Banks and Banking—Deposits—Interest—Receivers.

Depositors of an insolvent bank are entitled to interest at the legal rate of 8% per annum upon their deposits from the time that the bank suspended business and closed its doors.

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Superintendent of Banks,
Helena, Montana.

My dear Mr. Skelton:

You have requested my opinion as to whether receivers of insolvent state banks must pay interest on deposits in the banks of which they are receivers.

Section 8662, Revised Codes of 1921, provides as follows:

> "Every person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in him upon a particular day, is entitled also to recover interest thereon from that day, except during such time as the debtor is prevented by law, or by the act of the creditor, from paying the debt."

By Section 7725, Revised Codes of 1921, the legal rate of interest on money due, unless otherwise fixed by written agreement, is 8 per cent per annum.

The Supreme Court in the case of Williams v. Johnson, 50 Mont. 7, has passed directly upon this question. In that case the defendant was a depositor in an insolvent bank. He had a savings account amounting to $215.33 and a deposit, subject to check, amounting to $479.09. The defendant also owed the bank the sum of $1,000 on a note. The bank became insolvent and closed its doors on August 5, 1914. The plaintiff, as receiver of the bank, brought action against the defendant on the note, and the defendant asked the court that

his deposits, with interest, be allowed as a setoff against plaintiff's claim. The Court, in allowing the deposits, together with interest, as a setoff, said:

> "The effect of the suspension and declared insolvency of the bank was to make the defendant's deposits due and actionable. (Stadler v. First Nat. Bank, supra.) This being so, he was entitled to receive interest from August 5 until the date of the judgment. (Rev. Codes, Sec. 6043; Hefferlin v. Karlman, 29 Mont. 139, 74 Pac. 201; Leggat v. Gerrick, 35 Mont. 91, 8 L. R. A. (n. s.) 1238, 88 Pac. 788.)"

This rule seems to be well established by the decisions of other courts.

In the case of People v. Merchants Trust Co., 79 N. E. 1004, the Court of Appeals of New York, in speaking of this question, said:

> "We think, however, that this court is committed to the doctrine that interest is allowable if the assets are sufficient to pay the same."

The same Court, in holding that the legal rate of interest should be allowed, said:

> "To continue the interest at the contract rate would be manifestly unjust to the creditors, for the rates allowed under the contracts varied, as we have seen, from 2 to 4 per cent, and it would, therefore, favor one class at the expense of the other. We think, therefore, that when the contracts with creditors were broken by the defendant becoming insolvent and the appointment of a receiver, so that it was unable to perform its agreements, the legal rate of interest became the rate to which all the creditors were thereafter entitled, and it should be paid by the receivers if the assets are sufficient. It consequently follows that, in an action brought by the Attorney General to wind up the affairs of an insolvent bank, interest at the contract rate should be allowed and credited upon the accounts of its creditors to the date that the receiver took possession of its assets; that thereafter interest is not allowable as between the creditors themselves, but is allowable against the corporation; and, if the assets are sufficient after payment of the principal of the indebtedness, as established at the time the receiver took possession, the interest should be paid at the legal rate before the distribution of the surplus to the stockholders."

In the case entitled In the matter of Murray, 6 Paige (N. Y.) 204, the Court, in discussing this question, said:

> "I know of no principle, either legal or equitable, which can deprive the creditors of the full amount due to them respectively, including the interest to the time of payment, or so far as the fund will go."

The Supreme Court of South Carolina, in the case of Ex Parte Stockman, 48 S. E. 736, in discussing this question, said:

> "The depositor is therefore entitled to interest from the date of suspension as damages for breach of the contract to pay his checks on presentation. Richmond v. Irons, 121 U. S. 27, 7 Sup. Ct. 788, 30 L. Ed. 864; Thurston v. Bank (N. H.), 45 Am. Dec. 382; Sickles v. Herold (N. Y.), 43 N. E. 852; 5 Cyc. 569. The general deposits, after suspension, being sums of money ascertained and due, 7 per cent is the rate of interest prescribed by statute. The lower rate paid special depositors by contract cannot affect the right of a depositor who did not choose to make such a contract."

The Supreme Court of the United States, in the case of American Iron & S. Mfg. Co. v. Seaboard A. L. R. Co., 58 Law Ed. 949, said:

> "For, manifestly, the law does not contemplate that either the debtor or the trustees can, by securing the appointment of receiver, stop the running of interest on claims of the highest dignity."

To the same general effect are the following cases:

Flynn v. American Banking & T. Co. (Me.), 19 L. R. A. (N. S.) 428.
Huff v. Bidwell, 218 Fed. 6.
Rugger v. Hammond (Wash.), 163 Pac. 408.

It is not necessary that a depositor make demand upon the insolvent bank for the payment of his claim before interest starts to run. In the case of Flynn v. American Banking & T. Co. (Me.), 19 L. R. A. (N. S.) 428, the Court, in speaking of this question, said:

> "When the bank or corporation voted to stop payment and its assets were sequestered, all its deposits became immediately due and payable, without formal demand, except such as were on some specified time, which has not then elapsed. Whatever interest the bank had agreed to pay upon these deposits, it became liable for the legal rate of 6 per cent from and after its default, unless otherwise stipulated, which does not appear to have been done as to any deposit in this case."

To the same effect are:

Williams v. Johnson, 50 Mont. 7;
Ex parte Stockman (S. C.), 48 S. E. 736.

It is, therefore, my opinion that depositors of an insolvent bank are entitled to interest at the legal rate of 8 per cent per annum upon their deposits from the time that the bank suspended business and closed its doors.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.