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Banking Law--Resumption of Business by Closed Institutions

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CURRENT LEGISLATION

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BANKING LAW—RESUMPTION OF BUSINESS BY CLOSED INSTITUTIONS.—Since the creation of the office of superintendent of banking as part of the executive branch of our state government, it has been the province of the superintendent to close and take over an insolvent or faultily managed banking institution.[1] If at any time after such a closing he thought it would benefit all concerned to permit a resumption of business, he has had the power to surrender possession, and order such safeguards in the future operation of the bank as he deemed proper.[2] To some extent the present session of the legislature has clarified this last phase of his duty.[3] A new subdivision has been added to Section 61 of the Banking Law. It empowers the banking superintendent to permit a closed bank or trust company to be reopened on terms and conditions agreed on between him and its directors, subject, however, to conditions therein enumerated.

Instead of liquidating a closed institution, if the superintendent deems it in the interest of depositors and others interested in its affairs, he may determine the value of its sound assets, and list some of them for the purpose of making payments to depositors.[4] When the bank reopens, however, it may pay to each of its depositors at the time of closing, only eighty per cent of his proportionate share of the value, as determined by the superintendent, of the listed assets.[5] Whether or not he withdraws this permissible amount, the bank must immediately issue to each above-mentioned depositor a non-negotiable transferable certificate representing the remaining proportion of his account not subject to withdrawal.[6] These certificates bear interest at three per cent. They may not be taken up by the bank until the superintendent shall determine that through its renewed business activity its total sound assets above all deposits subject to withdrawal have increased, and are greater than the excess of sound assets over deposits subject to withdrawal at the time of reopening.[7] This increase of assets may then be utilized to make *pro rata* payments on certificates; first on interest, and after payment of interest in full, on principal. Meanwhile, no dividends may be declared until all the outstanding certificates shall have been paid or provision therefor made.[8]

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[1] *In re* S. Lungbino & Sons, 176 App. Div. 285, 163 N. Y. Supp. 9 (4th Dept. 1917).
[2] N. Y. BANKING LAW (1909) §61, subd. 1.
[3] N. Y. BANKING LAW (1933) §61, subd. 2; §69a.
[4] *Ibid.* §61, subd. 2a.
[5] *Ibid.*
[6] *Ibid.* §61, subd. 2c.
[7] *Ibid.*
[8] *Ibid.* §61, subd. 2d.

Within sixty days after the resumption of business, a meeting for the election of new officers and directors must be held.[9] Old office-holders will be eligible for re-election. The holders of certificates shall be entitled to vote, as though possessor of stock of the same pro value as the face amount of the certificate.[10] But at any time such certificate, at the option of the holder, may be surrendered for capital stock of an equal book value.[11] When these certificates are either paid or exchanged for stock, or when the superintendent may determine the condition of the bank to be such that it may safely continue business, he may permit its continuance in the ordinary course as though he had never taken possession.[12]

The section as a whole is clear and easily understandable. But the wording is somewhat confused where it directs the superintendent as to the assets to list subject to withdrawal. It apparently limits the depositors' interest to "such of its (the banks) assets as he may determine to be sound, and *may list* for the purpose of * * * such payments." This gives the superintendent the power to determine which of the assets are to be subject to the call of depositors, and to set aside the rest for other creditors and stockholders—an important power when we remember that the decision of the superintendent is not subject to judicial review.[13] However, the depositors' interest is safeguarded by a voice in the re-establishment and re-management of the business; and the option granted him to trade in his voting certificate for capital stock at any time, seems to present him an opportunity to recover his loss in the deposits by a speculation on the rise in value of the bank's stock.

Times of stress often produce fundamental and far-reaching changes in things. Out of the public clamor due to the high receivers' fees incident to bank failures in the panic of 1908, arose the idea of a state official to act as liquidator.[14] The present-day crisis has vividly shown the relation between deflation and security dumping as a result of enforced liquidation. Together with the newly created power of the superintendent to pledge a bank's assets as security for a loan,[15] the bill under consideration will tend to alleviate the folly of emptying good sound securities on a loaded market and forcing down the value of all securities, in order to obtain cash to meet part payments to depositors. By these sections our legislature has attempted to meet this condition, and to better safeguard the interests of depositors through conservation of assets.

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[9] *Ibid.*

[10] *Ibid.*

[11] *Ibid.* §61, subd. 2e. This subdivision also provides the authority for the necessary increases in capital stock, and recites the mechanics of the changes and filing requisites.

[12] *Ibid.* §61, subd. 2g.

[13] *Supra* note 1.

[14] *Ibid.*

[15] *Supra* note 3, §69a.

If the duties of the office of superintendent of banks are wisely carried on in the future as in the past, we are sure that the trend will be toward fewer liquidations and greater conservation of banks, with increasing resumption on a sound financial basis.

LAWRENCE T. GRESSER, JR.

PROPOSED CHANGE IN PERSONAL PROPERTY LAW: RE WAGE ASSIGNMENTS.—The wage assignment has been condemned by economists and social workers for many years; courts have admitted the evils but have been constrained from acting until the legislature should take the proper steps. It has brought poverty to many homes; workers have been deprived of their positions. The disastrous results of such assignments and their viciousness have been the subject of much discussion. The seizure of an employee's entire wage is a condition that must be remedied.[1] The question is as to the best method of accomplishing that ideal.

Because of such appalling conditions employers have attempted to prevent their employees from making wage assignments by means of a contract between themselves. In an Illinois case the highest court of that state held such a contract to be of no effect as being against public policy.[2] The New York courts have followed the same theory. Still, in a recent case, Mr. Justice Untermyer stated that an employer or any contracting party should not be denied the right to protect an interest so manifest, by means so reasonable, unless some principle of public policy or some statute inexorably requires it.[3] He could not see that such a contract offended on either ground. But one judge held that an agreement of that type would be invalid under the Personal Property Law,[4] and that it would be nugatory and against public policy.[5] The Court of Appeals has not, as yet, decided the point. It is doubtful that they would hold contra to the Illinois court.

As the necessity is clear for some action on the question the legislature has proposed to add a new section to the Personal Property Law.[6] The bill as introduced into the legislature provides that wage assignments securing indebtedness aggregating less than one thousand dollars must be contained in separate written instrument identifying the transaction, that no other assignment or order exists in connection therewith and that wages amount to at least twelve

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[1] Legal Aid Society Annual Report (1932) Report of the President, p. 12.
[2] State St. Furniture Co. v. Armour & Co., 345 Ill. 160, 177 N. E. 702 (1931).
[3] Sacks v. Neptune Meter Co., 144 Misc. 70, 255 N. Y. Supp. 254 (1932).
[4] PERSONAL PROPERTY LAW §41.
[5] *Supra* note 3.
[6] N. Y. LEGIS. INDEX (1933) Int. No. S381, A. 444—Pr. No. S385, A. 451.