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Banks and Banking—Power of Bank to Give Security for Deposits

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a licensed attorney or any firm not wholly composed of licensed attorneys . . ." R. S. Mo. (1929) sec. 11694. See also secs. 11692 and 11693. For a case under the statute see *Carey v. Gossom* (1920) 204 Mo. App. 695, 218 S. W. 917. Contracts to solicit business are apparently unaffected by the statute where both parties are lawyers.

Assuming that the "chaser" contract is declared void for champerty the interesting question arises as to whether the lawyer can recover under a quantum meruit for the reasonable value of his services. The precise question has not been much litigated; but where it has the courts have answered in the negative. *Gammans v. Johnson* (1899) 76 Minn. 76, 78 N. W. 1035; *Gammans v. Gulbrauson* (1899) 78 Minn. 21, 80 N. W. 779; *Ellis v. Frawley*, supra. C. B. P. '35.

BANKS AND BANKING—POWER OF BANK TO GIVE SECURITY FOR DEPOSITS.— To secure the waiver of a requirement that the repayment of a deposit by the receiver of a railroad company with the defendant national bank should be secured by a surety bond, the bank agreed to post as collateral security for the deposit Liberty Bonds with a face value equal to the amount of the deposit. The motive for this arrangement was a desire to save the expense of premiums charged by the surety company for the bond. Subsequently the bank failed. The receiver of the railroad company attempted to force the liquidator of the bank to turn over the Liberty Bonds. *Held*: The national bank had no power under the national banking laws to pledge its assets as collateral security for private deposits. Since the contract was ultra vires the bank, the liquidator of the bank could hold the bonds free of any claim by the receiver of the railroad. *Texas & Pacific Ry. Co. v. Pottorff* (C. C. A. 5, 1933) 63 F. (2d) 1.

There are relatively few cases which have passed upon the power of national banks to pledge their assets to secure private deposits. Two early cases dealing with state banks assert that this power exists even though not expressly conferred by statute since the power given to receive deposits implies the power to make the agreements considered necessary to secure these deposits. *Ward v. Johnson* (1880) 95 Ill. 215; *Ahl v. Rhoads* (1877) 84 Pa. 319. With reference to national banks the power was denied in *Smith v. Baltimore & Ohio R. R. Co.* (C. C. A. 3, 1932) 56 F. (2d) 799. The discussion in this latter case is very interesting as showing the respect paid by the courts to the decisions of administrative officers even as to questions of law. The majority of the court pointed out that the Comptroller of the Currency had repeatedly advised the national banks that they had no such power. The decision glosses over the fact that the same official had ruled that there was such power as to public deposits. Judge Dickinson dissented in the *Smith* case on the ground that it was a common practice to give such collateral security and that there was no distinction between deposits of political subdivisions of states and private deposits when national banks were concerned. The first reason for this dissent is especially interesting in view of the fact

that in the principal case the court takes judicial notice that it is not customary to give security for deposits.

The cases with reference to public deposits would seem to offer helpful analogies, although they were rejected by the court in the principal case. There are some cases which deny any power to state banks to give such collateral security. *Arkansas-Louisiana Highway District v. Taylor* (1928) 177 Ark. 440, 6 S. W. (2d) 533; *Commercial Bank & Trust Co. v. Citizens' Trust & Guaranty Co.* (1913) 153 Ky. 566, 156 S. W. 160; *Farmers' & Merchants' State Bank v. School District* (1928) 174 Minn. 286, 219 N. W. 163; *Divide County v. Baird* (1926) 55 N. D. 45, 212 N. W. 236; *Foster v. Longview* (Tex. Comm. of App. 1930) 26 S. W. (2d) 1059. The weight of authority as to state banks is that they may give such security. *Williams v. Hall* (1926) 30 Ariz. 851, 249 Pac. 755; *First American Bank & Trust Co. v. Palm Beach* (1928) 46 Fla. 247, 117 So. 900; *Andrew v. Odebolt Savings Bank* (1927) 203 Iowa 1335, 214 N. W. 559; *French v. School District* (Mo. App. 1928) 7 S. W. (2d) 415; *Richmond Casualty Co. v. Page Trust Co.* (1928) 195 N. C. 545, 142 S. E. 786; *Maryland Casualty Co. v. Board of County Commissioners* (1927) 128 Okla. 58, 260 Pac. 1112; *Cameron v. Christy* (1926) 286 Pa. 405, 133 Atl. 551. Similar power has been recognized to exist in national banks. *Burrowes v. Nimcocks* (C. C. A. 4, 1929) 35 F. (2d) 152; *Sneeden v. City of Marion* (D. C. E. D. Ill. 1932) 58 F. (2d) 341; *Pottorff v. El Paso-Hudspeth Road District* (C. C. A. 5, 1933) 62 F. (2d) 498. This result is made certain for the future by the passage of a statute expressly granting this power, 46 Stat. 809 (1930), 12 U. S. C. 90. Although the federal cases carefully distinguish between public and private deposits, this is not true of the state cases with rare exceptions, e. g., *First American Bank & Trust Co. v. Palm Beach*, above. There would seem to be no real reason for making any distinction unless it be possible to imply the grant of the power as to public deposits alone from the fact that the state statutes prescribe that the designated banks shall give security for these deposits.

All these cases draw a sharp distinction between loans to a bank and deposits in it, admitting that secured loans are proper. This difference is largely based upon custom and legislative usage in prescribing banking regulations. However, there are certain practical reasons of considerable importance for this distinction. A deposit is subject to check, while even a demand loan cannot be so treated. Moreover, bank statements keep the two items separated. The general financial public considers that the presence of loans among the liabilities of the bank is evidence that the bank is or has been in bad condition and is or has been in need of funds to pay the demands of its depositors. An expansion of the loan item is a danger signal, while an expansion of deposits ordinarily shows that the bank is prospering.

Thus, there would seem to be a ground for the different treatment of deposits and loans; but it would seem that in the absence of statute there is no reason for the special treatment of public deposits. G. W. S., '33.