Legal Department

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Recommended Citation
McClinchie, Alexander (1908) "Legal Department," Journal of Accountancy: Vol. 6: Iss. 2, Article 9. Available at: https://egrove.olemiss.edu/jofa/vol6/iss2/9

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Legal Department.

Conducted by Alexander McClung, of the New York Bar.

The purpose of this department is to present from month to month, short critical summaries of recent decisions, which affect accountants, and to furnish accurate information on legal questions. Inquiries from our readers will be welcome and will receive prompt attention.

Application of Payments.

The question of the right to apply payment to one of several debts between the same parties is as confused and confusing as it is important. An accountant can very often render invaluable service if he will instruct his client how to take advantage of the rules of law on this subject.

Direction as to the application of payment can be made by the debtor, by the creditor or by the court. Where a person owes several debts or items to another, he has a right to direct to which item the payment shall be applied. Otherwise the creditor may apply it as he sees fit. There are certain limitations on the creditor's rights, however, to the effect that he cannot apply payment to an illegal claim, such as a gambling debt, or to a claim for usurious interest, or, if we are to follow the case cited below, to a debt outlawed by the statute of limitations.

If at the time of payment neither party communicates his intention to apply it to a particular item, the right remains open to either party. This is the situation when a word from the accountant will save nine from a lawyer at a later time. Instruct your client to give immediate notice of his intention. We suggest the following cases as authorities and as illustrative of the principles above set forth: Stone vs. Seymour, 15 Wend. (N. Y.), 20; Patty vs. Milne, 16 Wend. (N. Y.), 557; National Bank vs. Bigler, 83 N. Y., 51, and Marsh vs. Oneida Central Bank, 34 Barb. (N. Y.), 298.

When the parties do not elect, the law will direct payment according to certain rules, which very greatly in the many jurisdictions of the United States. For example in New York the courts follow the Civil or Roman Law, and apply the payment in a way which would be most beneficial to the debtor. Payment will be applied to an interest bearing debt in preference to one that does not bear interest, because the former is the more burdensome. Payment will be applied to a mortgage and to a judgment debt in preference to an account, because the former is the more burdensome to the debtor.

The view directly opposed to that of the New York courts prevails in the United States courts, where payment is always applied first to the poorly secured debt. All the jurisdictions agree that there is but one continuous account of several items, payments will be applied to the earliest if the parties refer the matter to law. See Patterson vs. Hull, 9 Cowen (N. Y.), 747; Jones vs. Benedict, 83 N. Y., 70; Field vs. Holland, 6 Cranch (U. S.), 27, and Truscott vs. King, 6 N. Y., 147.

The question of direction by law, or, as it is termed by some writers, the presumptions in law on the question of application of payment, are more interesting to the lawyer than to the accountant. If the latter, however,
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ever, wishes to help settle a case before litigation has been begun and needs more specific directions as to the rules in his jurisdiction he is referred to Munger on "Application of Payments," and to 2 Am. & Eng., Encyc., 2d ed., 444, et seq., and cases there cited.

Notes on Recent Cases.

A creditor held two claims against a debtor, one of which was barred by the statute of limitations. He applied an undirected payment to the barred claim and then sought to recover on the other. The court held that the payment must be considered to have been made on the enforceable claim. Charles vs. Stewart, 11 Ont. Wkly. Rep., 421. (See note above.)

A New York statute provided that stock brokers should keep a record of every transaction in relation to transfers of stock and permit an official of the state to inspect the record for the purpose of discovering whether a transfer tax had been paid. The court held that inasmuch as failure to pay the tax is a criminal offense, the keeping of a record is tantamount to testifying against one's self, and is therefore not to be required. The statute, it holds, is unconstitutional.—People vs. Reardon, 39 N. Y. L. J., 171.

October is one of the nicest months of the year at Atlantic City; the cheap trippers come no more; the children are back at school; there is plenty of room everywhere and still plenty of enjoyment to be had. The American Association of Public Accountants meets there October 20-22, 1908.

NOTES.

The Marlboro-Blenheim Hotel, at Atlantic City, has been selected as the place and October 20-22, 1908, as the time for holding the twenty-first annual meeting of The American Association of Public Accountants. The meeting will be under the auspices of The Pennsylvania Institute of Certified Public Accountants.


On May 22, 1908, Governor Harris appointed as members of The Ohio State Board of Accountancy: Mr. J. S. M. Goodloe, of Columbus, for one year; Mr. J. H. Kauffman, of Canton, for two years; Mr. Guy H. Kennedy, of Cincinnati, for three years.

The fifth anniversary dinner of the Ohio Society was held on Saturday afternoon, June 13, 1908, at the Columbus Club, Columbus, Ohio.