THE BANK OF MONROVIA, INC., by B. E. COMBES, Manager, Appellant, v. **SAMPSON P. KOBBAH**, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued March 29, 30, 1950. Decided June 8, 1950.

1. The entry of a deposit in a passbook to the credit of the depositor is in the nature of a receipt, and is prima facie evidence that the bank has received the amount from the depositor and entered it to his credit.

2. Neither the passbook, the deposit slip, nor the ledger card of the bank is conclusive evidence. Nevertheless, a passbook given a depositor is considered to be of greater weight than a deposit slip or a ledger card where the same bank clerk entered all.

3. The law applicable to a contract of deposit is the *lex loci*.

4. All admissions made by a party himself or by his agent acting within the scope of his authority are evidence.

5. A bank which has through its clerk received a deposit and entered it on the passbook of the depositor is estopped from denying that it owes the depositor the amount shown in the entry if its rules provide that the book is evidence of the depositor's rights.

Plaintiff, now appellee, successfully sued defendant, now appellant, in debt in the magisterial court. On appeal to the circuit court, the judgment was affirmed. On appeal to this Court from the affirmance by the circuit court, *judgment affirmed.*

R. F. D. Smallwood for appellant. *Nete Sie Brownell* for appellee.

MR. JUSTICE REEVES delivered the opinion of the Court.

The facts germane to the action as culled from the records in this case are succinctly stated as follows :

The plaintiff in the magisterial court below, now appellee, on January 25, 1949

deposited the amount of forty dollars with, and opened a thrift account in, the Bank of Monrovia, Inc., which was received by teller Freeman. Bank passbook Number 3642 was given appellee.

Subsequently, on January 31, 1949, appellee took to the Bank with his passbook the amount of one hundred twenty dollars which he delivered to the said teller of the Bank. After the amount had been entered to his credit in said book, it was returned to him and he left. About two and one-half months thereafter, on April 13, 1949, appellee, finding himself in need of money, took his passbook to the Bank, handed same in, and demanded a withdrawal of forty dollars. To his surprise the said bank teller, Freeman, on his return from the inner side where he went to get the withdrawal of forty dollars, informed him that the bank books showed he had only twenty dollars remaining to his credit and not one hundred twenty dollars as his passbook showed. Upon hearing this information appellee immediately denied same and stated that after the withdrawal of forty dollars his passbook containing his thrift account showed one hundred twenty dollars to his credit. Unable to understand what had gone wrong with his deposit, appellee took up the question with the assistant cashier of the Bank, Mr. Brown, who took him to the acting manager, Mr. Combes, to whom the matter was related. The acting manager promised to make an investigation of the matter. Sometime thereafter, appellee, convinced that Mr. Combes was not disposed to permit the withdrawal of the one hundred twenty dollars balance in his thrift account according to his passbook, secured counsel, who with himself exhausted all means to get said amount. Failing, appellee instituted an action of debt against the Bank for the recovery of the amount in the Magisterial Court for the Commonwealth District, City of Monrovia.

On June 16, 1949 the case was called for hearing. Defendant, now appellant, pleaded *nil debit* as to one hundred twenty dollars and *debit* to twenty dollars only. Witnesses *pro et con* deposed, and after due consideration the magisterial judge made a lengthy ruling and rendered the following judgment :

"The defendant pleaded 'nil debit' to the amount of one hundred and twenty ($120.00) dollars but debit to twenty ($20.00) dollars only. Upon the evidence adduced this court is of the opinion that the defendant is justly indebted to the plaintiff in the sum of one hundred and twenty ($120.00) dollars, and that he must pay this amount forthwith to the plaintiff with all the costs of these proceedings. This is hereby so ordered. Dated this 29th day of June A.D. 1949."

Appellant, dissatisfied, announced an appeal from this judgment to the Civil Law

Court for the Sixth Judicial Circuit, Montserrado County. During the September, 1949 term of said civil law court chamber session, the appeal was called for hearing. On August 31, 1949, counsel for appellee having filed a motion to dismiss said appeal, the court heard the arguments thereon and rendered its ruling on September 7, 1949, dismissing said motion. Having made a careful study of the records sent forward from the magisterial court, the court rendered its final judgment affirming the judgment of the trial magistrate in the court below, to which counsel for appellant took exception and prayed an appeal to this Court at its March term, 1950.

When this appeal was called for hearing by this Court, counsel for appellant and appellee having filed their briefs, the Court listened attentively to the arguments of the issues raised therein. It now becomes our duty, as the Court of *dernier ressort,* to render a final decision in the matter.

We find according to the records that appellee opened a thrift account with appellant and passbook Number 3642, marked by the court exhibit "A," in which the bank thrift ledger clerk entered his several deposits, was given him, which book on its face shows the following:

[Please see pdf file for table and figures]

Upon the above, appellee predicated his action of debt. Appellant with his witnesses admitted that said book was the passbook the Bank had given appellee and that the thrift account entered therein had been entered by the bank's thrift ledger clerk, but in support of its plea of *nil debit* as to the amount of one hundred and twenty dollars, appellant offered two documents which were identified as a deposit slip and a ledger card and are as follows :

[Please see pdf file for tables and figures]

Appellant alleged that according to those documents of the Bank, appellee did not make a deposit of one hundred and twenty dollars on January 31, 1949 as his pass-book shows on its face, but that the thrift ledger clerk made a mistake in said entry, for the documents "A-I" and "A-2" show that only twenty dollars was deposited.

Counsel for the plaintiff, appellee herein, cross-examined witness Combes :

"Q. The deposit in question [was] made on the 31st of January, 1949 and Mr. Kobbah went to withdraw forty dollars on the 13th of April 1949. During the interval of

about two and [one-] half months did the Bank ever write to him to say anything with respect to his deposit of $izo.00 to the effect that they question same?

"A. No, because we have no more reason to doubt our entry than Mr. Kobbah to doubt the book entry; and he has not testified that he ever came to the bank prior to April to question it.

"Q. The bank's entry in Mr. Kobbah's book shows one hundred and twenty dollars. Your clerk, Mr. Prall, who made that entry, also made a contrary entry on the bank's records showing a deposit of only twenty dollars and for two and [one-] half months those two entries stood unquestioned by the bank. Does it not occur to you that Mr. Kobbah is not responsible?

"A. It does not occur to me."

In this respect the Court is of the opinion that no responsibility could be attached to appellee since the entries were all made in the passbook of the depositor and on the Bank's records by the identical bank thrift ledger clerk, who was not acting in said capacity as an agent of appellee but of the Bank.

It was further brought out in evidence that it is not customary for such documents as a deposit slip or a ledger card to be exhibited to depositors since they are ex-clusively documents of the Bank, handled by its officials. This is borne out by testimony in the original trial.

Counsel for appellee cross-examined witness Combes :

"Q. You will admit that when the entries [were] made on documents `A-1' and `A-2' showing twenty dollars as having been deposited by Mr. Kobbah on the 31st of January, 1949, and the entry in the thrift account book on the same date showing an account of one hundred twenty dollars as having been deposited by Mr. Kobbah, Mr. Kobbah neither saw the bank slips marked by court `A-1' and 'A-2' nor did he sign them, not so?

"A. Mr. Kobbah did not sign them but I cannot say whether he saw them or not.

"Q. Is it the practice for the bank to pass these slips to the depositors?

"A. It is not the usual practice but sometimes the unusual happens."

It is obvious then that appellee had no knowledge of the transactions that transpired between the said bank officials in connection with his deposits, except that after they had been entered by the bank official his passbook was handed him and he left.

Having stated the facts pertinent to the issue, we will now ascertain what the legal writers have recorded with respect to this issue between appellant and appellee.

Judge Bouvier declares that:

"The entry of a deposit in a passbook to the credit of the depositor is in the nature of a receipt, and is *prima facie* evidence that the bank has received the amount from the depositor and entered it to his credit." 3 Bouvier, Law Dictionary 2508 (Rawle's 3d rev. 1914).

In *Corpus Juris* we have this recorded:

"The entry of a deposit in the depositor's passbook is an admission of indebtedness to the depositor on the part of the bank and a contract to repay the money to the depositor or to his order; but such an entry is not necessary to bind a bank which has actually received a deposit. Formerly if a bank officer entered a deposit on the passbook at the time it was made the entry was original and binding on the bank; but if the entry was by copying from the ledger or from other bank books it could be questioned. The entry, however, was not binding on the depositor because the bank clerk was not his agent. The present rule, however, is that the rights of neither party are fixed or changed by entries in or the settling of a pass book, but in all cases the account is open to examination and correction. . . ." *7 Id. 637 (1916).*

" 'While it is true that the relation of a bank and its depositor is one simply of debtor and creditor . . . and that the depositor is not chargeable with any payments except such as are made in conformity with his orders, it is within common knowledge that the object of a pass book is to inform the depositor from time to time of the condition of his account as it appears upon the books of the bank. It not only enables him to discover errors to his prejudice, but supplies evidence in his favor in the event of litigation or dispute with the bank. In this way it operates to protect him against the carelessness or fraud of the bank. The sending of his pass book to be written up and returned with the vouchers is, therefore, in effect, a demand to know what the bank claims to be the state of his account. And the return of the book, with the vouchers, is the answer to that demand, and, in effect, imports a request by the

bank that the depositor will, in proper time, examine the account so rendered, and either sanction or repudiate it.' . . ." *Id.* n. 62 at 638.

"The rule which governs in keeping the account between a bank and a depositor is that as money is paid and drawn out, or other debts and credits are entered by the consent of both parties, in a general banking account of a customer, a balance may be considered as struck at the date of each payment or entry on either side of the account.

"A bank, being in law a debtor, is absolutely liable for the loss of a general deposit, although such loss occurs by reason of events wholly beyond its control; but if the bank fails, the general depositor, at common law, is not a preferred creditor." *Id.* at 643.

Corpus Juris Secundum discusses the issue as follows :

"Delivery of money or its equivalent into the possession of a bank ordinarily constitutes and completes the making of a deposit, irrespective of the subsequent crediting of such money to the depositor's account or the character of the particular designation by which the account may be called on the records of the bank. A bank may, but need not, receive deposits after hours. A bank may be estopped to deny the receipt of a deposit. Deposit agreements are subject to existing and future laws, and are ordinarily governed by the law of the place of performance.

"Generally speaking, a deposit is complete when money or negotiable instruments are delivered into the possession of the bank or its agent, delivery being made within the bank and during banking hours. The bank cannot escape liability because the deposit was not received by the receiving teller. The payment of a deposit to anyone serving behind the counter of a bank is valid, and even if he retains the money for his own use his bank is liable; but the bank is not liable in a case where an employee receives a deposit outside the bank, unless the bank acquiesces in or ratifies such action. It has, however, been held that the mere fact that a bank negotiated for a deposit at a place other than its banking house, in violation of a statute requiring that a bank's business shall be conducted only at such house, does not deprive the depositor of the right to his deposit.

"The view has been expressed that the deposit is complete, so as to create the relation of debtor and creditor, although there has been no actual entry of credit on the books of the bank; but there is other authority to the effect that until entry of credit

in his favor, a depositor cannot become a creditor of the bank. A bank receiving a depositor's check and collecting the proceeds thereof is under a duty to see that they are placed to the credit of his account, and where a bank receives money for general deposit and fails to enter it to the credit of the depositor, it may thereby become guilty of a conversion.

"On the other hand, a bank is not liable for the amount of a credit given for a deposit when in fact no such deposit was made." 9 C.J.S. 549 (1938).

Having quoted the legal authorities on the making, receipt, and entries of deposits in general, let us now ascertain what they conclude is the legal import of deposit slips and ledger cards, documents offered by appellant as written evidence in support of his plea of *nil debit* to one hundred twenty dollars but debit to twenty dollars.

In *Corpus Juris Secundum* we have the following:

"Deposit slips are ordinarily regarded as memoranda or receipts and not contracts.

"A deposit slip is a mere acknowledgment by the bank that the amount named has been received, and an indication of the customer's purpose to make a deposit. While such slip constitutes an admission by the bank that the relation of debtor and creditor has been created, and furnishes evidence of the date and amount of deposit, it is not conclusive, and the true state of the accounts and not the deposit slip or bank entry determines the rights of the parties.

"A deposit slip does not purport to embody the contract between the parties, nor do stipulations printed on the slip necessarily bind the depositor, and the deposit slip cannot affect the rights of a third person under an alleged agreement with the depositor and the bank officers.

"Deposit slips should be construed in accordance with the practical interpretation which has been placed upon them by the parties themselves before any controversy arose . . ." *Id.* at 552. According to the prevailing opinion of legal authorities, neither the passbook of a depositor, the deposit slip, nor the ledger card is conclusive evidence. Nevertheless, a passbook given a depositor is considered to be of greater weight than a deposit slip and ledger card because, as mentioned *supra,* the entries were all entered in the passbook and on the bank's records by the identical bank thrift ledger clerk, who was acting in said capacity as an agent of the Bank.

It is, however, the unanimous opinion of legal authorities that the law which governs such a contract is the *lex loci.*

"Deposits are subject to existing laws and laws that may validly be passed in the future. As a general rule, the law of the place of performance controls with respect to the contract of deposit, and by virtue of comity the lex loci contractu may be applied in respect of the crediting of a check." *Id.* at 551.

"The depository agreement is inherently subject to all laws existing at the time the deposit was made, and the depositor is conclusively presumed to have made said deposit with the knowledge of the existence of all such laws which might affect his rights in connection with said deposit.' Priest v. Whitney Loan & Trust Co., 261 N.W. 374, 378, 219 Iowa 1281.

" 'It has been universally held by courts of last resort everywhere that contracts made with institutions such as banks affected with a public interest are . . . inherently subject to the paramount power of the sovereign state, the people—the reserve power, sometimes called the police power—to enact through the Legislature additional remedial legislation in the public interest, affecting the supervision, regulation, control, or liquidation of banking corporations.' *[Ibid.]" Ibid. n.* 77.

Before resorting to the *lex loci,* it becomes necessary to quote the fifth, sixth, and seventh sections of the rules and regulations of the savings department of the Bank of Monrovia, Inc., which can be seen on said passbook:

"5. Money deposited will be entered on the books of the bank and also in a book to be given to the depositor. This book will be evidence of the property, and the depositor shall be bound by the rules and regulations of this book on receiving a book in which the same are printed.

"6. This Bank reserves the right to repay any deposit, or the total balance remaining to the credit of the depositor, in any money lawfully circulating in Liberia at the time of such withdrawal.

"7. Deposits may be withdrawn by the depositor in person or by written order but in either case the book must be presented, that such payments may be duly entered therein. Only four (4) withdrawals will be permitted on each savings Account per month. For each additional withdrawal over four a fee of twenty-five cents will be charged."

We also quote the eighth section of said rules and regulations :

"8. Depositors shall upon opening an account, sign the signature card, and shall thereby be held as agreeing and assenting to these rules and to any alterations or amendments that may be hereafter made by the Board of Directors of this Bank."

Appellee signed the signature card and thereby made the contract complete and binding.

"A contract is an agreement entered into by the assent of two of *[sic]* more minds, by which one party undertakes to give some valuable thing, or to do, or omit, some act, in consideration that the other party shall give, or has given, some valuable thing, or shall do, or omit, or has done, or omitted, some act. The consideration of a contract may be anything which is troublesome or prejudicial in any degree to the party, who performs or suffers it, or beneficial in any degree to the other party, an agreement without such a consideration is not a contract but only a promise. The violation of a promise made without a consideration although, most frequently an immoral act, is not an injury for which an action at law will lie.

"All admissions made by a party himself, or by any agent of his, acting within the scope of his authority are evidence.

"All admissions must be taken altogether, the whole document or conversation must be given in evidence, and will be evidence of all qualifications, exceptions and denials contained therein, and of all facts connected with the question stated therein, but evidence may be given of the falsehood of any statements so made. But no document or conversation, can be made evidence by the other party proving any other document or conversation, not referred to, in the document or conversation, first proved." Stat. of Liberia (Old Blue Book) tit. I, § 11, ch. X, §§ 13, 18, 2 Hub. 1515, 1549.

In addition, we quote from *East African Co. v. Dunbar, 1* L.L.R. 279 (1895):

"The first exception claiming the immediate attention of this court, is the second found in the bill of exceptions, and is as follows : 'Because the court overruled the plea of estoppel set up in the defendant's answer.' The plea of estoppel is among the pleas calculated to prevent one from denying his own acts or deeds, and when founded in truth must meet the sanction of the courts of law. Nothing would work

greater injustice than for a man to execute a note or deed in favor of another, and then attempt to prove its unlawfulness. In law he would be estopped, or hindered from doing it, and if such acts committed by any party, no matter in what capacity acting, becomes a question of lawfulness, neither the party himself, nor any one representing him, should be allowed to impeach his own deed, note or acts. In this the court below greatly erred. The court should have sustained the plea and abated the suit in its very commencement, it appearing in the record that the plaintiff below, with others, sold and supported the entry of the defendant below in all the rights of the original lessee, for whom she acted as executrix." *Id.* at 280.

From the above-quoted laws of the land which according to legal authorities must control the decision in this appeal, it is clear that parties making a contract are bound by its stipulations and agreements, and that all admissions made by a party himself are evidence against him and the law will not permit him to benefit by any repudiation of his contract.

Legal authorities, *supra,* agree that payment of a deposit to anyone serving behind the counter of a bank is valid, and if he retains the money for his own use his bank is liable. Legal authorities declare that such issues should be judged by the *lex loci.* We have concluded from what has been said *supra* that section *5* of the Bank's rules and regulations constituted an admission on its part. That section reads :

"Money deposited will be entered on the books of the bank and also in a book to be given to the depositor. This book will be evidence of the property, and the depositor shall be bound by the rules and regulations of this book on receiving a book in which the same are printed."

Appellant was estopped by this admission from making the plea of *nil debit* to the amount of one hundred twenty dollars inasmuch as the Bank and its witnesses identified the passbook, stating that the entries therein were made by its thrift ledger clerk, Jallah Prall.

If the entry made was mistakenly entered by the Bank's thrift ledger clerk, it appears needless to ask whose responsibility it is in view of the admission, stipulation, and agreement of appellant found in section 5 of the regulations printed in said passbook.

Without belaboring the question further and in view of what has been said, we find ourselves fully in accord with and do hereby affirm the judgment of the lower court

which affirmed the judgment of the trial magistrate with costs against appellant; and it is hereby so ordered.

Affirmed