

**Opinion No. 180**

**Banks and Banking—Assignment of  
Deposit—Notice—Preferred Deposit  
—Insolvent Banks.**

HELD: The fact of assignment may be questioned where officers of corporation claim to offset a corporation bal-

ance against their notes to closed bank, and in case of doubt controversy should be decided by court.

No notice to bank of assignment of deposit is necessary where no right of the bank against assignor is affected thereby.

set-off the other depositors might charge that you were giving a preference to one depositor and therefore it might be advisable to submit the question to the court for a judicial determination of the facts.

April 25, 1933.

You have submitted the following facts and question: "It seems that the Great Falls Paper Company, Great Falls, had on deposit in the Conrad Banking Company of that city approximately \$700.00 and they drew \$400.00 of this in currency, leaving the balance in their corporation account. They now claim that this was turned over to their two officers and they desire that we apply their balance against the two notes of the officers of the bank. In other words, they are asking us to apply the corporation balance against the personal notes, thereby making the corporation a preferred creditor in the bank. We are writing to ask you if we have authority to do this."

I understand from the letters and affidavits enclosed that the alleged assignment was made on February 28, 1933, and that the bank was open until March 4.

In *Mitchie—Bank and Banking*, Volume 5, page 279, Section 147, the text writer states the law as follows: "Notice to a bank of the assignment by a depositor is necessary only to prevent the bank from parting with the funds on the faith of the deposit still belonging to him, and therefore a failure to give such notice gives the bank no right to apply a deposit to the depositor's debt which falls due after the assignment." See also: *Beckwith v. Union Bank*, 6 N. Y. Superior Ct. (4 Sanford) 604.

I am inclined to believe that the above statement of the law is in line with the law generally in regard to assignments. Where the bank is not affected in any of its rights against the depositor it would seem that there is no reason why it should have notice of the assignment.

A similar situation would likely occur where a depositor makes an assignment for the benefit of creditors. The facts, however, are so unusual in this instance that if you should allow the