Michigan Law Review

Volume 32 | Issue 3

1934

BANKS AND BANKING-PAYMENT BY SAVINGS BANK TO OTHER THAN DEPOSITOR

BANKS AND BANKING — PAYMENT BY SAVINGS BANK TO OTHER THAN DEPOSITOR — The plaintiff, depositor in a savings bank, sued the bank to recover for a payment made, upon presentation of the passbook together with a forged receipt, to one known to have previously acted as the depositor's agent. In order to protect itself in such a case the bank had provided the following by-law: "The passbook shall be the voucher of the depositor, and the possession of the passbook shall be sufficient authority to the bank to warrant any deposit or payment made or entered therein." *Held*, the bank was liable to the depositor, despite the by-law, as it was still bound to exercise reasonable care. *Hernandez v. First Nat. Bank*, (Neb. 1933) 249 N. W. 592.

As is the case with other banks, a savings bank is authorized to pay deposits only to the depositor or his proper agent.[1] The perils of such a rule caused these banks to provide for their protection by-laws[2] that become a part of the contract[3] between the bank and the depositor. Despite the broad latitude given by such a contract to the banks in payments to the possessor of the passbook, the banks are still held liable for a failure to exercise reasonable care,[4] in accord with

[1] Eaves v. People's Sav. Bank, 27 Conn. 229, 71 Am. Dec. 59 (1858); Ackenhausen v. People's Sav. Bank, 110 Mich. 175, 68 N. W. 118, 64 Am. St. Rep. 338, 33 L. R. A. 408 (1896); and Smith v. Brooklyn Sav. Bank, 101 N. Y. 58, 4 N. E. 123, 54 Am. Rep. 653 (1885).

[2] The usual provision is to the effect that any payment, upon presentation of the passbook, is warranted.

[3] For the contract aspect of these by-laws, see 8 MICHIE, BANKS AND BANKING 23 (1932); 2 MORSE, BANKS AND BANKING, 6th ed., 1292 (1928); 69 L. R. A. 324 (1906); and 5 A. L. R. 1203 (1920).

[4] Chase v. Waterbury Sav. Bank, 77 Conn. 295, 59 Atl. 37, 69 L. R. A. 329, 1 Ann. Cas. 96 (1904); Brown v. Merrimac River Sav. Bank, 67 N. H. 549, 39

the principal case. However, a proper exercise of care will discharge the bank [5] unless there is an unusual by-law.[6] The holding in the principal case, and others of similar effect, is believed to be desirable and in accord with the tendency of the American courts to disregard contracts against negligence.[7]

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Atl. 336, 68 Am. St. Rep. 700 (1893); Kummel v. Germania Sav. Bank, 127 N. Y. 488, 28 N. E. 398, 13 L. R. A. 786 (1891); Hough Ave. Sav. & Bank. Co. v. Anderson, 78 Ohio St. 341, 85 N. E. 498, 18. L R. A. (N. S.) 431, 125 Am. St. Rep. 707, 14 Ann. Cas. 479 (1908); and Ninoff v. Hazel Green St. Bank, 174 Wis. 560, 183 N. W. 673 (1921). As to what constitutes negligence, see Ladd v. Augusta Sav. Bank, 96 Me. 510, 52 Atl. 1012, 58 L. R. A. 288 (1902), holding the bank was negligent since it did not attempt to identify one who presented a passbook by a comparison of his signature with the one on file; and Ferguson v. Harlem Sav. Bank, 92 N. Y. S. 261 (1905), holding that a bank exercises reasonable care if it asks test questions for purposes of identification and gets proper answers, although no comparison of signatures is made.

[5] Wasilauskas v. Brookline Sav. Bank, 259 Mass. 215, 156 N. E. 34 (1927); Ninoff v. Hazel Green St. Bank, 174 Wis. 560, 183 N. W. 673 (1921); Schoenwald v. Metropolitan Sav. Bank, 57 N. Y. 418 (1874); and see the cases cited in n. 4, supra.

[6] Where the by-law provided that the bank would use its "best efforts," reasonable care was held not to suffice. Allen v. Williamsburgh Sav. Bank, 69 N. Y. 314 (1877). Where the by-law provided that "money may be withdrawn only by the depositor or his authorized agent," the bank was held liable despite care, when it paid on a forged order. Ladd v. Androscoggin Co. Sav. Bank, 96 Me. 520, 52 Atl. 1016 (1902).

[7] THROCKMORTON'S COOLEY ON TORTS 671 (1930); and 13 C. J. 491 (1917).