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BANKS AND BANKING — REORGANIZATION UNDER ENABLING STATUTES REQUIRING LESS THAN UNANIMOUS AGREEMENT — EFFECT ON SPECIAL DEPOSITS — The plaintiff issued drafts to the defendant bank under

a special agreement that they were to cover certain checks already cashed or to be cashed. When a balance of such drafts stood at \$2,000 in favor of the plaintiff, the defendant bank became insolvent. A North Dakota statute provided that if eighty per cent of the deposit creditors agreed to a plan of reorganization, and such plan was approved by the state bank examiner and the secretary of the guarantee fund commission, it was to be held binding on all other unsecured creditors. Eighty per cent of the depositors of the defendant bank agreed to a sixty per cent reduction in their claims, and the bank was reopened on that basis. The plaintiff did not consent to the plan, and after the reopening sued the bank for \$2,000. *Held*, that plaintiff should recover the entire sum of \$2,000 on the ground that the statute has no application to a trust fund placed in a bank for a special purpose. Such funds are not the property of the bank, and do not come under the control of the depositors seeking the reopening of the bank. *Equity Elevator & Trading Co. v. Farmers' & Merchants' Bank*, (N. D. 1933) 250 N. W. 529.

The weight of authority in this country holds that the trust depositor has a claim superior to that of the general creditor on the insolvency of the depository.¹ It seems to be a logical step to hold that the unsecured creditors and unsecured depositors who are bound by a reorganization agreement under statutes similar to that involved in the principal case should take their rights thereunder subject to claims based on trust deposits.² The type of statute in question has been held constitutional in several cases where that problem arose.³ While the purpose of such reorganization statutes is worthy,⁴ the principal case indicates a desirable and necessary limitation to protect the interest of trust depositors.

T. A. P.

¹ 13 CORN. L. Q. 603 (1928); *Merchants Nat. Bank v. School District*, (C. C. A. 9th, 1899) 94 Fed. 705.

² See Aigler, "Rights of Holder of Bill of Exchange Against the Drawee," 38 HARV. L. REV. 857 (1925).

³ *Farmers' and Merchants' Bank v. Tomlinson*, 55 S. D. 185, 225 N. W. 305 (1929); *Hoff v. First State Bank of Watson*, 174 Minn. 36, 218 N. W. 238 (1928). See also, for a general discussion of validity of reorganization statutes, 30 MICH. L. REV. 934 (1932),

⁴ 30 MICH. L. REV. 934 (1932).