

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.

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

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. *Vandagriff 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.

the bank, title passing from the depositor to the depository, and the bank has a legal right to lend the money or to use it otherwise in its discretion.⁵ If the bank fails the depositor is a general creditor and has no preferential right to his funds.⁶ The deposit of public funds in a legally constituted public depository creates a debtor-creditor relationship with the same incidents.⁷

If, however, either the public agency (depositor) or the depository has failed to comply with the appropriate statutes, the depository is not legally authorized to receive the funds and the public deposit becomes impressed with a trust by operation of law.⁸ Funds so deposited may not be mixed with the general assets of the bank, and the *cestui que trust* is entitled to preferential payment upon failure of the depository.⁹

In the instant case the court indicated that the sureties on a strictly statutory bond would not be liable for public funds deposited in an unqualified depository, since the resulting trustee-*cestui que trust* relation would not be within the protection of the bond.¹⁰ The creation of a trust relation is not consideration for a bond issued to secure funds on deposit.¹¹ However, some decisions disclose a tendency to limit the circumstances under which the sureties can escape liability. One line of cases holds that substantial compliance with the statutory requirements is sufficient, and that minor defects, such as failure to approve sureties within the statutory time-

5. *Butcher v. Butler* (1908) 134 Mo. App. 61, 114 S. W. 564; *State v. Pate* (1916) 268 Mo. 431, 188 S. W. 139; *First State Bank v. Fidelity Nat'l Bank and Trust Co.* (Mo. 1938) 119 S. W. (2d) 348.

6. *Butcher v. Butler* (1908) 134 Mo. App. 61, 114 S. W. 564.

7. *Henry County v. Salmon* (1907) 201 Mo. 136, 165, 100 S. W. 20, in which the court quotes from *Board of County Comm'rs v. Citizen's Bank* (1897) 67 Minn. 236, the following: "But the relations of a bank to the county and to the funds deposited with it under the statute are entirely different. The relations between the bank and the county is that of debtor and creditor, the same as between it and any other depositor. The money of the county does not remain the property of the county, but becomes the property of the bank, which it has a right to lend or use in any way it sees fit." See also *Ralls County v. Commissioner of Finance* (1933) 334 Mo. 167, 66 S. W. (2d) 115.

8. *Huntsville Trust Co. v. Noel* (1928) 321 Mo. 749, 12 S. W. (2d) 751; *Marion County v. First Savings Bank* (1935) 336 Mo. 675, 80 S. W. (2d) 861; *Ralls County v. Commissioner of Finance* (1933) 334 Mo. 167, 66 S. W. (2d) 115; *White v. Greenlee* (1932) 330 Mo. 135, 49 S. W. (2d) 132.

9. The Kansas City Court of Appeals held, in *School District No. 61 v. Railey and Bros. Banking Co.* (1932) 227 Mo. App. 543, 545-546, 55 S. W. (2d) 699, that "The deposit of school money in a bank which has not been legally designated as a depository is illegal and a bank receiving the deposit under such circumstances becomes a trustee *ex maleficio*. When such deposits pass into the general assets of the bank and said assets so enhanced pass to its assignee or liquidator, there is no question that such funds may be recovered in full against the general creditors." *Ralls County v. Commissioner of Finance* (1933) 334 Mo. 167, 66 S. W. (2d) 115; *Page County v. Rose* (1906) 130 Iowa 296, 106 N. W. 744, 5 L. R. A. (N. S.) 886.

10. *School Consolidated District No. 10 v. Wilson* (Mo. 1939) 135 S. W. (2d) 349, 352-353.

11. *Id.* at 353.

limit, will not release the sureties, even under a strictly statutory bond.¹² The legislative intent as expressed in the depositary statutes is presumed to be protection of the public, and not provision of loopholes for the release of sureties in case of irregularities.¹³ Another line of cases holds that the sureties may estop themselves from asserting non-compliance, if they intended their principal to procure a deposit of public funds and knew or should have known that their giving a bond would be instrumental in achieving that result, and if, in fact, there was reliance up their obligation.¹⁴ In the instant case the court said that the record did not disclose any compliance or attempt to comply with the statutes.¹⁵ Moreover, there were apparently no facts sufficient to raise an estoppel.¹⁶ Had the bond, then, been strictly statutory, the failure to create a debtor-creditor relation would have released the sureties.¹⁷ But the terms of the bond actually were broader than the statute requires, covering "all funds of the School District, including those belonging to said District."¹⁸ Thus, in effect, the decision holds only that the sureties consented to a contractual obligation broader than that required by the statute, and (by necessary inference) that the placing of funds in the hands of the bank as trustee was sufficient consideration to support the bond as worded.

R. T. S.

CERTIORARI—RECORD PROPER—STIPULATIONS AS PART OF THE RECORD—
[Missouri].—The relator, as a taxpayer, petitioned for certiorari in the assessment of certain trust certificates in its possession. Certiorari issued to the County Assessor and three reviewing tax boards to certify their

12. *School District v. Second Bank* (Mo. 1930) 26 S. W. (2d) 785, 792, held: "Where, as here, faith and credit have been given to a depositary bond and it has performed the function of a statutory bond, the sureties on such bond cannot escape liability upon the ground that their principal was not duly selected as a depositary, nor upon the ground that such bond was not executed and delivered within the time prescribed by the statute." Cf. *Jones v. State to use of Blow* (1841) 7 Mo. 81, 37 Am. Dec. 180; *Moore v. State* (1845) 9 Mo. 334; *James v. Dixon* (1855) 21 Mo. 538; *State use of Young v. Hesselmeyer* (1863) 34 Mo. 76; *State use of Burrough v. Farmer* (1873) 54 Mo. 439; *Note* (1919) 18 A. L. R. 274, 276; *Note* (1931) 77 A. L. R. 1479 reads in part: "Though the decisions which follow the general rule * * * are commonly reached by judicial construction, in a few jurisdictions it appears that the question is set at rest as to certain bonds by statutory provision to the effect that those bonds, shall not be vitiated by an informality or defect in the approval thereof." (Although these cases and annotations treat statutory bonds which are not depositary bonds, there seems to be no logical basis of distinction.)

13. *Henry County v. Salmon* (1907) 201 Mo. 136, 100 S. W. 20; *Buhrer v. Baldwin* (1904) 137 Mich. 263, 100 N. W. 468.

14. *Henry County v. Salmon* (1907) 201 Mo. 136, 100 S. W. 20; *Wright County ex rel. Elk Creek v. Farmer's and Merchant's Bank* (Mo. 1930) 30 S. W. (2d) 32; *Canton v. Bank of Lewis County* (1936) 338 Mo. 817, 92 S. W. (2d) 595.

15. *School Consolidated District No. 10 v. Wilson* (Mo. 1939) 135 S. W. (2d) 349, 350.

16. *Id.* at 354.

17. *Id.* at 353.

18. *Id.* at 353.