Marie E. Leigh-Parker of the City of Monrovia, Liberia Plaintiff/Appellant versus **The International Bank (Liberia), Limited (IBLL**), formerly the International Trust Company of Liberia, also of the City of Monrovia, Liberia Defendant/Appellee

ACTION OF DAMAGES FRO BREACH OF CONTRACT

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

Heard: 21 March 2007 Decided: 11 Ma's 2007

MR. CHIEF JUSTICE LEWIS DELIVERED THE OPINION OF THE COURT.

Marie E. Leigh-Parker, plaintiff/appellant, and her husband, the late Lever R. Parker, opened a general deposit savings account with defendant/appellee's predecessor Bank, the International Trust Company (ITC), in 1978. The number assigned the account was 16149. The initial deposit, according to plaintiff/appellant, was seven hundred sixty-nine dollars, seventeen cents ($769.17). It appears that after one or two transactions, the account reflected a balance of ten thousand six hundred sixty-one dollars, eighty-seven cents (10,661.87). This balance the defendant/appellee Bank has acknowledged in its brief filed with this Court.

Two years after the account was opened, there occurred a *coup d' etat* in Liberia, when on 12 April 1980, the Liberian Government was overthrown by the People's Redemption Council (PRC). PRC Decree no. 2, issued on 24 April 1980 and Published on 20 May 1980, provided for the suspension of the Constitution of Liberia and the establishment of a system of orderly Government. PRC Decree no. 30, issued on 30 January 1981, confiscated, *inter alia,* "all wealth, including both realty and personalty of . . . any person who was arrested and imprisoned *on any charge whatsoever* for political and economic offenses on or following April 12, 1980" (emphasis supplied).

The defendant/appellee Bank relies on PRC Decree no. 30 as one of it three probabilities in asserting that "the [plaintiff/appellant's] claim is not recoverable "

The late Lester R. Parker, plaintiff/appellant's husband, was among several prominent citizens arrested and imprisoned, but there is no indication that he was ever *charged* whatsoever for political and economic offenses on or following April 12,1980."

Following his release from prison, both Mr. Parker and the plaintiff/appellant left Liberia and settled in the United States of America. It is not indicated, from the certified records in this case, when the plaintiff/appellant and her husband left Liberia for the United States, when Mr. Parker died, or when the plaintiff/appellant returned to Liberia.

We find in the certified records, however, several correspondences between the plaintiff/appellant and ITC, and between the plaintiff/appellant and the defendant/appellant Bank relating to account #16149.

The first letter, dated 22 October 1999, from the plaintiff/appellant addressed to Mr. Willis F. Larrabee, General Manager of ITC, was a demand on the bank fog -the payment of the balance in the account, which as of 12/10/78 was US$10,661.37, plus interest.

The response to plaintiff/appellant's letter was a letter dated 3 November 1999 from Ms. Remmy N. Bartee, Vice President and Customer Service Manager o' ITC, in which she stated, *inter alia:*

"We have searched all our records including our numerical and alpha listing and have not found the number referred to by you, nor your husband's name in our records.

"In this regard, unless you have any documentation that may assist in further researches we would appreciate were you to make same availa,51e" (emphasis supplied).

On 19 May 2000, Mr. Patrick D. Kutu-Akoi, Senior Vice President of ITC, addressed the following letter to the plaintiff/appellant, in response to a letter E4ne had written dated 26 March 2000:

"Reference to your letter dated March 26, 2000 regarding your and your husband joint account, we have searched our records in order to find name or the above mentioned account but to no avail.

"In your 3/26/00 letter, you stated that copy of your Bank Statement was provided to your sister, Mrs. Theresa Leigh-Sherman, instructing her to withdraw the balance of $10,661.87 (ten thousand six hundred sixty one dollars and eighty seven cents) from said account. The money must have been withdraw and account closed. This is the most likely reason why we do not have any current record on said account now.

"We ask that you kindly liaise with your sister for additional information. *Meanwhile we do continue to review our files for record that will help us to conclude this issue. . ."* (emphasis supplied).

On 25 May 2000, the plaintiff/appellant addressed the following letter to Mr. Wilfredo Ochoada, Vice President and General Manager of ITC:

"It has become necessary at this time to bring this issue to your kind attention as I have not been able to obtain substantive response to my many queries regarding the account of myself and my late husband, Lester R. Parker, account #16149.

"The letter of May 19, 2000 from Mr. Patrick Kutu-Akoi, Senior Vice President of Banking, states that my sister 'Mrs. Theresa Leigh-Sherman must have withdrawn the balance of US$10,666.87 (ten thousand six hundred sixty one and 87/100 United States dollars), and the account was closed.' It is not true that my sister withdrew the money; my husband did not, and I have not.

"I have produced the copy of my bank book. I request that the Bank provides me with the balance of the account in the amount of US$10,666.87, plus interest, as soon as possible, as this issue is long overdue. . . ."

ITC's response to the plaintiff/appellant's letter was a letter, dated 29 May 2000, over the signature of Counselor Salia A. Sirleaf of the Henries Law Firm. The letter concluded:

"Our client also informed us that despite the staleness of your claim, they have made every effort to find any documents pertaining to your account. *They are still searching their records which were also affected by the 1990 civil war* (emphasis supplied).

On 4 October 2000, Counselor P. Nyenawelie Gibson of the Providence; Law Associates, on behalf of the plaintiff/appellant, addressed a letter to Mr. Patric Kutu-Okoi, Senior Vice President for Banking of the defendant/appellee Bank, in which he informed Mr. Kutu-Okoi that he had taken note that prior to securing their legs: services, the plaintiff/appellant had addressed several letters to executives of the Bank, including Mr. Kutu-Okoi, touching on the subject of her claim, the validity of which the defendant/appellee Bank had acknowledged. Counselor Gibson, therefore, impressed upon Mr. Kutu-Okoi the urgent need to make immediate settlement of the claim of the plaintiff/appellant.

It would appear that there was no response to Counselor Gibson's letter, and so on 9 February 2001, Counselor Gibson addressed a letter to the President of the defendant/appellee Bank, in which he informed the President that he was constrained to bring the matter to his attention because all attempts to persuade the defendant/appellee Bank, through other officers, to discharge its just obligation to the plaintiff/appellant had proved futile. Counselor Gibson pointed out that the defendant/appellee Bank having accepted the funds of the plaintiff/appellant on deposit, as evidenced by a copy of the account book which was made available to the defendant/appellee Bank, it was under a duty to settle with the plaintiff/appellant, and it was unacceptable that payment of the plaintiff/appellant's claim was being made contingent on the discovery by the defendant/appellee Bank of its records, especially when it had failed to define the time-frame of the purported search for the records.

On 23 March 2001, Sherman and Sherman, Inc., by and thru G. Moses Paegar, Counselor-at-Law and Acting Manager Director, addressed the following letter to Counselor Gibson:

"We represent the legal interests of the International Bank (Liberia) Limited (formerly the International Trust Company of Liberia) and we wish to advise that communications between you and IBL, Mrs. Marie E. Leigh-Parker and ITC, etc. have all been referred to us *for a final response to the claim for US$10,666.87 plus interest, said amount claimed to be the balance in the abovementioned account as at October 12, 1978*. Given the uncertainty in the communications, which started in October 1999, we deemed it appropriate to review the entire matter in light of whether the claim is recoverable both as a matter of law and as a matter of the facts and circumstances.

"We have determined that as a matter of law, the claim is not recoverable; and as such, we have advised the IBL that we should communicate this opinion to you so as *to apprize you of its final position on this claim.*

"IBL has not been able to find any record of account #16149 in the name of Mrs. Marie E. Leigh-Parker and her husband, Lester R. Parker, jointly. In a letter dated November 3, 1999 over the signature of Mrs. Remmy N. Bartee, ITC advised Mrs. Parker that a thorough search of its records, including both its numerical and alpha listing, do not show account #16149. However, considering that Mrs. Parker does have an ITC passbook with that account #16149, it was assumed by Mr. Patrick D. Kutu-Akoi, also of ITC, in a letter dated May 19, 2000, that Mrs. Theresa

Leigh-Sherman, whom Mrs. Parker had said was instructed to withdraw the funds and close the account, must have complied with that instruction. Mr. Kutu-Akoi surmised that the only logical conclusion that could be derived from the unavailability of records on account #16149 would be that the account was indeed closed by Mrs. Theresa Leigh-Sherman; but Mrs. Parker insisted that the account was never closed by Mrs. Theresa Leigh-Sherman.

"By a letter dated May 29, 2000, Counselor Salia Sirleaf of the Henries Law Firm, acting for ITC, advised Mrs. Parker that firstly, the account was stale and secondly, ITC had not been able to find any records on the account. Counselor Sirleaf also informed your client that the absence of records and the account could be attributed to the massive destruction of ITC's records in the wake of the civil crisis. Since then, you wrote your first letter of October 4, 2000, which was responded to by Counselor James C. R. Flomo of IBL with the same information of absence of records for account #16149 *and the continuation of the search for the records.* You followed up with a more recent letter of February 9, 2001; to which, IBL has not responded.

"We hereby advised that IBL has still not found any record on account #16149 and we wish to also advise that IBL has concluded that there is no probability that it will be able to find any record of the aforesaid account, *In the absence of records, IBL cannot say with absolute certainty what may have happened to account #16149, but is highly probable that one of these events described below might have occurred.*

"As a consequence of the April 12, 1980, Mr. Lester R. Parker, the late husband of Mrs. Marie E. Leigh-Parker, was amongst several prominent Liberian citizens who were arrested and imprisoned for many, many months for alleged violation of human rights, abuse of public office, corruption, and other offenses. Mrs. Parker herself was Assistant Minister for Presidential Affairs at the Executive Mansion, responsible for coordinating the affairs of several strategic public agencies in the financial and economic sectors, and reported directly to the late President Tolbert.

"In her letters of October 22, 1999 and March 26, 2000, Mrs. Parker correctly admitted that in addition to the imprisonment of her husband, the accounts of all detainees for these political offenses were frozen. What Mrs. Parker must be unaware of or neglect to state is that while Mr. Lester R. Parker was still in prison, PRC Decree no. 30 was promulgated, confiscating all the wealth [including both] realty and personalty of all persons arrested and imprisoned on or following April 12, 1980. PRC Decree no. 30 is so exhaustive in its coverage that even if Mrs. Parker had held funds on deposit in her name alone, considering that she was in the strategic position

of Assistant Minister for Presidential Affairs, responsible for the coordination of public agencies of strategic economic and financial importance and reporting directly to President Tolbert, such assets were subject of confiscation since she had then probably had to leave Liberia and seek political asylum in the United States as the promulgation of PRC Decree no. 30 on January 30, 1981.

"The accounts of many persons were affected by PRC Decree no. 30; and given the facts and circumstances of account #16149 it is highly probable that it was confiscated in keeping with PRC Decree no. 30.

"The fact that neither Mrs. Parker nor Mr. Lester R. Parker made any claim on ITC for the deposit balance of account #16149 until 1999 leads any reasonable person to the conclusion that they knew that their account h ad been confiscated pursuant to PRC Decree no. 30. You will recall that on May 15, 1984 PRC Decree no. 86 was promulgated and it ordered the return of all properties confiscated by the Liberian Government, with a few exceptions; and we don't think that properties owned by Mr. Lester R. Parker and Mrs. Marie E. Leigh-Parker could have been one of those exceptions. However, where the property confiscated was money, it was not possible for the Liberian Government to refund that money and it did not. What is important though is that PRC Decree no. 86 would have effectively unfrozen any account with a bank, which was frozen as a consequence of the *coup d'etat* but not actually physically confiscated as at the promulgation of PRC Decree no. 86. Yet, neither Mrs. Marie E. Leigh-Parker nor Mr. Lester R. Parker made an inquiry on account #16149; and the only reasonable conclusion for their inaction is that they knew that the account balance had been confiscated pursuant to PRC Deere no. 30 back in 1981.

"The rules of the passbook for account #16149, specifically rule 12, provides that *"all accounts to which no deposit and upon which no withdrawal shall have been made for three consecutive years shall be considered dormant, and neither such account nor the interest which shall have accrued then)on, shall draw any interest after the expiration of three years from the time* o*f last deposit or withdrawal unless special arrangements have been made with Bank".* So even if account #16149 was owned by somebody other than those affected by PRC Decree no. 30, interest would have ceased as of October 1981, the third anniversary of the last deposit or withdrawal. And there is more to the inactivity on an account with a bank.

"Section 66 of the Financial Institutions Act (1974) provides that a general deposit, such as account #16149, is presumed abandoned where a period of fifteen years there is no increase or decrease in the amount of the deposit, no correspondence in

writing on the status of the account, and no other indication of interest in the account as evidenced by a writing to the bank. Mrs. Parker has said that as of October, 1978, not only has there been no activity on account #16149, but that no written communication to ITC about the account had been made before 1999. Obviously, by October, 1993, account #16149 would have been considered abandoned property had it not been subject of confiscation pursuant to PRC Decree no. 30. The only person to whom ITC would have been liable under such circumstances would have been the National Bank of Liberia through the remittance of the balance in the account to said National Bank of Liberia. *In essence, even if the Parkers were not to be affected by PRC Decree no. 30, their failure or neglect would have caused the balance of account #16149 to be remitted to the National Bank of Liberia in October, 1993; and in such event, they would not have any right to recover that account balance.*

"You are also aware of the general periods of limitation for any course of action, whether *ex contractu* or *ex delicto;* and under either such circumstances, the statues operate to make null and void any claim that the Parkers could possibly have on account #16149. So based on the limitation of actions, as provided by law, the Parkers cannot recover against IBL and IBL is not required to answer to them in respect of the aforesaid account #16149.

"Finally, we believe that is overly presumptuous on the part of Mrs. Parker to assert that the balance in the account #16149 should be United States dollars. We need not elaborate on the law in existence at the time the account was opened. The Liberian dollar was and continues to be legal tender in Liberia; the balance in a general deposit, such as account #16149, was then repayable in any money legally circulating in Liberia; and as such, assuming without admitting, that IBL continues to be liable on said account #16149, the liability would have been discharged by the tender of Liberian dollar. In essence account #16149 was not a special account; there was no special agreement between ITC and the Parkers on the currency in which repayment would have been made; and so the Parkers have no legal ground for demanding repayment in United States dollar even if IBL, as successor to ITC, were liable.

"In view of the foregoing, for and on behalf of IBL, we hereby disclaim any and all liability to the Parkers in respect of account #16149" (emphasis supplied).

On 21 August 2001, the plaintiff/appellant instituted an eight-count action of damages for breach of contract against the defendant/appellee Bank, praying for special damages in the amount of ten thousand six hundred sixty-one United States dollars and eighty-seven cents (US$10,661.87), plus interest of thirty-five thousand

five hundred seven United States dollars and thirty-two cents (US35,507.32) at the rate of 6% per annum for 23 years, from 1978 up to and including the date of the filing of the complaint, or a total of forty six-thousand one hundred sixty-nine United States dollars and nineteen cents (US$46,169.19).

The plaintiff/appellant's complaint is grounded on the premise that a proper demand was made on the defendant/appellee Bank to recover the balance of her general deposit, plus interest, but that the defendant/appellee had refused to honor her demand.

On 31 August 2001, the defendant/appellee Bank filed a twenty-two count answer in which it contended, *inter alia:*

1. That while it is true that the plaintiff/appellant and her late husband opened a joint savings account at defendant/appellee's predecessor Bank in 1978, and that as of 12 October 1978 the account reflected a net balance of $10,661.87, PRC Decree no. 30, which was promulgated by the PRC confiscated all the wealth (real and personal) of all persons arrested and imprisoned on or following 12 April 1980, including plaintiff/appellant and her husband's account #16149 at defendant/appellee's predecessor Bank.

2. That defendant/appellee Bank concedes that in August 1999, plaintiff/appellant and her counsel, for the first time following the *coup d'etat,* commenced communicating with defendant/appellee Ban',. in respect of account #16149, but that it had addressed all of plaintiff/appellant's inquiries and finally, in its letter of 23 March 2001, addressed to Counselor P. Nyenawelie Gibson, of counsel for plaintiff/appellant, defendant/appellee Bank disclaimed any and all liability to plaintiff/appellant.

3. That section 66 of the Financial Institution Act of 1974 provides that a general deposit, such as account #16149, is presumed abandoned where, for a period of fifteen (15) years, there is no increase or decrease in the amount of the deposit, no correspondence in writing on the status of the account, and no other indication of interest in the account as evicenced by a writing to the bank, and that in the case of abandoned property, the only person to whom the defendant/appellee Bank can be liable to is the National Bank of Liberia.

5. That the action is time-barred since the cause of action accrued , n 1984 when, by plaintiff/appellant's own admission, she tried to withdraw funds from the account.

6. That as to the demand for forty-six thousand, one hundred sixty-nine United States dollars and nineteen cents (US$46,169.19) as special damages and the interest thereon, both are untenable since the savings account was a general deposit and the relationship created thereby was one which subsists between a debtor and a creditor.

The defendant/appellee Bank prayed for the dismissal of plaintiff/appellant's cause of action.

On 10 September 2001, plaintiff/appellant filed a twenty-two count reply in which it traversed the issues which had been raised in the defendant/appellee Bank's answer.

His Honor Judge Yusif D. Kaba, assigned Circuit Judge over the March Term, 2002, of the Civil Law Court, ruling on the law issues, dismissed the plaintiff/appellant's complaint on the ground that it was "barred by the statute of limitations."

In traversing the law issues raised in the pleadings, and in reviewing Judge Kaba's ruling on the law issues, we have determined that three law issues are determinative of ruling this case to trial:

1. Whether the plaintiff/appellant's cause of action is time-barred?

2. Whether the defendant/appellee Bank has from its pleadings shown that it has discharged its obligation to the plaintiff/appellant?

3. What is the defendant/appellee Bank's liability to the plaintiff/appellant, assuming the defendant/appellee Bank has not shown from its pleadings that it has discharged its obligation to the plaintiff/appellant?

We recognize that the joint savings account which the plaintiff/appellant and her late husband opened with defendant/appellee's predecessor Bank in 1978 was a general deposit, and that her remedy, if any, to recover the balance of the deposit is an action of damages for breach of contract.

"The remedy of a general depositor to recover the balance of his general deposit is, as a general rule, an action at law; this follows from the fact that a general deposit is in effect a mere loan, and because the relation between a general depositor and the bank is merely that of debtor and creditor without any fiduciary relation. This action at law may sound in contract upon the theory that the bank receives the deposit upon the

agreement to repay it on demand or order; indeed, it has been held that an action by a depositor to recover from the bank deposits which the bank refuses to return sounds in contract and not in tort. . ." 10 Am Jur 2d *Banks, §* 449.

The defendant/appellee Bank acknowledges, since it has not challenged, that the plaintiff/appellant's action of damages for breach of contract is the proper cause of action. The defendant/appellee Bank maintains, however, that the action is time barred, and relies on Civil Procedure Law, 1 L.C.L.Rev., tit. 1, § 2.13(1) (1973), which provides:

"An action to obtain payment of a debt or for damages for breach of contract based on a written instrument or acknowledgment shall be commenced within seven years of the time the *right to relief accrued" (emphasis* supplied).

We must decide, therefore, when did the right to relief accrue.

The defendant/appellee Bank contends that the right to relief accrued ire 1984. The defendant/appellee Bank has requested the Court to take judicial notice of the averment contained in count three of plaintiff/appellant's complaint, which reads:

"Plaintiff submits that she did visit the country very briefly in 1984 1993 and 1997 respectively, and during those visits, she tried to withdraw from the account, *but the defendant did not allow the withdrawal to take place. . ."* (emphasis supplied).

It is our opinion that the defendant/appellee Bank may not benefit from this averment. The plaintiff/appellant has not indicated why the defendant/appellee Bank did not allow the withdrawal to take place; for it could have been for any number of reasons, within the rules of the passbook, not amounting to *a refusal* by the Bank to honor its obligation. The defendant/appellee Bank has elected not to provide any clarification in its answer.

"The ordinary bank deposit is payable on demand, although a bank may, pursuant to bylaws or rules or regulations, postpone for a reasonable time the repayment of the depositor's funds." 10 Am Jur 2d *Banks, §* 356.

A breach of the defendant/appellee Bank/s obligation to pay by its refusal, upon proper demand, was therefore essential to a cause of action to recover it.

"Ordinarily, the obligation of the bank to its depositor is to repay the depositor on a proper demand, and such a demand must, as a general rule, have been made to enable a depositor to maintain an action for his deposit. The general custom in banking business is to pay on account of such indebtedness only upon a proper demand therefor by check or its equivalent at the banking house during ordinary banking house. One who deposits money for his credit in such an account, without any special undertaking to the contrary, is presumed to accept the undertaking of the bank to pay according to the general usage in such cases, which is known to all men. *Thus a breach of the bank's obligation to pay upon a proper demand being made, or some act on the part of the bank dispensing with such demand, is essential to a cause of action to recover it. . ."* (emphasis supplied). 10 Am Jur 2d *Banks,* ∫ 450.

We hold that the defendant/appellee Bank may only assert that the right to relief accrued in 1984, 1993 or 1997 if it defends that a proper demand was made by the plaintiff/appellant during any of those years, and that the proper demand was *rejected* by the defendant/appellee Bank. The defendant/appellee Bank has not plead this defense, and in none of its responses to letters written by the plaintiff/appellant, or on her behalf, *prior to its letter dated 23 March 2001 addressed to Counselor P. Nyenawelie Gibson,* had the defendant/appellee Bank, *rejected* the proper demand of the plaintiff/appellant.

The defendant/appellee Bank, in its letter dated 23 March 2001 *rejecting* the proper demand of the plaintiff/appellee, stated:

"We have determined that as a matter of law, the claim is not recoverable, and as such, we have advised the IBL that we should communicate this opinion to you so as to apprize you of its final position on this claim."

We hold, therefore, that the plaintiff/appellant's cause of action is not time-barred since the right to relief accrued on 23 March 2001, when by letter, over the signature of Counselor Moses G. Paegar, the defendant/appellee Bank, *for the first time,* refused to honor its obligation to the plaintiff/appellant.

In this holding, we find the following support:

". . . The general rule is that unless by some act on the part of the bank the necessity of demand has been dispensed with, the statute of limitations does not begin to run against the right of a depositor in a bank to maintain an action against the bank to recover a general deposit until there has been a demand for payment, by check, or

otherwise, *and a refusal to pay*. Conversely, after a demand for payment, the statute of limitations begins to run. The statement frequently made that the relation between depositor and banker is merely that of debtor and creditor does not mean that a bank, like a common debtor, must look up its creditor and pay him whenever and wherever found. To the contrary it pays only over its counter. Since the deposit is not due until demand is made, it is the demand and *refusal* to pay that sets the statute running. . ." (emphasis supplied). 10 Am Jur 2d *Banks,* ∫ 453.

We address next the issue whether the defendant/appellee Bank has from its pleadings shown that it has discharged its obligation to the plaintiff/appellant.

We hold that the defendant/appellee Bank has not discharged its obligation to the plaintiff/appellant, as it has not plead positively and definitely what disposition was made of the balance of general deposit in account #16149.

The defendant/appellee Bank, in paragraph five its letter addressed to Counselor P. Nyenawelie Gibson, of counsel for the plaintiff/appellant, dated 23 March 2C01, wrote:

"We hereby advised that IBL has still not found any record on account #16149 and we wish to also advise that IBL has concluded that there is no probability that it will be able to find any record of the aforesaid account. *In the absence of records,* ***IBL*** *cannot say with absolute certainty what may have happened to account #16149, but is highly probable that one of these events described below might have occurred*" (emphasis supplied).

We shall address the three probabilities advanced by the defendant/appellee Bank.

The first probability is that as a consequence of the April 12, 1980, the late Lester R. Parker, husband of the plaintiff/appellant, was among several prominent Liberian citizens who were arrested and imprisoned, and that while Mr. Parker was still in prison, PRC Decree no. 30 was promulgated "confiscating all the wealth [including both] realty and personalty of all persons arrested and imprisoned on or following April 12 1980." The defendant/appellee Bank then concludes:

"The accounts of many persons were affected by PRC Decree no. 30; and given the facts and circumstances of account #16149, it is highly probable that it was confiscated in keeping with PRC Decree no. 30."

The Court finds this hypothetical by the defendant/appellee Bank unacceptable; for, PRC Decree no. 30 was not self-executing. All banks which had deposits in those affected by PRC Decree no. 30 were under a duty to communicate with, and "pay and deliver," to the PRC Government all such deposits. The defendant/appellee Bank has not averred that it "paid and delivered" to the PRC Government the balance in account #16149, as it should have done.

We should like to point out, additionally, that the defendant/appellee Bank has misinterpreted PRC Decree no. 30. PRC Decree no. 30 confiscated, *inter alia,* "all wealth, including both realty and personalty of . . . any person who was arrested and imprisoned *on any charge whatsoever* for political and economic offenses on or following April 12, 1980" (emphasis supplied). The defendant/appellee Bank has not averred that Mr. Parker was *charged whatsoever* for political and economic offenses on or following April 12, 1980. We conclude, therefore, that account #16149 was not confiscated, and the defendant/appellee Bank did not "pay and deliver" to the PRC Government the balance of the general deposit.

In advancing its second probability, the defendant/appellee Bank, relies upon section 66 of the Financial Institutions Act (1974), and maintains that by Octob3r 1993, account #16149 would have been considered abandoned property.

Section 66 of the Financial Institutions Act (1974), on Abandoned Property, provides, *inter alia:*

"1. The following items held or owing by a financial institution, unless subject to sub-section (2) are presumed to be abandoned:

"(a) any general deposit (demand, savings or matured time deposit) made in Liberia with a financial institution, together with any interest or dividend, excluding any lawful charges.. .

"2. The items enumerated in sub-section (1) (a) through ©) shall not be presumed to be abandoned if the owner has, within fifteen years of the date of the deposit, payment of funds, or issuance of instruments, as the case may be:

"(a) increased or decreased the amount of the deposit or fund: or presented the passbook or other record for the crediting or interest or dividends in respect of the items enumerated in sub-section (1) (a) or (b);

"(b) corresponded in writing with the financial institution concerning the items;

"(c) otherwise indicated an interest in the items as evidenced by a memorandum concerning them written by the financial institution."

Assuming that the deposit in account #16149 was abandoned property, within the meaning of section 66 of the Financial Institutions Act (1974), the defendant/appellee Bank has failed to aver that it complied with section 67 of the Financial Institutions Act (1974). Section 67 provides:

"Every financial institution holding any of the items enumerated it section 66 annually shall report such holdings to the National Bank, *and thereafter pay or deliver to it all abandoned property* listed in the report in accordance with regulations which the National Bank shall prescribe. Upon paying or delivering abandoned property into the custody of the National Bank, a financial institution shall be relieved of all liability to the extent of the value of the property for any claim in respect thereof" (emphasis supplied).

We hold, in the absence of a definitive averment by the defendant/appellee Bank that it "paid and delivered" to the National Bank, as abandoned property, the deposit in account #12149, that the defendant/appellee Bank is liable to the plaintiff/appellant.

The third probability advanced by the defendant/appellee Bank is that, upon the instructions of plaintiff/appellant to the defendant/appellee Bank, authorizing Mrs. Theresa Leigh-Sherman to withdraw the funds and close the account, *the instructions must have been complied with.*

We hold that the defendant/bank should have plead definitively that the funds were withdrawn by Mrs. Theresa Leigh-Sherman and the account closed, especially when the defendant/appellee Bank admits in its letter dated 23 March 2001 that the plaintiff/appellant insisted that the account was never closed by Mrs. Leigh-Sherman.

This probability, had the defendant/appellee Bank plead definitively would, at trial, absolve the defendant/appellee Bank of liability. The burden of showing that the plaintiff/appellant's deposit was paid, however, is on the defendant/appellee Bank.

". . . payment of a deposit is a defense to an action to recover the deposit, [but] the bank has the burden of sustaining its plea of payment by proof that the money has

been paid out on a valid check or other order drawn by the depositor." 10 Am Jur 2d *Banks,* ∫ 452.

"The bank has the burden of showing that a depositors account was paid out by his order, or that the depositor had so acquiesced in the payment of the account to another as to be estopped to deny that such payment was authorized." 10 Am Jur 2d *Banks,* ∫ 494.

We hold that the defendant/appellee Bank has not plead definitively payment of the deposit to Mrs. Theresa Leigh-Sherman.

We address, lastly, the issue of what is the defendant/appellee Bank's liability to the plaintiff/appellant, the Court having determined that the defendant/appellee Bank has not discharged its obligation to the plaintiff/appellant.

In addressing this issue, we must decide, firstly, whether the plaintiff/appellant is entitled to be paid in United States dollars, and secondly, whether the defendant/appellee Bank is liable to pay interest on the deposit.

The defendant/appellee Bank contends that as the joint savings account of the plaintiff/appellant and her late husband was a general deposit, the defendant/appellee Bank is not obliged to pay in United States dollars, although the defendant/appellee Bank has admitted that the account, when opened in 1987, was in United States dollar, on par with the Liberian dollar.

We accept that account #16149 was an interest-bearing general deposit, and the relationship created between the defendant/appellee Bank and the plaintiff/appellant that of debtor and creditor.

We accept, also, that with general deposits, the bank may discharge its obligation to the depositor "by such money as is by law legal tender." 10 Am Jur 2d *Banks,* ∫ 499.

We hold, however, that while the defendant/appellee Bank may discharge its obligation to the depositor "by such money as is by law legal tender," the payment must be *at par.*

In this holding, we take note of the averment contained in count twenty-one of the defendant/appellee Bank's answer, which we quote:

"Further to count twenty (20) of this Answer, Defendant says that the Honorable Supreme Court, in the case Citibank, N. A. v. Barrow, decided December 11, 1996, held that where the contract merely states 'dollars,' since the Liberian dollars is and was legal tender in Liberia and is the official currency of Liberia, then the obligation may be settled in Liberian dollars. The Court is respectfully requested to take judicial notice that in count one (1), the very first count of plaintiff's complaint, plaintiff says 'that in 1978, plaintiff and her late husband, Lester R. Parker, opened a joint savings account, designated as account no. 16149, with an initial amount of $769.17 at defendant's bank and after some transactions, left a balance of $10,661.87 at the said Bank.' (Emphasis ours). *No mention of United States Dollars is made, because at the time, both as a matter of law and of fact, the Liberian dollar and the United States dollar had the same value and were interchangeable on their faces one with the other.* Defendant is not responsible for any inflationary effect, which may have caused a depreciation of the market value of the Liberian dollar since the mid-1980's. Indeed, when the National Bank of Liberia was introducing the Liberian dollar coin in 1982 and the Liberian dollar banknote in 1989 in replacement of the Liberian dollar coin, on both occasions, it issued a regulation to the effect that the Liberian dollar continues to be legal tender on par with and interchangeable on its fact with the United States dollar and that no one may refuse the Liberian dollar or the Liberian dollar banknote in discharge of a private or public obligation. So at all material time, plaintiff's account with the defendant was payable in Liberian dollar, and as such, plaintiff cannot demand United States dollars today" (emphasis supplied).

In quoting count twenty-one of the defendant/appellee Bank's answer, we have emphasized the following sentence: *"No mention of United States dollars is mi de, because at the time, both as a matter of law and of fact, the Liberian dollar and the United States dollar had the same value and were interchangeable on their faces one with the other."*

We hold that the plaintiff/appellant may not demand payment in United States dollars. We hold, however, that since the deposits into the account were in United States dollars, where according to the defendant/appellee's own admission the parity of the United States dollar to the Liberian dollar was one-to-one, the plaintiff/appellant, at the option of the defendant/appellee Bank, in case of a judgment in her favor, may be paid in Liberian dollars, but at the prevailing Central Bank buying/purchasing rate of the United States dollar to the Liberian dollar at the time of judgment.

In this holding, we find the following support:

"In the case of a special deposit the depositor may rightfully demand the identical thing deposited with the bank, but where the deposit is genera the transaction is, in the absence of any special agreement, unaffected by the character of the money in which the deposit was made, and the bank becomes liable for it as a debt, which liability can be discharged by such money as is by law legal tender. *Such a deposit is payable in money, without discount, even though the deposit was made in bank bills which subsequently became depreciated. This means, in the absence of a statute modifying the rule or a contract changing it in a particular instance, that the payment must be at par; to deduct exchange would make the payment less than par.* . . (emphasis supplied).

We address, lastly, the issue of interest.

The defendant/appellee Bank maintains that under rule 12 of the rules of the passbook, plaintiff/appellant cannot claim interest on the deposit beyond three years of October 1978, the month of the last transaction involving account #16149. RL, e 12 of the rules of the passbook provide:

"All accounts to which no deposit and upon which no withdrawal shall have been made for three consecutive years shall be considered dormant, and neither such account nor the interest which shall have accrued thereon. shall draw any interest after the expiration of three years from the time of last deposit or withdrawal unless special arrangement have been made with the Bank."

We hold, however, that interest credited to a general account is a deposit to the account, so that deposits were made to the account up to October 1978, and should have continued to the date of demand by the plaintiff/appellant, and refusal by the defendant/appellee Bank. 10 Am Jur 2d *Banks, ∫* 416.

We hold, therefore, that the plaintiff/appellant's account was not dormant.

In view of the foregoing, the judgment of the Civil Law Court dismissing the plaintiff/appellant's cause of action is hereby reversed. The Clerk of this Court is hereby ordered to send a mandate to the Civil Law Court commanding the judge presiding therein to resume jurisdiction, and to proceed with the trial of the cm. 3e of action consistent with this opinion. Costs to abide final determination. It is so ordered.

Judgement reversed.