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Banks -- Garnishment -- Prior Right to Debtor's Deposit

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CASES NOTED

BANKS — GARNISHMENT — PRIOR RIGHT TO DEBTOR'S DEPOSIT

A judgment creditor sought to garnish the debtor's bank account. After service of the writ of garnishment, the bank attempted to apply the debtor's deposit to his note which was held by the bank, and which provided for acceleration if the holder deemed the debt insecure. *Held*, the bank could apply the deposit of the debtor to his note in their hands although garnishment proceedings by the judgment creditor had already been initiated. *State National Bank of Decatur at Oneonta v. Towns*, 62 So.2d 606 (Ala. 1952).

A bank has the right to apply the whole or part of his deposit to any matured indebtedness of a depositor to the bank.[1] While the bank's right to apply the debtor's deposit to the payment of his indebtedness to the bank has, by some courts, been called a *lien*, the debtor-creditor relationship resulting from the general deposit has induced many courts to label it *setoff*.[2] Whether it be called a lien or a setoff, the right of a bank to apply the matured indebtedness of its depositor against the latter's bank account exists although the account has been garnished at the instance of a creditor of the depositor.[3] However, the cases manifestly indicate that a bank may not apply a deposit to the payment of an unmatured debt[4] of its depositor.[5] The two outstanding exceptions to this rule are where the rights and obligations have been specifically altered by contract,[6] and where the debtor has become insolvent prior to garnishment.[7]

It is well settled that there is no necessity for a bank to make book

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1. United States v. National City Bank of N. Y., 90 F. Supp. 448 (S.D. N.Y. 1950); *In re* Susquehanna Chemical Corp., 81 F. Supp. 1 (W.D. Pa. 1949); Trinity Universal Ins. Co. v. First State Bank, 143 Tex. 164, 183 S.W.2d 422 (1944).

2. Sherberg v. First Nat. Bank of Englewood, 122 Colo. 407, 222 P.2d 782 (1950); Teeters v. City Nat. Bank of Auburn, 214 Ind. 498, 14 N.E.2d 1004 (1938); First Nat. Bank of Schulenberg v. Winkler, 199 Tex. 131, 161 S.W.2d 1053 (1942).

3. United States v. Bank of U. S., 5 F. Supp. 942 (S.D. N.Y. 1934); Walters v. Bank of America Nat. Trust & Sav. Ass'n, 7 Cal.2d 28, 59 P.2d 983 (1936).

4. Pendleton v. Hellman Commercial Trust & Sav. Bank, 58 Cal. App. 448, 208 Pac. 702 (1922) announced the majority view saying, "Where the debt to the bank is not due, the banker's right of setoff does not exist."

5. Kane v. First Nat. Bank, 56 F.2d 524 (5th Cir. 1932); Gillette v. Williamsville State Bank, 310 Ill. App. 395, 34 N.E.2d 552 (1941).

6. Boston Continental Nat. Bank v. Hub. Fruit Co., 285 Mass. 187, 189 N.E. 89 (1934); Forastiere v. Springfield Institution for Savings, 303 Mass. 101, 20 N.E.2d 950 (1939).

7. Norris v. Commercial National Bank of Anniston, 231 Ala. 204, 163 So. 768 (1935); Pendleton v. Hellman Trust & Sav. Bank, 58 Cal. App. 448, 208 Pac. 702 (1922).

entries prior to service of a writ of garnishment in order to claim the setoff.[8] It is sufficient that there be a valid matured debt owing to the bank.[9] The word "matured", when applied to commercial paper means the time when the paper becomes due and demandable, and an action can be maintained thereon to enforce payment.[10] While an acceleration clause creates the right to consider the note due and payable, it is not self-executing. It creates a mere option in the holder to treat the note as due.[11] Thus, in the absence of exceptional circumstances, a bank has the absolute right of setoff where a debt has matured prior to garnishment proceedings.

The instant case poses the following question. Did the recital providing for acceleration when the obligee deemed the debt insecure,[12] mature the debt at some instance prior to garnishment? Pursuant to the decision in *Nickell v. Bradshaw*,[13] and parallel cases,[14] an acceleration clause creates a mere option to treat the note as due. Here, although the option existed *ab initio*, it was not exercised until after garnishment. Thus, it appears that the court in the noted case erroneously rendered the decision in favor of the bank.

In defense of the court, although not stated in the opinion, it may be contended that, since the event accelerating payment[15] was in the exclusive control of the bank, it is analogous to a demand note which is considered matured *ab initio*.[16]

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CONSTITUTIONAL LAW — DOUBLE JEOPARDY AND THE FOURTEENTH AMENDMENT

Defendant was tried for commission of a felony. A mistrial resulted because a state's witness refused to testify, claiming privilege against self-incrimination. *Held*, the defendant's rights under the due process clause of the 14th Amendment[1] were not violated. Therefore, a second trial did

8. Thus, the garnishee is not limited to showing that it once had a claim which was collected by a bookkeeping entry before the writ was served. Aarons v. Pub. Service Building & Loan Co., 318 Pa. 113, 178 Atl. 141 (1935).

9. Walters v. Bank of America Nat. Trust & Sav. Ass'n, 7 Cal.2d 28, 59 P.2d 983 (1936).

10. Ardmore State Bank v. Lee, 61 Okla. 169, 159 Pac. 903 (1916).

11. Nickell v. Bradshaw, 94 Ore. 580, 183 Pac. 12 (1919).

12. ". . . or should the holder of this note deem the debt insecure, the full amount evidenced hereby shall become due and payable immediately at the election of the holder of this note." State Nat. Bank of Decatur at Oneonta v. Towns, 62 So.2d 606, 607 (Ala. 1952).

13. See note 11 *supra*.

14. Holt v. Guaranty & Loan Co., 136 Ore. 272, 296 Pac. 852 (1931); Harrison v. Beals, 111 Ore. 563, 222 Pac. 728 (1924).

15. Considering the debt insecure.

16. Beilanski v. Sav. Bank, 313 Mass. 577, 48 N.E.2d 627 (1943).

1. U. S. CONST. AMEND. XIV (nor shall any State deprive any person of life,