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Notes

THE STATE'S PRIORITY UNDER DEPOSITORY LAWS

That the state shall be preferred when the creditor of an insolvent has been the rule which was adopted in England under the common law and in a great many of the States of the Union.

The reason underlying this rule is that the government must be maintained, and that regardless of the calamities and misfortunes that may befall the subject in his relation as a creditor of an insolvent debtor it is most important of all to him that the sovereign power be maintained undisturbed.

Hence in early English jurisprudence the right of the King to be first paid out of the assets of an insolvent debtor is recognized and referred to as one of the royal prerogatives.

When the common law was transplanted to the states the courts, owing to our republican form of government, were slow to apply this prerogative to the sovereign state, and a review of the American cases will disclose that in the absence of an express statute the courts have looked for various reasons to deny the preference. Some have placed it on the ground that it did not follow the common law to America, others on waiver, and still others on the ground that where there has been passed a depository or banking law setting forth how the money of the state shall be kept, such law embraces the entire subject dealing with the question in all of its phases and thus withdraws the subject from the operation of the general law.

The Federal Government recognized that it had no such prerogative, and at an early date passed a general statute making it a preferred creditor.[1]

Four of the States, New Jersey,[2] Mississippi,[3] South Carolina[4] and Kentucky,[5] denied the common law right. The following courts have recognized the right: The United States,[6] Georgia,[7] Iowa,[8] Maryland,[9] Minnesota,[10] Missouri,[11] Montana,[12] New York,[13] North Carolina,[14]

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[1] Sec. 3466, Rev. Stat. U. S.: Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all debts due from the deceased, the debts due to the United States shall be first satisfied: and the priority hereby established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed.

[2] Middlesex County v. State Bank, 30 N. J. Equity 311.

[3] Shields v. Thomas, 71 Miss. 260; 42 Am. St. Rep. 458.
Potter v. Fidelity Co., 101 Miss 823; 58 So. 713.

[4] State v. Cleary, 20 S. C. (Law) 600.

[5] State v. Arnold, 176 S. W. 983 (Kentucky).

[6] Marshall v. New York, 254 U. S. 380, 65 L. Ed. 315.
Guaranty Title & T. Co. v. Guaranty Title & S. Co., 224 U. S. 152, 56 L. Ed. 706.
Dollar Savings Bank v. United States, 19 Wall. 227, 22 L. Ed. 80.
United States v. Heron, 20 Wall. 251.

[7] Booth v. State, 131 Ga. 750, 63 S. E. 502.

[8] Bibbins v. Clark, 29 L. R. A. 278.
Leach, Supt. v. Bank, 203 N. W. 31.

[9] State v. Bank, 26 Am. Dec. 561.
State v. Williams, 101 Md. 529, 1 L. R. A. (NS) 254, 4 Ann. Cas. 970.

[10] American Surety Co. v. Pearson, 178 N. W. 817.

[11] State ex rel. Phillip v. Rowse, 49 Mo. 586.
Greely v. Provident Savings Bank, 98 Mo. 458.
In re: Holland Banking Co. v. Heer Stores Co. et al., 281 S. W. 702.

[12] Fidelity etc. Co. v. McClintock, 218 Pac. 652.
Aetna Acc. Co. v. Miller, 54 Mont. 377, L. R. A. 1918c 954, 170 Pac. 760.

[13] In re: Carnegie Trust Co., 46 L. R. A. (NS) 260.
United States Fidelity Co. v. Trust Co. 213 N. Y. 629, 107 N. E. 1087.

[14] Hoke v. Henderson, 14 N. C. 12.

Oregon,[15] Pennsylvania,[16] Tennessee,[17] West Virginia,[18] Michigan,[19] New Mexico,[20] Utah,[21] Washington,[22] and Wyoming.[23]

In Missouri the state's claim is recognized by express statute which was taken from the Federal Statute, passed in 1881.[24] The Missouri constitution of 1875, Section 15, Article X, provided for the passage of depository laws, acting under which the legislature of 1879[25] passed a state depository law which has from time to time been amended and will now be found in Chapter 123 R. S. of Missouri, 1919.[26]

Turning now to our Missouri laws regulating the liquidation of insolvent banks, we find that covering the entire subject of liquidating an insolvent bank there are four specific priorities mentioned: 1st, penalties and forfeiture;[27] 2d, dealing with trustees;[28] 3rd, liquidating expense;[29] and 4th, liquidating officers' deposits.[30] This law designates specifically what priorities exist but makes no mention of the state's claim for deposits.

So does the National Bank law provide for certain priorities,[31] but fails to mention the Federal government's claim for deposits.

The right of the Federal government to obtain a priority under Sec. 3466 U. S. R. S. out of the assets of an insolvent National Bank is discussed in the leading case of *Cook County National Bank v. U. S.*,[32] and the holding denies the right to claim under Section 3466.

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[15] United States Fidelity Etc. Co. v. Bramwell, 32 A. L. R. 829, 217 Pac. 332.
[16] Booth v. Miller, 237 Pa. 297, 85 Atl. 457.
[17] Maryland Casualty Co. v. McConnell, 257 S. W. 410.
United States Fidelity Etc. Co. v. Rainey, 113 S. W. 397.
[18] Woodyard v. Sayre, 24 A. L. R. 1497. [19] State v. Bank, L. R. A. 1918A 394.
[19] Bank Commissioner v. Chelsea Savings Bank, 125 N. W. 424, 127 N. W. 351.
[21] National Surety Co. v. Pixton, 24 A. L. R. 1487.
[22] Aetna Casualty Co. v. Moore, 181 Pac. 40.
[23] State v. Foster, 29 L. R. A. 226.
[24] Session Acts 1881, p. 35. Now Section 7212, Rev. St. Mo. 1919: Whenever any person indebted to the State of Missouri is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all debts due from the deceased, the debts due to the State of Missouri shall be first satisfied: and the priority hereby established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed: *Provided,* that nothing in this article contained shall be construed to interfere with the priority of the United States as secured by law, or the payment of the expenses of the last sickness, wages of servants, demands for medicine and medical attention during the last sickness of the deceased, nor funeral expenses.
[25] Session Acts of 1879, p. 237.
[26] Sec. 13379 (approved securities): " . . . and in the event that such bank or banks or banking institution of deposit shall fail to pay such deposit or any part thereof on the check or checks of the state treasurer, it shall be the duty of the state treasurer to forthwith convert such bonds into money and disburse the same according to law." Sec. 13384 (personal bonds).
[27] Sec. 11688, Rev. St. Mo. 1919. [28] Sec. 11691, Rev. St. Mo. 1919.
[29] Sec. 11707, Rev. St. Mo. 1919. [30] Sec. 11714, Rev. St. Mo. 1919.
[31] Sec. 5236 and 5242, Rev. St. U. S. Sec. 5236: " . . . From time to time, after full provision has been first made for refunding to the United States and deficiency in redeeming the notes of such Association (*insolvent national bank*), the Comptroller shall make a ratable dividend. . . ."

To the same effect are the holdings of the Supreme Court of Missouri in the case of *Holland Bank v. Heer Stores Company*,[33] and the Supreme Court of Iowa in *Leach v. Exchange Bank*.[34]

The vast sums of money that must be kept by the State Treasurer and deposited in designated banks calls for our depository laws to safeguard the State's interest and a strict adherence to the requirements of our depository laws by our state officials as to the kind and character of securities to be taken, makes a loss to the state almost impossible.

The law gives to the banks of our state who get the money, funds with which the industry of the state may receive the benefit and in no way endangers the right of the general depositor, for when the bank places the proper character of securities with the state treasurer he puts back in the bank the cash to take their place.

Whenever the State of Missouri has lost money which was on deposit in banks that have failed it has not been due to the form or the substance of our depository laws, but rather to a failure of those in charge of state funds to insist on the strict observance of the law.

JOHN S. FARRINGTON.*

DISCRIMINATIONS AGAINST NEGROES IN PRIMARY ELECTIONS

With the adoption of the Fourteenth and Fifteenth Amendments to the Federal Constitution there arose many and diverse opinions among the political and social leaders of the nation as to the precise extent to which the Federal Government could exercise its prerogative in effecting an equality of rights between the newly emancipated Negro race and the Anglo Saxon race. Any friction or conflicting opinion was, however, in the course of a few years soon removed, for the United State Supreme Court in a series of cases resulting from race clashes promulgated a doctrine now seldom disputed. That court so construed the Fourteenth Amendment as conferring upon the negroes perfect equality of civil and political, though not social, rights with whites, and preventing any person from being made the object of discrimination.[1] The Court interpreted the Fifteenth Amendment as leaving in the several states the power to determine the qualifications of voters, the Federal Government interposing only where a qualified voter is denied the right to vote because of "race, color, or previous condition of servitude."[2]

It is because of the consistency with which the Supreme Court has construed the Fourteenth and Fifteenth Amendments that many of the early problems resulting from racial contacts are now treated as dormant issues, having been determined years ago by the courts. Despite the fact that under the Federal Constitution sufferage cannot be denied to

[33] 17 Otto 445, 27 L. Ed. 700.
[34] 281 S. W. 702. [34] 203 N. W. 31.
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[1] See Plessey v. Ferguson, 163 U. S. 554; McPherson v. Blacker, 146 U. S. 39.
[2] See Guinn v. U. S., 238 U. S. 247; Anderson v. Meyer, 238 U. S. 368.