A savings deposit may be withdrawn at will.[12] A time deposit creates the relation of debtor-creditor between bank and customer;[13] so also does a savings deposit.[14] Moreover, under banking practice, time deposit funds and savings deposit funds are not separated, but are mingled with the general funds of the bank.[15] The chief difference between the two transactions lies in the time at which the respective funds may be withdrawn. The instant case, however, indicates that there is another difference, namely, a benefit to the infant by the savings deposit. But why is the infant benefited in the one case more than in the other? In both transactions he is provided with a safe place for his money and is paid interest on that money. If, as is thought, the benefits are substantially the same in both cases, then the only difference lies in the time of payment. To seize upon this technical distinction seems arbitrary, since the policy of protecting infants from disadvantageous contracts would seem to be no stronger in the case of the time deposit than in the case of the savings deposit.

There is one factor which may have influenced the court in making this distinction. In the *Stinson* case only one infant was seeking a preference, and that in the amount of $900. The *Phillips* case, however, was a test case, and had the plaintiff there been allowed a preference, many other school children would also have been preferred, and the preferred claims would have totalled over $80,000. If this factor is important, it remains to be seen what will happen when the next possible situation arises, namely, where a single minor, as in the *Stinson* case, attempts to establish a preference where he has a *savings* deposit, as in the *Phillips* case.

J. L. F.

LANDLORD AND TENANT—DEPRESSION AS CONSIDERATION FOR REDUCING RENT—[Texas]—.Is an economic depression sufficient consideration for an agreement reducing the rent payable under a contract of lease? This is answered affirmatively by a Texas Court of Appeals in the recent case of *Liebreich v. Tyler State Bank & Trust Co.*[1] The plaintiff had leased property to the defendant in 1931 for five years. Because of financial hardship in 1933, the defendant requested a reduction of rental price, and the plaintiff assented. At expiration of the five-year term, the plaintiff sued for the original contract price, alleging lack of consideration for the modification agreement. In declaring economic depression a good consideration, the

12. The contract may require 30 days notice of the withdrawal.

13. State v. Corning State Savings Bank, 136 Iowa 79, 113 N. W. 500 (1907).

14. 1 Morse, *Banks and Banking* (6th ed. 1928) sec. 289; Kantor Bros. v. Wile, 158 N. Y. Supp. 115, 93 Misc. Rep. 438 (1916).

15. Inquiry at representative banks discloses that although the funds are kept separate as bookkeeping items, yet they are both considered liabilities of the bank and are not separated for investment purposes.

1. 100 S. W. (2d) 152 (Tex. 1936).

court classified it with those "unexpected obstacles" which give rise to the need for "readjustment of contractual relations."[2]

The majority of courts hold that a general economic adversity, however disastrous it may be in its individual consequences, is no warrant for abrogation of the common law rule of consideration, *viz.*, benefit to promisor or detriment to promisee.[3] These same courts, however, are willing to find a sufficient consideration for modification agreements in the mutual cancellation of the primary lease,[4] or in the lessor's apprehension as to the probable failure of the tenant,[5] and some courts find consideration in that the lessee would not have remained in possession under the lease unless the rent were reduced.[6] At last two jurisdictions have indicated, and perhaps too broadly, that an agreement for reduction of rent may be enforced even without any consideration at all.[7]

The few decisions following the principal case exhibit a modern tendency to depart from the strict common law rule and give effect to

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2. For the line of cases holding that unexpected hardship will give rise to at least an "equitable" ground of rescission see 43 A. L. R. 1451, 1466 (1926); L. R. A. 1915B 1, 44.

3. Levine v. Blumenthal 117 N. J. Law 23, 186 Atl. 457 (1936); 1 Williston, *Contracts* (rev. ed. 1936) 347. For decisions refusing to find consideration in financial depression see: Levine v. Blumenthal, herein noted; Campbell v. Spare, 180 Cal. 128, 179 Pac. 384 (1919); Gordon v. Green, 51 Cal. App. 765, 197 Pac. 955 (1921); Atwood v. Hayes et al., 139 Okl. 95, 281 Pac. 259 (1929).

4. Sutherland v. Madden, 46 P. (2d) 32 (Kan. 1935); Raymond v. Krauskopf, 87 Iowa 602, 54 N. W. 432 (1893) (tenant's crops destroyed by storms). A similar situation furnished consideration in Latham v. Douglas, 206 S. W. 392 (Mo. 1918); Cf. Sandbrook v. Morrison Inv. Co., 209 Mo. App. 600, 239 S. W. 543 (1922) (contract for sale of real estate).

5. This seems to be the only consideration in Brown v. Cairns, 53 Kan. 693, 66 Pac. 1033 (1901); see also Sherman & Co. v. Buffum & Pendleton, 90 Ore. 352, 179 Pac. 241 (1919); this factor apparently influenced the court in Latham v. Douglas, 206 S. W. 392 (Mo. 1918).

6. These decisions declare the lessor is benefited by a continuous occupancy of the premises. Commonwealth Investment Co. v. Fellsway Motor Mart, 1 N. E. (2d) 201 (Mass. 1936); Bowman v. Wright, 65 Neb. 661, 91 N. W. 580 (1902); Cooper v. Fretnoransky, 42 N. Y. St. Rep. 472, 16 N. Y. Supp. 866 (1892); Parrot v. Mexican Central Railway, 207 Mass. 184, 93 N. E. 590, 34 L. R. A. (N. S.) 261 (contract for advertising); contra, Cold Storage Co. v. Ice & Storage Co., 77 Colo. 556, 238 Pac. 42 (1925). The tenant's reliance (as demonstrated by retaining possession of the premises) upon the lessor's promise to reduce the rent also seems to furnish consideration in some of these cases. This view is apparently in accord with the American Law Institute. Restatement, *Contracts* (1932) sec. 90 (promise reasonably inducing substantial action or forbearance).

7. Wilson v. Windham, 213 Ala. 31, 104 So. 232 (1935); Hurlbut v. Butte-Kansas Co., 120 Kan. 205, 243 Pac. 324 (1926). The latter case treated the reduction as a waiver on the lessor's part, and hence needing no consideration. See criticism of this holding in 43 A. L. R. 1480 (1926). In West Philadelphia Buick Co. v. Shuster et al., 120 Pa. Super. 329, 183 Atl. 75 (1936), there was no consideration, but the subsequent agreement was valid in so far as it had been executed.

what has been termed a "reasonable" modification of the primary lease.[8] Thus, financial depression has been recognized as an unexpected hardship which will support an agreement to reduce the rental price of railway cars where the years covered by the lease extended into a period of monetary deflation.[9] A willingness to apply this liberal view has also been indicated by the Minnesota courts, especially in the matter of rent reductions, where it is apparent business adversity has made the terms of the original lease no longer just.[10] Other courts, although not basing the consideration technically upon the existence of financial depression, have been greatly influenced by such a change in economic conditions at the time the secondary agreement was made.[11]

There seems little need for the theory of the instant case. Other courts, under similar circumstances, have based their decisions upon more substantial grounds.[12] It is submitted that a general adoption of this view would lead to many obvious difficulties which do not arise under the customary view of consideration. For instance, what constitutes a "depression" to warrant reduction of rent? Will a depression in a particular trade suffice, or will a depression in a particular locality furnish consideration? These, and similar queries, would arise as a result of the wide-spread adoption of the theory of the instant case.

W. E.

TAXATION—IMMUNITY OF CITY EMPLOYEE FROM FEDERAL INCOME TAX—[Federal].—The preservation of the States, and the maintenance of their governments is very much within the design and care of the Constitution.[1] It is to that high end that the Supreme Court has recognized the rule, which rests upon necessary implication, that the National Government may not tax the governmental means and instrumentalities of the State.[2] Yet with

8. But see Levine v. Blumenthal, 117 N. J. Law 23, 186 Atl. 457 (1936), which refutes this view.

9. Commercial Car Line v. Anderson, 224 Ill. App. 187 (1922).

10. Ten Eyck v. Sleeper, 65 Minn. 413, 67 N. W. 1026 (1896); Lindeke Land Co. v. Kalman, 190 Minn. 601, 252 N. W. 650, 93 A. L. R. 1393 (1934). These decisions also emphasize the retention of the premises by the tenant (supra, note 6). A liberal view of consideration has also been adopted by statute in Pennsylvania. The Uniform Written Obligations Act, Pa. P. S. 985, no. 475, sec. 1, Purdon's Pa. St., Title 33, sec. 6, provides that a promise will be binding without consideration, if there is an express statement in writing that the signer intends to be legally bound.

11. Atwood v. Hayes et al., 130 Okl. 95, 281 Pac. 259 (1929). See cases cited supra, note 6.

12. Supra, notes 4, 5, 6.

1. Texas v. White, 7 Wall. 700, 19 L. ed. 227 (1869).

2. The Collector v. Day, 11 Wall. 113, 20 L. ed. 122 (1871); Van Brocklin v. Tennessee, 117 U. S. 151, 6 S. Ct. 670, 29 L. ed. 845 (1886). The mutual and complementary immunity from taxation of state and federal instrumentalities of government is implicit in our constitutional form of government and is founded in the doctrine that the power to tax is the power to destroy. McCulloch v. Maryland, 4 Wheat. 316, 4 L. ed. 579 (1819).