ceeding involving similar facts, this question of policy was decided in favor of the injured person.[10] There, however, the question arose under a statute whose whole philosophy indicated rather clearly the line of policy to be followed in doubtful cases, and which the court was compelled by tradition to interpret liberally. Perhaps in the instant case the court was correct in refusing to hold the principal liable by extending further the concept of scope of employment. Action to that end could better be taken by the legislature. In the jurisdiction of the principal case the legislature took action tending toward that result while the case was in litigation, passing a statute which imposes liability on the owner of a car for the act of any person who drives it with his consent.[11]

V. M.

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APPELLATE PRACTICE—JURISDICTIONAL AMOUNT—INVESTMENT OF TRUST ESTATE FUNDS—[Missouri].—The life beneficiary of a trust estate requested the trustee under a will to invest $8,000 of the trust estate in preferred and common stock, and $8,000 in a common trust fund. It was intended thereby to increase the income from the trust estate by about $200 a year. The estate was, at the time, invested wholly in corporate bonds worth $38,000. The remaindermen of the trust estate contested the trustee's authority under the will to make the proposed change of investments. The circuit court held that the trustee did possess such power. An appeal was taken to the supreme court, both parties tacitly assuming that the appeal would lie, since the estate exceeded $7,500. *Held*, that the supreme court did not have jurisdiction, because the amount in dispute was insufficient; that, since the relief demanded was not primarily a money judgment but merely a determination of the trustee's right to make particular investments, the amount in dispute was to be determined by the value in money of relief to the plaintiff. Under this ruling, the contemplated increase in annual income would determine the amount in dispute, and it clearly did not exceed $7,500. *St. Louis Union Trust Co. v. Toberman.*[1]

The broad rule adhered to by the court in reaching this decision is that jurisdiction attaches when, and only when, the record of the trial court affirmatively shows that there is involved an amount in controversy, independent of all contingencies, exceeding $7,500.[2] It was under this rule that the court held that where there is involved no divestiture of the title of a trust estate, the value of the entire estate does not determine jurisdiction.

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10. Babington v. Yellow Taxi Corp. (1928) 250 N. Y. 14, 164 N. E. 726, 61 A. L. R. 1354. But cf. Kennelly v. Salt & Lumber Co. (1916) 190 Mich. 629, 157 N. W. 378 (employee ordered by fire-warden to assist in extinguishing forest fire).

11. D. C. Code (Supp. V, 1939) tit. 6, sec. 255b. The statute would not, necessarily, apply to the facts of the principal case. Was the agent driving with the principal's consent after his services had been impressed by the police officer?

1. (Mo. 1939) 134 S. W. (2d) 45.

2. Hardt v. City Ice & Fuel Co. (1937) 340 Mo. 721, 102 S. W. (2d) 592.

This is the view adopted in will contest cases, even where the whole estate greatly exceeds $7,500. It is the disputed sum only that determines jurisdiction.[3] In Louisiana, however, it is the value of the whole estate which determines jurisdiction, even though the actual dispute may concern a part that is definitely below the jurisdictional limit.[4]

A similar problem arises in disputes over the right to administer estates,[5] and over the appointment of receivers.[6] Here, although the value of the estate to be administered or of the property going into receivership may exceed $7,500, such value is not determinative of jurisdiction. Since the judgment would grant only temporary control and not permanent divestiture of title, the amount in dispute is only the financial value of such temporary control. To illustrate: in *In re Wilson's Estate*,[7] where plaintiffs sought to remove the administrator of an estate valued at $17,000, the court held that the amount in dispute was only $850, this being the statutory compensation allowed the administrator, and hence the value of the office. Louisiana is *contra* here also, holding that it is the amount of the fund to be administered which determines jurisdiction, rather than the value of the office.[8]

The court brought up an interesting problem when it stated that, even conceding that the life beneficiary would receive the expected annual increase in net revenue from the proposed change of investment, *the record did not disclose* and the court would not say that the beneficiary would live long enough to receive more than $7,500. Does this mean that the life expectancy of the interested party may be introduced in evidence to compute the sum in dispute? The court has never ruled definitely on this question. In a dispute over an award of the Workmen's Compensation Commission, where the plaintiff was awarded $20 a week for 300 weeks and $13.50 a week for life, the court held that only $6,000 was in dispute since it was not certain that the plaintiff would live long enough to receive an additional $1,500.[9] However, in another Workmen's Compensation case the court, in

3. Fleischaker v. Fleischaker (1936) 338 Mo. 797, 92 S. W. (2d) 169; Meyers v. Drake (1930) 324 Mo. 612, 24 S. W. (2d) 116.

4. In Succession of Wengert (1934) 178 La. 1077, 152 So. 747, where only $120 was sought out of an estate of $9,000, the latter figure was held to determine jurisdiction.

5. In re Wilson's Estate (1928) 320 Mo. 975, 8 S. W. (2d) 973.

6. Matz v. Miami Club Restaurant (1936) 339 Mo. 1133, 100 S. W. (2d) 476; Simplex Paper Co. v. Standard Corrugated Box Co. (Mo. 1934) 76 S. W. (2d) 1075; Rust v. Geneva Inv. Co. (Mo. 1939) 124 S. W. (2d) 1135.

7. (1928) 320 Mo. 975, 8 S. W. (2d) 973.

8. State ex rel. Guion v. People's Fire Ins. Co. (1910) 125 La. 983, 52 So. 120.

9. Hardt v. City Ice & Fuel Co. (1937) 340 Mo. 721, 102 S. W. (2d) 592 (no indication that mortality tables were used). See Hanley v. Carlo Motor Service Co. (1939) 344 Mo. 267, 126 S. W. (2d) 229; Hohlstein v. St. Louis Roofing Co. (1931) 328 Mo. 899, 42 S. W. (2d) 573. Cf. Stuart v. Stuart (1928) 320 Mo. 486, 8 S. W. (2d) 613; Kouka v. Kouka (1906) 221 Ill. 98, 77 N. E. 556. Certain distinctions have been made, in workmen's compensation disputes, between awards for permanent total disability and

reviewing the commutation of an award, used mortality tables as one device to determine the amount in dispute.[10] But, since with or without such calculation the amount in dispute was insufficient to confer jurisdiction, this case cannot be said to sanction the use of the tables. In Louisiana, in a case where a life beneficiary of a trust was to receive $516 annually, it was held no error to show that his life expectancy would cause the income to be sufficient eventually to come within the jurisdictional amount.[11]

It seems that the remarks of the court in the instant case still leave undecided its policy as to the use of mortality tables in such litigation.

R. W. K.

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BANKING—UNQUALIFIED DEPOSITARY OF PUBLIC FUNDS—TRUST RELATIONSHIP BETWEEN BANK AND DEPOSITOR—[Missouri].—Plaintiff, a school district, deposited public funds with a bank which had not qualified as a depositary of public funds under the applicable state statutes.[1] The bank and defendant sureties executed and issued a bond covering "* * * * all of the funds of the School District, including funds belonging to said District * * *."[2] The bank failed, and plaintiff sued defendant sureties for the amount of the bond, less partial payments already received from the bank's estate. On appeal from a judgment for plaintiff, defendants contended that consideration for their bond had failed, since the deposit, being illegal, created a trustee-*cestui que trust* relation, and not the debtor-creditor relation contemplated by the parties when they executed the bond. *Held:* If the sureties had given merely a statutory bond, they would not have been liable for the illegal deposit. But the terms of the bond, broader than the statute required, included the risks resulting from a deposit in an unqualified depositary. *School Consolidated District No. 10 v. Wilson.*[3]

A contract between a bank and a depositor generally creates a debtor-creditor relation.[4] Money deposited with the bank becomes the property of

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awards for temporary total disability. In the case of the former, the amount awarded for a given number of weeks is definite and determines the amount in dispute. But in the case of the latter, where continued payments under the award are contingent upon continued disability, only the amount accrued is determinative, since the court has no assurance that the disability will continue long enough for the amount in dispute to reach $7,500 (Platies v. Theodorow Bakery Co. (1933) 334 Mo. 508, 66 S. W. (2d) 147).

10. Hanley v. Carlo Motor Service Co. (1939) 344 Mo. 267, 126 S. W. (2d) 229.

11. Marks v. Loewenberg (1916) 143 La. 196, 78 So. 444.

1. R. S. Mo. (1929) secs. 12184-12198, 9362.

2. School Consolidated District No. 10 v. Wilson (Mo. 1939) 135 S. W. (2d) 349, 353.

3. (Mo. 1939) 135 S. W. (2d) 349.

4. Vandagrift v. Masonic Home (1912) 242 Mo. 138, 145 S. W. 448; State ex rel. American Auto Ins. Co. v. Gehner (1928) 320 Mo. 702, 8 S. W. (2d) 1057, 59 A. L. R. 1026; Bank of Republic v. Republic State Bank (1931) 328 Mo. 848, 42 S. W. (2d) 27; American Sash and Door Co. v. Commerce Trust Co. (1933) 332 Mo. 98, 56 S. W. (2d) 1034.