

ion, I wish to advise that I have checked the authorities you cited. Of these cases, the case of *In Re Warren's Bank*, 244 N. W. 594, seems to be more nearly in point. In that case the court went considerably beyond the ordinary cases where a special deposit arises from a deposit for a special purpose. The facts in that case are somewhat different. It will be noted that instead of the Railroad Company keeping a running account in the bank, the bank returned the checks which were paid each pay-day, together with the balance of the deposit not used, thus closing the transaction. The court said on page 59: "The transaction involved in the cashing of each pay roll was thus closed in every instance before the next pay roll became due." Apparently the court considered this fact of considerable importance. In the case of *Larabie Brothers Bank*, I am advised that this was not done and that the Railroad Company kept a running balance of about \$5,000.

The Circuit Court of Appeals, in *Northern Sugar Corporation v. Thompson*, 13 Fed. (2d) 829, refused to hold that a deposit made for the purpose of paying "beet pay roll" checks was a special deposit. The facts of that case are somewhat similar to those in our case, in the following particulars: 1. The deposit was made in the name of the company making the deposit. 2. The company did not advise the bank as to what specific growers or laborers were to be paid. 3. The bank was not required to ascertain that the persons presenting checks were in fact beet growers or laborers. 4. From the time of the first deposit in the beet pay roll account to the close of the bank there was continuously an amount to the credit of the company in that account. 5. There was no special agreement between the Sugar Corporation and the bank that the funds deposited to cover pay roll checks should be held by the bank as a special fund separate and apart from other general funds of the bank or that they should be treated by the bank in any way different from a general deposit. All of these facts the court considered and commented upon in arriving at its decision. The court made this statement:

"If it was understood and agreed between the sugar corporation and the bank that the deposits were to be for

Opinion No. 245

Banks and Banking—Special Deposits —Trusts.

HELD: Money deposited by and in the name of C. M. St. P. & P. Railroad Co. in *Larabie Bros. Bank* for the purpose of paying employees checks, upon all facts disclosed, is not necessarily a special deposit which entitles the railroad company to claim the balance of the account as a trust fund in the bank now closed.

June 20, 1933.

Replying to your request for an opin-

a specific purpose, and that the bank was to act as the agent of the sugar corporation in disbursing such deposits, then the title to the funds deposited would not have passed from the sugar corporation to the bank, and the bank would not have become the debtor of the sugar corporation to the extent of the funds deposited, **and the sugar corporation would not have been entitled to have the funds deposited placed to its credit; that the sugar corporation did not intend the relation between it and the bank to be that of principal and agent but rather the conventional relationship of creditor and debtor, which grows out of a general deposit, is indicated by the requests of the sugar corporation that the bank place the deposits to the credit of the sugar corporation.**"

The deposit in the Larabie Brothers bank was made in the name of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (see letter of Vice-President Sparrow dated January 13, 1928). His instructions were to "honor all treasurer's checks, voucher checks, paymaster's checks, and all other drafts issued by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company when signed on behalf of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company as per signatures on file with you."

According to the liquidating agent, the bank was authorized "to pay any and all checks issued by the Milwaukee." There seems to have been no agreement nor understanding so far as the bank was concerned that this account was to be treated different from that of a general deposit.

It is true that text writers and courts have said that a special deposit exists when money is given to a bank for a specific purpose. (5 *Mitchie Banks and Banking*, Sec. 332; 3 *R. C. L. (Bank)* Sec. 146, 148; 7 *C. J.* 631, Sec. 307; *Fogg v. Tyler*, 109 *Me.* 109; 30 *Ann Cas.* 1913E p. 41, and note 45; *Morton v. Woolery* (N. D.) 189 *N. W.* 232; 24 *A. L. R.* 1107 and note 1111; *Hudspeth v. Union Trust & Sav. Bank*, 196 *Ia.* 706; 195 *N. W.* 378; 31 *A. L. R.* 466, note 472; Note 39 *L. R. A.* (n. s.) See also cases cited in *In Re Warren's Bank* (supra); *Northern Sugar Corp. v. Thompson* (supra). The facts in these cases cited in support of this propo-

sition are generally quite different, being generally in the nature of money deposited to pay a debt, to pay a particular person, to pay a contractor, to pay the purchase price of property, to pay a note or draft, etc., and generally according to instructions given to the bank.

In view of the Northern Sugar Corporation case, supra, and the fact that the precise question has not been ruled upon by our Supreme Court, it cannot be said that the law in such cases as the one we have under consideration, is well settled. It is my opinion that the facts would have to be particularly strong before our Supreme Court would follow the Wisconsin case. Therefore, and pending further investigation of the facts, I do not feel that I can at this time positively advise the Superintendent of Banks that the account of the Milwaukee should be considered a preferred claim; nor do I believe that he will wish to make such a decision in view of the conflicting interests of the other depositors in the bank.