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Legal Department.

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An act of the legislature of Nebraska, approved March 25, 1909, the purpose of which was to compel banks to guarantee deposits of other banks, not national, within the state, has recently been held void by the Federal Circuit Court. The act prohibited the banking business from being carried on except in the corporate form, and provided that the right to engage in that business be conditioned up the making of certain contributions to a fund known as the "depositors' guaranty fund," to be used for the payment of the claims of depositors of any bank organized under the state law, which should become insolvent.

The decision holding the act void comes as the result of an action by certain individuals and corporations in Nebraska to enjoin the authorities from enforcing the act. The scheme of bank deposit guaranty formulated by the Nebraska legislature is held to be a violation of the Fourteenth Amendment to the Federal Constitution, and of a similar provision in the State Constitution. The contentions of both sides—the state and the bankers—are well set forth and passed upon in the following paragraph:

It is insisted that the provision in question is similar to those regulatory measures often imposed upon banking and other business interests, whereby the state lawfully imposes license fees, requires frequent examinations or inspections, designates the character of investments that may be held, prescribes the amount of capital necessary to engage in a designated business, and the like. It is sufficient to say that these and similar measures are founded on the theory that they merely require the one upon whom they are imposed to pay the expense of inspection of his own business and to safeguard those who deal with him. It is entirely clear that this act of the legislature does deprive the citizen of his right to engage in a lawful business, except upon the terms that the state will take of his property, without his consent, for the private use of others, and without due process of law. This is not accomplished by requiring that A. shall pay directly to B., or to B.'s creditors, a certain sum of money for the financial relief of B., or of his creditors; but the same process is effected through a process akin to taxation. It is well settled that the state can not, under the form of taxation, take the property of its citizens and give it to build up the private fortunes of others.—First National Bank of Holstein, Neb., vs. Shallenberger, 172 Fed. 999.

Signed Blank Bank Checks.

Where a person leaves with his bookkeeper a number of signed blank checks, one of which is stolen and filled in and subsequently paid by the bank, the loss falls on the signer, he having assumed the risk of placing his signature where forgery could be committed without possible detection by the bank. This decision seems to fly in the face of the Negotiable Instruments Law, Section 34, which says: "Where an incomplete instru-
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ment has not been delivered it will not, if completed and negotiated, without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed there on delivery."

The case is therefore interesting, for it draws a distinction between the validity of the instrument in the hands of a *bona fide* holder and in the hands of the bank which has paid it. "We may, for the purpose of this appeal, dismiss entirely the question whether the defendant would be liable to a *bona fide* holder for value; the question before us is entirely one concerning the duties of a depositor to his bank. That a depositor owes a real duty of care to the bank has been frequently decided, and this duty is greater than that which the maker of an instrument owes to subsequent holders for value. A purchaser of a negotiable instrument can take it or not at his option, and usually, at least to some extent, relies upon the responsibility of the last holder. A bank, however, must at its peril pay out the money deposited if the depositor directs it to do so."


Examination of Stock Book by Stockholders.

The highest court in the State of New York has very recently held that a corporation having an office for the transaction of business in the state is bound to permit one of its stockholders to inspect, during the usual hours of business, the stock book and to copy therefrom the names of its stockholders, their places of residence, and the number of shares held by them respectively. The stockholder cannot be deprived of this privilege till he discloses the purpose of the inspection.—Robert E. Henry vs. Barcock & Wilcox Company, N. Y. Law Journal, November 23, 1909.

Monopolies.

The Standard Oil Company has been declared illegal by the United States Circuit Court as violating the Sherman Anti-trust Act of 1890. The memorandum of the court has been so widely and completely reported in the press that any further comment here would be superfluous. To preserve, as a matter of record, however, the vital part of the decision, we reprint the "pertinent rules" applied to the facts for the interpretation of the statute:

The test of the legality of a contract or combination under this act is its direct and necessary effect upon competition in inter-state or international commerce.

If the necessary effect of a contract, combination, or conspiracy is to stifle, or directly and substantially to restrict, free competition in commerce among the states or with foreign nations, it is a contract, combination, or conspiracy in restraint of that trade and it violates this law.

The parties to it are presumed to intend the inevitable result of their acts, and neither their actual intent nor the reasonableness of the restraint imposed may withdraw it from the denunciation of the statute.

The exchange of the stock or shares in the ownership of competitive corporations engaged in inter-state commerce for stock or shares in the ownership of a single corporation, the necessary effect of which is a direct
and substantial restriction of competition in that commerce constitutes a combination in restraint of commerce among the states or with foreign nations that is declared illegal by this law.

It may be added that the defendant will undoubtedly appeal and that the matter will go directly to the Supreme Court instead of taking the usual course of appeal through the Circuit Court of Appeals. This swift course is provided in the "Expedition Act" of 1903, giving to cases involving the Sherman Act the right of a direct appeal to the Supreme Court.

There is so much popular confusion between the Standard Oil Trust and the Standard Oil Company that it is deemed necessary to call attention to the fact that the former was dissolved nineteen years ago (15 L. R. A. 145) and was an arrangement between individual stockholders forming what is correctly and technically known as a "trust," while the latter, recently declared void, is a stockholding scheme, whereby, instead of forming a new holding company, an old company already engaged in the business—the Standard Oil Company of New Jersey—took over the stock in the various subsidiary companies previously held by the individuals involved in the "trust."

**Trust Companies.**

The powers of trust companies, though set forth with considerable detail in the statutes in New York, have not frequently been the subject of judicial determination. The case of **Gause vs. Commonwealth Trust Co.,** 89 N. E. 476, which has recently been to the Court of Appeals, the highest tribunal in the state, is therefore interesting as a new judicial determination of the powers of trust companies. The opinion of the court below has frequently been cited as a rule prescribing what are beyond the powers of trust companies, but as a strong dissenting opinion was also filed the question could not be deemed fully decided till it had been before the Court of Appeals.

Very briefly stated, the facts are these: The defendant trust company guaranteed to sell certain securities for the plaintiff at a certain price and before a certain time. The securities not having been sold and the stock (of the United States Shipbuilding Company) having become worthless, the action was brought on the guaranty, to which the defendant replied, among other defenses, that the alleged contract was *ultra vires.* It is unnecessary to go into the details, but the following excerpts from the decision will probably be found useful.

What was the purpose of the alleged agreement with the plaintiff? It was not that the defendants should become the purchaser of such bonds and stock, but it was to bring the plaintiff into the pooling agreement to protect the price thereof. Both parties to said agreement promised to cooperate with the syndicate, and it was by the express terms of said agreement intended as an aid to the syndicate agreement. The defendant was not to profit directly by the sale of the plaintiff's bonds and stocks in any event. It had no direct interest in the said agreement. The defendant, to induce the plaintiff to enter into the agreement, guaranteed at a minimum price within a specified time "the sale of all of his said securities * * * whether through the efforts of the syndicate or otherwise." The defendant
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did not at any time become the owner of the bonds and stocks, but the guarantor of a "future" and, in substance, of the prosperity and success of the Shipbuilding Company. It was a reckless and most unusual and hazardous agreement.

We have herein quoted the statutory definition of that form of a banking institution known as a trust company, and the statutory statement of its powers and the purposes of its organization. Such powers and purposes are primarily fiduciary. Their primary work is of a trust capacity and to a large extent they take the place of individual administrators, executors, guardians, committees, receivers and trustees. They receive appointment from the courts in trust capacities without giving a bond. It is assumed that the statutory restriction and regulation of their powers will make the execution of a bond in each particular instance unnecessary. The courts, in considering the effect of ultra vires acts, have always recognized the distinction between business and trading corporations and corporations whose purposes are largely fiduciary.

The Legislature intended, and the public interests demand, that trust companies shall be confined not only within the words, but also within the spirit of the statutory provision which declares that a corporation shall not possess or exercise any corporate powers not given by law or not necessary to the exercise of the powers so given. Such authority does not permit a trust company to enter into speculative and uncertain schemes or, unless under peculiar circumstances not disclosed in this case, becomes the guarantor of the debtedness or business of others. Its authority to buy and sell bonds does not authorize it to indulge in hazardous promoting schemes, although it may hope from the success of such schemes to make large commissions and receive large bonuses.—Gause vs. Commonwealth Trust Co., 80 N. E. 476.

Loose Bookkeeping.

The successful abstraction of from $500,000 to $2,000,000 or more, by Treasurer Warriner, from the funds of the Big Four Railroad, reveals such a looseness in its system of account keeping as few would have suspected in a great corporation, controlled by the Vanderbilts and supposedly possessed of the nicest facilities for directing the flow of its funds. It turns out that, so far as the protection of the revenues of the company is concerned, the costly and complex system of accounting which it has maintained has been really of little more practical value than the old stage driver's system of "a slate, a sponge and a divvy."

Corporation accountants have been in the habit of sneering at Government methods, which admit of such peculation, for instance, as that of the sugar financiers in their dealings with the custom house. But here is a railroad company—with daily transactions so vast that the maintenance of a system of checks and balances practically thief-proof would have imposed a tax on its earnings of only an infinitesimal percentage—one of whose officials has been able to get away with hundreds of thousands of dollars annually, for a long term of years, without being found out! In a day when three per cent. dividends are highly appreciated by capitalists, he steals enough to have paid such a dividend on $20,000,000 for from one to four years! Nevertheless the Vanderbilt managers are usually considered "smart."—St. Paul Pioneer Press.