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Insolvency -- Rights of Assignee of Secured Depositor of Insolvent Bank

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that would not have warranted it in his domicile.[33] The inconvenience of witnesses, the increased difficulty and expense of defending suit in a foreign jurisdiction are not considered as warranting injunctions.[34] Courts also disregard the inability of the foreign jury to view the premises where the accident occurred.[35] Nor is unprofessional and unethical conduct of an attorney for the plaintiff in the foreign suit a sufficient ground for granting an injunction.[36]

The injunctive relief which the court in the principal case granted against the plaintiff in the foreign proceeding is consistent with these settled rules. In the Missouri action the claimant sought to avoid both an Illinois statute and an Illinois contract by which claimant's remedy was limited. The Federal District Court went too far, however, when it ordered the Workmen's Compensation Commission not to entertain the suit. The attempted distinction between an administrative tribunal and a court may have served to circumvent the federal statute,[37] but it did not give the Federal Court direct supervisory power over the Commission.[38]

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Insolvency—Rights of Assignee of Secured Depositor of Insolvent Bank.

A county's deposit in a state bank was secured by state bonds, and by indemnity bonds written by plaintiff insurer. The bank became insolvent; then on the insistence of the plaintiff the county sold the state bonds and credited the proceeds on its deposit; the county, neverthe-

[33] Grover v. Woodward, 92 N. J. Eq. 227, 112 Atl. 412 (1920).

[34] McWhorter v. Williams, 155 So. 309 (Ala. 1934); Illinois Life Ins. Co. v. Prentiss, 277 Ill. 383, 115 N. E. 554 (1917); Missouri, K. & T. R. Co. v. Ball, 126 Kan. 745, 271 Pac. 313 (1928); American Express Co. v. Fox, 135 Tenn. 489, 187 S. W. 1117 (1916). *Contra*: Cleveland, C., C. & St. L. Ry Co. v. Shelly, 96 Ind. App. 273, 70 N. E. 328 (1930); Kern v. Cleveland, C., C. & St. L. Ry. Co., 204 Ind. 595, 185 N. E. 446 (1933); Wabash Ry. Co. v. Peterson, 187 Iowa 1331, 175 N. W. 523 (1919); Bankers' Life Co. v. Loring, 250 N. W. 8 (Iowa, 1933); Northern Pac. Ry. Co. v. Richey & Gilbert Co., 132 Wash. 526, 232 Pac. 355 (1925). The rule applies with equal strictness where witnesses are unable to attend the distant trial and it is necessary to take depositions instead of oral testimony. Missouri-Kansas-Texas R. Co. v. Ball, 126 Kan. 745, 271 Pac. 313 (1928); Chicago, M. & St. P. Ry. Co. v. McGinley, 175 Wis. 565, 185 N. W. 218 (1921).

[35] Missouri-Kansas-Texas R. Co. v. Ball, 126 Kan. 745, 271 Pac. 313 (1928); Chicago, M. & St. P. Ry. Co. v. McGinley, 175 Wis. 565, 185 N. W. 218 (1921).

[36] Reed's Adm'x v. Illinois Cent. Ry. Co., 182 Ky. 455, 206 S. W. 794 (1918); Chicago, M. & St. P. Ry. Co. v. McGinley, 175 Wis. 565, 185, N. W. 218 (1921); Chicago, M. & St. P. Ry. Co. v. Wolf, 199 Wis. 278, 226 N. W. 297 (1929).

[37] 36 STAT. 1162 (1911), 28 U. S. C. A. §379 (1928): "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy." See Durfee and Sloss, *Federal Injunctions Against Proceedings in State Courts: The Life History of a Statute* (1932) 30 MICH. L. REV. 1145, 1154; Note (1932) 10 N. C. L. REV. 209.

[38] Notes (1925) 25 COL. L. REV. 371, 372.

less, filed a claim in the bank liquidation proceedings for the full amount of the deposit; plaintiff paid the county the balance due on its deposit, and took an assignment of its claim in the liquidation. *Held,* plaintiff's claim is allowed only for the sum it actually paid the county.[1]

Four different rules dealing with the rights of creditors holding collateral security worth less than the full amount of their claims have been applied in the distribution of insolvent estates.[2] The first of these is commonly known as the bankruptcy rule under which the creditor is allowed either to surrender his security and prove for dividends upon the full amount owing at the time of the adjudication of insolvency, or to exhaust his security and prove for the balance.[3] This rule has been embodied in the National Bankruptcy Act.[4] The second rule allows the creditor to hold his security and receive dividends upon the amount owing at the time of the declaration of each dividend regardless of any amount received from his security subsequent thereto; but the amounts received from the security before the declaration of the dividend go to reduce the claim on which the dividend is allowed.[5] The third rule allows the creditor to retain his security and receive dividends upon the amount owing at the time of proving his claim regardless of any amount received from his security subsequent thereto; but all sums received prior to proving the claim reduce the amount on which dividends are allowed.[6] Under the fourth rule, better known as the chancery rule, the creditor may prove for and receive dividends upon the full amount owing at the time of the declaration of insolvency, regardless of the amount of his security or any sums received therefrom after the insolvency, until the claim has been paid in full.[7]

North Carolina adopted the bankruptcy rule in the case of *Creecy v. Pearce,*[8] but changed five years later to the chancery rule[9] which has been applied consistently until the present.[10] The instant case refused

[1] U. S. Fidelity & Guaranty Co. v. Hood, 206 N. C. 639, 175 S. E. 135 (1934).

[2] Merrill v. National Bank of Jacksonville, 173 U. S. 131, 19 Sup. Ct. 360, 43 L. ed. 640 (1899); Chemical National Bank v. Armstrong, 59 Fed. 372 (C. C. S. D. Ohio 1893); Note L. R. A. 1918B 1024.

[3] Citizens & Southern Bank v. Alexander, 147 Ga. 74, 92 S. E. 868, (1917); Bristol County Savings Bank v. Woodward, 137 Mass. 412 (1884).

[4] 30 STAT. 560 §57 (e), (h) (1898), 11 U. S. C. A. §93 (e), (h) (1927).

[5] Philadelphia Warehouse Co. v. Anniston Pipe Co., 106 Ala. 357, 18 So. 43 (1895); State National Bank v. Esterly, 69 Ohio 24, 68 N. E. 582 (1903).

[6] *In re* Hamilton's Estate, 1 Fed. 800 (D. Ky. 1880); Levy v. Chicago National Bank, 158 Ill. 88, 42 N. E. 129, (1895); Kellock's Case [1868] L. R. 3 Ch. 769.

[7] Merrill v. National Bank of Jacksonville, 173 U. S. 131, 19 Sup. Ct. 360, 43 L. ed. 640 (1899); *In re* Jamison's Estate, 163 Pa. 143, 29 Atl. 1001 (1894); Mason v. Bogg, 2 Myl. & C. 443 (Ch. 1837).

[8] 69 N. C. 67 (1873).

[9] Brown v. Bank, 79 N. C. 244 (1878).

[10] Winston v. Biggs, 117 N. C. 206, 23 S. E. 316 (1895) (assignment for benefit of creditors); Merchants National Bank v. Flippen, 158 N. C. 334, 74 S. E.

to allow the plaintiff to prove for and receive dividends upon the full amount due at the time of insolvency because "the bonds were sold and the credit made at plaintiff's solicitation" before the claim was filed. According to the previous decisions, the county itself would have been entitled to recover *pro rata* on the original deposit.[11] If the plaintiff had paid the county the full amount of its deposit, it would have been entitled to all the rights and remedies of the county, including the state bonds held as collateral.[12] The plaintiff, as creditor, under the chancery rule hitherto adhered to in North Carolina, could then have sold the state bonds and still have dividends upon the entire claim in the liquidation proceedings until repaid in full. The plaintiff's rights should be the same whether it paid the balance after the county had sold the collateral, or paid the county in full and took the collateral and sold it itself. In either case the plaintiff is paying out of its pocket the same amount. The court failed to follow the well established law in this state.[13] By departing from the chancery rule in favor of the third rule above, the court took a position which receives considerable support,[14] but it should have recognized it was changing North Carolina law. It is interesting to note the parallel betwen this state and England which changed first from the bankruptcy rule[15] to the chancery rule,[16] then to the third rule,[17] and finally returned by statute to the bankruptcy rule.[18]

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100 (1912) (receivership of insolvent bank); Boney & Harper Milling Co. v. Stephenson, 161 N. C. 510, 77 S. E. 676 (1913) (receivership of insolvent corporation); Central Bank & Trust Co. v. Jarrett, 195 N. C. 798, 143 S. E. 827 (1928) (assignment for benefit of creditors); see Commissioner of Banks v. White, 202 N. C. 311, 314, 162 S. E. 736, 737 (1932) (receivership of insolvent bank).

[11] Merchants National Bank v. Flippen, 158 N. C. 334, 74 S. E. 100 (1912); see Commissioner of Banks v. White, 202 N. C. 311, 314, 162 S. E. 736, 737 (1932).

[12] Smith v. McLeod, 38 N. C. 390 (1844); see Brinson v. Thomas, 55 N. C. 414 (1856); 5 POMEROY, EQUITY JURISPRUDENCE & EQUITABLE REMEDIES (2d. ed. 1919) §2345.

[13] *Supra* note 10. A possible ground for supporting the decision, not, however, advanced by the court, is that here the plaintiff was not surety for the entire deposit, but for only a part. It therefore might be argued that the plaintiff would not be entitled to the full claim of the county quite apart from the sale of the state bonds at the plaintiff's request. The answer to this argument is that the full claim was assigned to the plaintiff.

[14] See dissenting opinion Merrill v. National Bank of Jacksonville, 173 U. S. 131, 19 Sup. Ct. 360, 43 L. ed. 640 (1899); Note (1931) 19 CAL. L. REV. 638; Note (1909) 23 HARV. L. REV. 219; Note (1920) 15 ILL. L. REV. 171; Note (1923) 8 MINN. L. REV. 232.

[15] Greenwood v. Taylor, 1 Russ. & M. 185 (Ch. 1830).

[16] Mason v. Bogg, 2 Myl & C. 443 (Ch. 1837).

[17] Kellock's Case, (1868) L. R. 3 Ch. 769.

[18] SUPREME COURT OF JUDICATURE ACT (1873) Amendment, 38 & 39 VICT. c. 77, §10 (1875).