve required of a national bank in a nonreserve locality is but 15 per cent of its deposits, while 25 per cent is required in a reserve city. A national bank in a city of more than 50,000 is required to have a capital of $200,000, but, with the approval of the Secretary of the Treasury, it may, in a place of 3,000 inhabitants or less, have a capital of $25,000. Such banks may change their place of business from one place to another in the same State not more than 30 miles distant, with the approval of the comptroller, but such change is not valid until the comptroller has issued his certificate of approval. *Held*, that where a national bank located in a suburb outside the corporate limits of Oklahoma City, having a population of not to exceed 3,000, was chartered with a capital of $25,000, and, after the suburb had been included in the city, the comptroller refused permission to move the bank's place of business into the business section of the city unless it increased its capital to at least $200,000 and agreed to comply with the law regulating reserves in reserve cities, of which Oklahoma City was one, the alteration of the city's boundaries did not entitle the bank to so remove without compliance with the comptroller's conditions, and, it having removed without fulfilling such conditions, the comptroller was entitled to maintain a suit for the forfeiture of its charter. (Ib.)

INSOLVENCY AND RECEIVERS.

Powers of Receiver to Dispose of Assets and Compound Claims.

Receivers—Powers.

(U. S. D. C., 1914.) Under Revised Statutes, section 5234 (U. S. Comp. St. 1901, p. 3507), authorizing the receiver of a national bank to take possession, under the direction of the comptroller, of the assets of the bank, and on the order of court to sell the property of the bank, a receiver of a national bank can not sell the real or personal property of the bank without an order of court, and a sale not authorized is void. (Schofield *v.* Baker, 212 Fed. Rep., 504.)

Receiverships—Sale by receiver—Validity.

(U. S. D. C., 1914.) An order of court which authorized the receiver of a national bank to sell the bank assets, consisting of bills receivable, judgments, overdrafts, stocks, warrants, securities, assessments on stockholders, and "all other personal property and chattel property and evidences of indebtedness," entered on a petition which did not comprehend real estate, limited the receiver to sell personal and chattel property, and did not authorize a sale by him of real estate consisting of tidelands purchased by the receiver, with the approval of the Comptroller of the Currency, by exercising the preference right granted by law to the bank as a riparian owner of uplands to purchase on paying the price in installments and obtaining a deed on final payment. (Ib.)

Courts—Controlling decisions—Decisions of State court defining the nature of property.

(U. S. D. C., 1914.) Where property in a State has been defined by the highest court of the State as real property, the United States district court sitting in the State should adopt that definition in determining whether such property is real or personal. (Ib.)

Right to acquire and hold real estate.

(U. S. D. C., 1914.) Under Revised Statutes, section 5137 (U. S. Comp. St. 1901, p. 3460), authorizing national banks to purchase and hold real estate for enumerated purposes, and sections 5234 and 5236 (U. S. Comp. St. 1901, pp. 3507, 3508), and act of Congress March 29, 1886, defining the powers of the receiver of a national bank, a national bank lawfully owning uplands, and thereby having under State laws a preference right to purchase tidelands of the State, may purchase tidelands, and receiver acquiring tidelands with the approval of the Comptroller of the Currency may not challenge the right to acquire the same, and his holding can be questioned only by the Government. (Ib.)

Trusts—Purchase of property by receiver of national bank—Evidence.

(U. S. D. C., 1914.) A receiver of a national bank transferred privately to a third person land purchased with the approval of the Comptroller of the Currency. The third person merely paid the price which the receiver had paid to the State and a nominal profit. Subsequently the title was transferred to the receiver's attorney. The receiver thereafter promoted a corporation, and the land was conveyed to it in full payment of its capital stock. The third person made admissions that he purchased for the receiver and held the title to accommodate him. The value of the land greatly exceeded the price paid by the third person and by the receiver on the title being conveyed to his attorney. *Held,* That the property was chargeable with a trust under the rule that a trustee may not directly nor indirectly purchase any of the trust property and acquire title as against the beneficiary. (Ib.)

Trusts—Enforcement—Laches.

(U. S. D. C., 1914.) An action by a receiver of a national bank against a prior receiver to charge with a trust property sold by the prior receiver for his benefit, and subsequently conveyed to a corporation promoted by him in payment of the capital stock of which he owned 95 per cent is not barred by laches, though not brought until the expiration of many years after the sale, but brought shortly after the facts were brought home to the receiver, and it did not appear that he should have known the facts prior thereto. (Ib.)

Trusts—Enforcement—Conditions.

(U. S. D. C., 1914.) Where property sold by the receiver of a national bank to a third person for his benefit was subsequently conveyed to a corporation in payment of the capital stock, he owning a large majority of the stock, persons subsequently acquiring the stock could not prevent a decree charging the property with a trust in favor of the bank on payment to such receiver or to the corporation of all money paid for the purchase and all taxes and assessments with interest from date of payment. (Ib.)

Constructive trusts.

(U. S. D. C., 1914.) Property sold by the receiver of a national bank and reconveyed to his attorney, and then to a corporation promoted by such receiver held chargeable with a trust. (Ib.)

Receivers—Improvident acts—Stockholders—Right to sue.

(U. S. D. C., 1913.) Where a receiver of a national bank, 90 per cent of the stock of which was owned by plaintiff, wrongfully, willfully, and negligently sold assets of the bank for less than 50 per cent of their value, a right of action against such receiver was in the bank, and could not be enforced by plaintiff without alleging a demand on the receiver's successor, the comptroller, and the bank in turn, and the refusal of each to institute suit. (Moss *v.* Goodhart, 209 Fed. Rep., 102.)

Insolvency—Appointment of receiver—Authority to sue and be sued.

(U. S. D. C., 1913.) A national bank continues to exist and has capacity to sue and be sued, notwithstanding the appointment of a receiver of its assets by the Comptroller of the Currency. (Ib.)

Insolvency—Receivers—Misconduct—Actions—Parties.

(U. S. D. C., 1913.) Where a receiver of a national bank willfully sold certain of its assets for less than 50 per cent of their value, and the receiver's successor, the comptroller, and the bank successively and in turn refused to bring suit to set aside the sale or for an accounting, the receiver's successor should be made a party defendant to a suit by a stockholder to obtain such relief, that the bank might be bound by the result of the litigation. (Ib.)

Actions by Receivers.

Pleading—Bill of particulars, right to appeal.

(U. S. D. C., 1913.) In an action by a receiver of a national bank against directors to recover damages for negligence in permitting the looting of the bank by its cashier, defendants held not entitled to a bill of particulars to make the complaint more definite and certain as to the means by which the fraud was committed. (Curtis *v.* Phelps, 209 Fed. Rep., 261.)

Office of bill of particulars.

(U. S. D. C., 1913.) The office of a bill of particulars is to prevent surprise and narrow the evidence to the issues framed, but not to furnish defendant with plaintiff's evidence nor the names of his witnesses. (Ib.)

When party can not be required to furnish bill of particulars.

(U. S. D. C., 1913.) A party can not be required to furnish a better or more particular statement unless he has more information on the subject than his adversary. (Ib.)

PREFERENCES IN INSOLVENCY.

Insolvency—Deposits received when insolvent—Trust.

(U. S. D. C., 1912.) A private banker, who at the time of making a general assignment was so hopelessly insolvent that his estate in bankruptcy will not pay more than 1 per cent on claims of general creditors, was legally chargeable with knowledge of his insolvency on the preceding day, which made his acceptance of deposits on that day fraudulent and impresses a trust on the money received in favor of the depositors where it is traced into the hands of his trustee. (In re Silver, 208 Fed. Rep., 797.)

OFFICERS.

REPRESENTATION OF BANK BY.

(U. S. C. C. A., 1914.) A loan by defendant bank, secured by the note of B, who was the president and principal owner of plaintiff bank, held an indebtedness of plaintiff, so that, on plaintiff's failure, defendant was entitled to apply plaintiff's deposit balance on such debt. (Kendrick State Bank *v.* First National Bank of Portland, 213 Fed. Rep., 610.)

Notice to agent—Imputation to principal.

(U. S. D. C., 1913.) A bank which made loans to a mercantile company, taking assignments of its accounts receivable as they were created as security, and which appointed the president of the company, who acted for the company in the transaction, its own agent under bond to collect the accounts and deposit the proceeds, is bound by the knowledge of such agent that the company was insolvent. (In re Cotton Manufacturers Sales Co., 209 Fed. Rep., 629.)

OFFICERS, CIVIL LIABILITY OF.

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

(U. S. D. C., 1913.) There is an implied contract on the part of the directors of a national bank to faithfully perform their duties as directors, and if by their misconduct or negligence damage results to the creditors or stockholders, a cause of action arises which may be enforced by a receiver. Such a cause of action is contractual, and survives against the representatives of a deceased director. (Curtis *v.* Phelps, 208 Fed. Rep., 577.)

PREFERENCES.

Preference—Delivery by bank of securities to customer.

(U. S. Sup., 1913.) An understanding that the proceeds of a loan made by a bank to a customer and placed to the credit of his general account are to be used to take up certain securities does not, in the absence of any special agreement to that effect, create a lien upon those securities, and the delivery of such securities to the bank with notice of the customer's impending insolvency is an illegal preference under the bankruptcy act. (National City Bank of New York *v.* Hotchkiss, 231 U. S., 50.)

Preference—Liability of holder of securities constituting preference in suit to recover back.

(U. S. Sup., 1913.) Under an agreement made in a suit by a receiver against a bank to recover securities in specie as an illegal preference, that the bank should hold them pending the decision of the suit with a power to sell, in its discretion, which had not been exercised, held that the bank was only liable for the securities and not for their value at the time the agreement was made. (Ib.)

Preferences—Knowledge—Sufficiency of showing of.

(U. S. Sup., 1913.) A notice to a bank demanding securities for a loan made to the bankrupt that bankruptcy was impending and that it was receiving a preference is sufficient to show that the bank had cause to believe that it was obtaining a preference. (Ib.)

Intent in transactions between bank and customer—Attitude of courts.

(U. S. Sup., 1913.) Courts may go far in giving financial transactions between banks and customers any form which will carry out the mutually understood intent (Sexton *v.* Kessler, 225 U. S., 90); but if the intent is doubtful or inconsistent with the legal effect of dominant facts it will fail. (Ib.)

Subrogation.

(U. S. Sup., 1913.) Although a loan may be made for a specified purpose, if the lender places it in the stream of the borrower's general property there is no right of subrogation. (Ib.)

Advances to pay for goods—Delivery on trust receipt.

(U. S. D. C., 1913.) Where a bank purchased with its own funds silk for certain bankrupts, taking title in its own name, and delivered the silk to the bankrupts under a trust receipt binding the latter to hold the goods or their proceeds for the bank until the price was paid, the title never passed to the bankrupts; and their agreement while insolvent to return the goods to the bank was not a preference. (In re Killian Mfg. Co., 209 Fed. Rep., 498.)

Preferential transfers—Equitable assignments.

(U. S. D. C., 1913.) An agreement, made by a bankrupt more than four months prior to the bankruptcy, by which it agreed to assign to a bank its future accounts receivable, and the bank agreed to make advances on the same, held not to operate as an equitable assignment of the accounts, which would validate assignments made within the four months' period and otherwise preferential. (In re Cotton Manufacturers' Sales Co., 209 Fed. Rep., 629.)

Transfers of property—voidable preference.

(U. S. D. C., 1913.) Assignments of accounts by a bankrupt while insolvent and within four months prior to its bankruptcy to a bank to secure advances made thereon held valid as security for such advances, but in so far as the accounts were to be held as security for other indebtedness to constitute voidable preferences under section 60b of the bankruptcy act, as amended by act February 5, 1903, and act June 25, 1910. (Ib.)

TAXATION.

Discrimination against, by State—Effect of tax law of New York of 1909, chapter 62.

(U. S. Sup., 1913.) The provisions in the tax law of New York, chapter 62, Laws of 1909, imposing a flat rate on shares of all banks, both State and National, without the right of exemption in case of indebtedness of the owners, does not discriminate against national banks and is not invalid under 5219, Revised Statutes. People *v.* Weaver (100 U. S., 539), distinguished. (Amoskeag Savings Bank *v.* Purdy, 231 U. S., 373.)

Discrimination against, by State—Taxation of, may differ from that of other property.

(U. S. Sup., 1913.) The State is not obliged to apply the same system to the taxation of national banks that it uses in the taxation of other property, provided no injustice, inequality, or unfriendly discrimination is inflicted upon them. Bridgeport Savings Bank *v.* Feitner (191 N. Y., 88) approved. (Ib.)

Discrimination against, by State—Taxation—Sufficiency of showing.

(U. S. Sup., 1913.) The Federal courts will not overthrow a system of State taxation as discriminatory against national banks under 5219, Revised Statutes, unless such discrimination is affirmatively shown. (Ib.)

Moneyed capital within meaning of 5219, Revised Statutes.

(U. S. Sup., 1913.) Mercantile Bank *v.* New York (121 U. S., 138) followed as to what constitutes moneyed capital within the meaning of 5219, Revised Statutes. (Ib.)

Powers—Restrictions—Payment of State taxes for depositors not ultra vires.

(U. S. Sup., 1913.) While a national bank can only transact such business as the Federal statutes permit, it may, under its incidental powers, make reasonable business agreements in regard to its deposits, including the payment of State taxes thereon, pursuant to the laws of the State in which it is located. Such an agreement is not ultra vires. (Clement National Bank *v.* Vermont, 231 U. S., 120.)

Contract impairment—Effect on contract between bank and depositor of State statute requiring bank to act as agent of State in collecting tax on deposits.

(U. S. Sup., 1913.) A lawful State tax on deposits in bank is imposed in the exercise of a power subject to which deposits are made, and does not impair the contract obligation of the bank to the depositors by requiring the bank to act as agent in collecting it. (North Missouri R. R. Co. *v.* Maguire, 20 Wall., 46.) (Clement National Bank *v.* Vermont, 231 U. S., 120.)

State taxation on deposits—Validity of.

(U. S. Sup., 1913.) A tax upon deposits in a national bank to be paid by the depositors held in this case not to be a tax upon the franchise of the bank. (Ib.)

State taxation on deposits—Effect of national bank act.

(U. S. Sup., 1913.) The national bank act does not withdraw credits of depositors in national banks from the taxing power of the State. (Ib.)

State taxation on deposits—Power of classification.

(U. S. Sup., 1913.) Under its broad powers of classification for taxation, a State may classify depositors in national banks so long as the tax is not essentially inimical to such banks in frustrating the purpose of the legislation or impairing their efficiency as Federal agencies. (Ib.)

State taxation—Effect of 5219, Revised Statutes.

(U. S. Sup., 1913.) The object of 5219, Revised Statutes, is to prevent hostile discrimination against national banks; and a State tax to be in conflict therewith must constitute such a discrimination. (Ib.)

State taxation; discrimination—Effect of 815, chapter 37, Vermont Public Statutes.

(U. S. Sup., 1913.) This court finds no basis for the charge of injurious discrimination against national banks in 815 of chapter 37 of the Public Statutes of Vermont. (Ib.)

Taxation of, by State—Validity under 5219, Revised Statutes.

(U. S. Sup., 1913.) Section 5219, Revised Statutes, deals with shareholders of national banks as a class and not as individuals, and a scheme of taxation that is fair to the class will not be held invalid because of a particular case arising from circumstances personal to the individual affected.—(Amoskeag Savings Bank *v.* Purdy, 231 U. S., 373.)

Due process of law—Effect of want of notice to depositor on validity of tax on deposits paid by bank under agreement with State.

(U. S. Sup., 1913.) A State tax of a specified per cent on deposits in national banks paid by the bank under agreement with the State pursuant to statute and which is otherwise valid, does not amount to denial of due process of law because the depositor had no notice in advance of the assessment, where, as in this case, the tax was recoverable by suit in which the depositor would have full opportunity to resist any illegal demand. (Clement National Bank *v.* Vermont, 231 U. S., 120.)

Equal protection of the law—Effect to deny, of classification for taxation of interest-bearing and noninterest-bearing deposits in bank.

(U. S. Sup., 1913.) A State tax on interest-bearing deposits in national banks does not deny equal protection of the law on account of exemptions which it is within the power of the State to allow or on account of the exemption of noninterest-bearing accounts. The classification is reasonable. (Ib.)

Taxation—Assessment—Relief in equity.

(U. S. C. C. A., 1914.) The assessment of the property of national banks at its full value while other classes of property are assessed at only 60 per cent of their fair cash value, though in violation of Revised Statutes, section 5219; Constitution Oklahoma, article 10, sections 5, 8, and Comp. Laws Oklahoma 1909, section 7580, does not entitle a national bank to relief in equity unless it appears that the erroneous valuation was not made accidentally or inadvertently with respect to a single piece or kind of property, but systematically and intentionally with respect to one or more classes of property with the intention of imposing upon such class an undue burden of taxation. (Lacy *v.* McCafferty, County Treasurer et al., 215 Fed. Rep., 352.)

INCOME TAX.

Computation of net income by national bank.

(U. S. D. C., 1913.) A bank in Massachusetts held not authorized to deduct from its gross income taxes paid on its shares on behalf of its stockholders under Revenue Laws Massachusetts, chapter 14, sections 9 to 18, in ascertaining its net income subject to special excise tax under tariff act August 5, 1909, chapter 6, section 38, paragraph 2, 36 Statute 112. (Eliot National Bank *v.* Gill, 210 Fed. Rep., 933.)

Authority of Commissioner of Internal Revenue to amend return.

(U. S. D. C., 1913.) Tariff act August 5, 1909, chapter 6, section 38, paragraph 5, 36 Statutes 112, held to authorize the Commissioner of Internal Revenue to amend the return of a corporation upon which the special excise tax is assessed as a "false" return if it is incorrect although made in good faith, even after the tax assessed on the original return has been paid. (Eliot National Bank *v.* Gill, 210 Fed. Rep., 933.)

(U. S. D. C., 1913.) The provision being that in case of such false or fraudulent return the commissioner shall make an amended return "upon the discovery thereof at any time within three years after said return is due," the corrected assessment is not required to be made within the three years. (Ib.)

TRUSTS.

Trust funds—Dissipation—Effect of depletion of account in which deposited.

(U. S. Sup., 1914.) Where one has deposited trust funds in his individual bank account and the mingled fund is at any time wholly depleted, the trust fund is thereby dissipated and can not be treated as reappearing in sums subsequently deposited to the credit of the same account. (Schuyler *v.* Littlefield, 232 U. S., 707.)

Trust funds—Burden of proving individual right to funds in hands of trustee for all creditors.

(U. S. Sup., 1914.) One seeking to charge a fund in the hands of a trustee for the benefit of all creditors as being the proceeds of his property and therefore a special trust fund for him, has the burden of proof; and if he is unable to identify the fund as representing the proceeds of his property, his claim must fail, as all doubt must be resolved in favor of the trustee who represents all creditors. (Ib.)

Establishment—Sufficiency of showing.

(U. S. Sup., 1913.) A trust can not be established in an aliquot share of a man's whole property, as distinguished from a particular fund, by showing that trust moneys have gone into it. (Natl. City Bank of New York *v.* Hotchkiss, 231 U. S., 50.)

National banks—Liability for money received under contract ultra vires.

(U. S. D. C., 1914.) A national bank can not receive money equitably belonging to another without accounting for the same, even though it was received as an incident of a contract made by the bank, which was ultra vires and not enforceable. (Equitable Trust Co., of New York *v.* National Bank of Commerce in St. Louis, 211 Fed. Rep., 688.)

Advances to customer for importation of merchandise—Trust receipts.

(U. S. D. C., 1913.) A bank issued letters of credit for the use of a hide-importing company in purchasing hides for import; the custom being for the seller to consign the purchase to the bank and draw on its London correspondent for the price, with invoice and bill of lading attached. On arrival of the consignment, the bank indorsed the bill of lading to the company, taking a trust receipt, by which the company was given the right to have the hides manufactured into leather and to sell the same, but agreed that the leather or its proceeds should be held in trust for the bank for the payment of the amount of the letter of credit and "of any other indebtedness" to the bank. A receiver was appointed for the company, which had at the time a quantity of leather for sale in the hands of commission merchants, consisting, in part, of leather procured through the bank, but intermingled with that from other sources, and it had procured advances on the consignments with the consent of the bank. The bank notified the merchants of its claim to the entire proceeds of the leather in their hands, subject to the advances. At that time the company had paid all of its obligations to the bank then due, including those arising from the particular letters of credit with which the leather then with the commission merchants had been purchased, but owed other claims not matured. *Held*, that the bank was the general owner of the leather, subject only to the company's contract right to become the owner by paying the amount due under the letters of credit with which it was purchased and any other indebtedness then due the bank, and that, such payment having been made, the title then passed to the company, free from any claim or lien on account of any indebtedness which might subsequently become due for other purchases. (Vaughan *v.* Massachusetts Hide Corporation. Smith *v.* Brown Bros. & Co., 209 Fed. Rep., 667.)