

held that the drawers of the bill could not maintain an action against the acceptor's banker, on the ground of a lack of privacy. (1) Though it might be inferred that, had the banker advised his correspondent to pay the bill, the decision might have been otherwise.

82. In England it has been held that where money is paid in to the banker by his customer, for the express and declared purpose that the same should be paid over to a third party, nevertheless such third party can enforce no claim against the fund until the banker shall, by some act upon his own part, have come under an obligation to pay to him. (2)

83. All the sums paid into the Bank on general deposit, by the same or different depositors, form one blended fund. (3) So soon as the money has been handed over to the Bank, and the credit given to the payer, it is at once the proper money of the Bank. It enters into the general fund and capital, and is undistinguishable therefrom. Thereafter the depositor has only a debt owing him from the Bank, a *chose* in action, not any specific money or a right to any specific money. (4) It follows that the act of deposit having been once consummated, nothing short of payment on the part of the Bank, or some act of the depositor himself, will suffice to exonerate it from the indebtedness it has assumed. The identical bag of coin or roll of bills in which the deposit was made may be stolen, before it has been in any practical manner comingled with the funds of the Bank; it may be embezzled or fraudulently misapplied by an officer of the Bank; still the indebtedness of the Bank subsists entirely unaltered by these circumstances.

84. On the other hand, however, it appears that under certain peculiar circumstances, the customer may follow and establish his ownership of funds deposited by him, but not yet actually mingled with the assets of the Bank. Thus, when money is paid

(1) *Hill v. Royds*, 8 L. R. Eq. 290.

(2) *Malcolm v. Scott*, 5 Exch. 610; *Grant on Bankers and Banking*, 3d ed., p. 4.

(3) *Devaynes v. Noble*, 1 Mer. 541; *Bodanham v. Purchas*, 2 Barn. & Ald. 39; *Henniker v. Wigg*, 4 Q. B. (Ad. & El.) 792; *Commercial Bank of Albany v. Hughes*, 17 Wend. 94.

(4) *Marine Bank v. Fulton Bank*, 2 Wall. 252; *Thompson v. Riggs*, 5 id. 663; *Bank of the Republic v. Millard*, 10 id. 152; *Ætna National Bank v. Fourth National Bank*, 46 N. Y. 82; *Carr v. National Security Bank*, 107 Mass. 45; *First National Bank v. Ocean National Bank*, 60 N. Y. 278.