not received a greater portion of his debt than other creditors could have received by payments at the same time, it is not a voidable preference, regardless of the fact that upon bankruptcy the creditor receives a greater percentage than others. So construed, such partial payments as were made in the principal case have been held not voidable. *Mansfield Lumber Co. v. Sternberg*, 38 F. (2d) 614 (C.C.A. 8th 1930); *Slayton v. Drown*, 93 Vt. 290, 107 Atl. 307 (1919). The conflicting construction of the section is explained by the fact that no technical definition is given the term "preference" in subsection (b), and reliance must be placed upon the definition in (a). If (a) is read into (b), a transfer can operate as a voidable preference if the final effect in the event of bankruptcy will be to enable one creditor to obtain a greater percentage of his debt than that obtained by other creditors. And the word "then" may be treated as having been inserted to preclude the possibility of avoiding a transfer which, at the time of its being made, treated all creditors alike; as, for example, an assignment for the benefit of creditors. The requirement that the creditor must "then have reasonable cause to believe that a transfer would effect a preference" would be satisfied by proof that the creditor knew of the debtor's insolvency and that like payments were not being made to all creditors.

The National Bankruptcy Conference, recognizing the ambiguity of § 60, has proposed a re-definition of a preference as a transfer by an insolvent debtor when such transfer "is not made for the benefit in like proportion of all other creditors of the same class, and is not accompanied by transfers giving all other creditors like benefits," and seeks to make a preference voidable "if the creditor has, at the time when such transfer is made, reasonable cause to believe that the debtor is insolvent and that not all the other creditors of the same class are then receiving like benefits." National Bankruptcy Conference, Proposed Amendments—Committee Print, May 15, 1935, at pp. 152, 155. This re-definition seems desirable not only because it avoids a construction leading to practical administrative difficulties in computing percentages and investigating the bankrupt's balance sheet at the date of every transfer within the four-month period, but also because it realizes one of the fundamental objectives of the Bankruptcy Act—equality of treatment for creditors. 29 Yale L. J. 112 (1919); *Bank v. Sherman*, 101 U.S. 406 (1879). A creditor could no longer receive 100 per cent as to the part paid before bankruptcy, plus a pro rata share of the balance, or a total percentage greater than that received by other creditors. *Commerce-Guardian Trust and Savings Bank v. Devlin*, 6 F. (2d) 518 (C.C.A. 6th 1925); *Bronx Brass Foundry, Inc. v. Irving Trust Co.*, 76 F. (2d) 935 (C.C.A. 2d 1935).

Banks—Constructive Trusts—Right of Trustee in Bankruptcy to Recover Funds Placed in Non-designated Depository—[Federal].—A trustee in bankruptcy deposited funds in a bank after being informed by the bank's vice-president that he presumed the bank was an authorized depository for bankruptcy funds. The bank was not so authorized and, upon its failure, the trustee sought a preference. *Held*, the trustee was entitled to no preference, although some deposits were in cash and could be traced. *In re Bogena & Williams*, 76 F. (2d) 950 (C.C.A. 7th 1935).

There is no dispute but that the ordinary general deposit of trust funds by a trustee having power to make such a deposit results only in a debtor-creditor relation. *In re Bologh*, 185 Fed. 825 (D.C. N.Y. 1911); 1 Bogert, Trusts and Trustees 101 (1935). A preference upon the insolvency of a bank is commonly obtained when public funds have been wrongfully deposited on the ground that the bank has become a constructive trustee. *Board of Commissioners v. Strawn*, 157 Fed. 49 (C.C.A. 6th 1907); *American Surety Co. v. Jackson*, 24 F. (2d) 768 (C.C.A. 9th 1928); *Huntsville Trust Co. v. Noel*, 321 Mo. 749, 12 S.W. (2d) 751 (1928); *Nelson v. State Bank*, 354 Ill. 519, 188 N.E. 853 (1933). In these cases the wrong usually arises from failure to comply with some statutory prerequisite to making the deposit. *Douglasville v. Mobley*, 169 Ga. 53, 149 S.E. 575 (1929); *Brown v. Sheldon State Bank*, 139 Iowa 83, 92, 117 N.W. 289 (1908). Some courts hold that title to the funds does not pass to the bank because the trustee has no right to deposit the money unless the provisions of the statute are complied with. *Leach v. Farmers Savings Bank*, 204 Ia. 1083, 216 N.W. 748 (1927). It has been suggested that, in accordance with the intention of the parties, title does pass but that the bank acquires such title only by participating in the depositor's wrongful act and should therefore be charged with a constructive trust. 1 Bogert, Trusts and Trustees 103 (1935). The bank need not have actual knowledge of the illegality of the deposit; it is sufficient that it knows of the nature of the funds and has not fulfilled the statutory requirements necessary to validate such deposits. It is charged with notice both of the statute and the fact that acceptance of a deposit without compliance therewith is unlawful. *Gentry v. Page Bank*, 322 Mo. 29, 14 S.W. (2d) 597 (1929); *Yellowstone County v. Bank*, 46 Mont. 439, 128 Pac. 596 (1912). When the failure to satisfy the statute arises from facts independent of, and unknown to, the bank, no notice of the breach of duty by the depositor may be imputed to the bank and no trust is raised. *Rankin v. Benton State Bank*, 81 Mont. 322, 263 Pac. 689 (1928).

The National Bankruptcy Act provides that courts of bankruptcy shall designate banking institutions as depositories for the money of bankrupt estates, shall require bond from such banking institutions, and that trustees shall deposit all money received by them in the designated depositories. 30 Stat. 557 (1898), 11 U.S.C.A. §§ 101, 75a(3) (1898). Failure to comply with the direction to deposit in designated depositories is a breach of the fiduciary's duty. 1 Collier, Bankruptcy 735 (12th ed. 1921); 2 Remington, Bankruptcy § 1129 (3d ed. 1923). The bank is actively participating in the breach of duty when it knowingly accepts a deposit of bankruptcy funds without being a proper depository, either for want of proper designation, or for having failed to file a bond. Courts have correctly applied a constructive trust to bankruptcy funds under such circumstances. *In re Potell*, 53 F. (2d) 877 (D.C. N.Y. 1931); *In re Weiss et al.*, 2 F. Supp. 767 (D.C. N.Y. 1931); *In re Ocean City Title and Trust Co's Bond*, 6 F. Supp. 311 (D.C. N.J. 1934); see *In re Battani*, 6 F. Supp. 376, 380 (D.C. Mich. 1934). There are no substantial grounds upon which to distinguish these from the principal case. The fact that the *Potell* case involved a receiver, instead of a trustee in bankruptcy, is hardly a basis for distinction since the receiver, like the trustee, has power to pass title by a general deposit, and is subject to the duty imposed by the Bankruptcy Act to deposit in designated depositories. 2 Clark, Receivers § 1098 (2d ed. 1929). *In re Weiss* is referred to as having been based on false representations. It is only in the syllabus of the case that the basis for such a distinction can be found. The facts of the case itself do not reveal whether there was more than innocent misrepresentation, an element which may even be found in the instant case. *In re Ocean City Title and Trust Co's Bond* was not distinguished, except by implication, for having followed the above cited cases. On the other hand, where a deposit was wrongful because the bankruptcy court did not authorize the trustee, a bank, to deposit the fund with itself as a bank, a constructive trust has been imposed. *Hillsdale Grocery Co. v. National Bank*, 6 F. Supp. 773 (D.C. Mich. 1934). The refusal of the court in the principal case to follow this trend of authority rested upon *Hancock County v. Hancock National Bank*, 67 F. (2d) 421 (C.C.A. 5th 1933), where a deposit of county funds was accepted by a bank which had not given bond and upon which no constructive trust was raised. In the *Hancock* case, however, the deposit was not in violation of a statute since, as the court found, the passing of a bond was not a condition precedent to the establishment of a proper depository.

A further ground for the decision was the distinction found between cases "where the bank by mandate of law is prevented from receiving deposits, and those where a trustee is merely required to make his deposits in a certain bank." This distinction is more apparent than real since in both situations the bank, having notice of the character of the funds and the requirements of the statute, is an active participant in the breach of the fiduciary's duty by accepting the deposit. It is immaterial that in the latter case the beneficial owners of the fund have a cause of action against the trustee or his surety. *American Surety Co. v. Jackson*, 24 F. (2d) 768 (C.C.A. 9th 1928); *In re Bank of Nampa*, 29 Idaho 166, 157 Pac. 1117 (1916). The equitable relief should still be available to them, and should remain available even though the claim is prosecuted on their behalf by the errant fiduciary and may indirectly redound to his benefit. Rights of the general creditors of the bank, under R.S. § 5236, 12 U.S.C.A. § 194 (1927), do not suffer as the bank has paid no value for the deposit and no preference is permitted when the deposit cannot be traced. *Spokane County v. Clark*, 61 Fed. 538 (C.C.A. Wash. 1894).

Constitutional Law—Taxation—General Income Tax as Reduction of Judges' Salaries during Term of Office—[Montana].—The plaintiff, administratrix, sought to enjoin the collection of a state income tax on the salary paid to a deceased judge, contending that the general income tax, as applied to judges' salaries, was unconstitutional. *Held*, the tax did not violate § 29, art. 8 of the Montana constitution which prohibits the diminution of an official's salary during his term of office. *Poorman v. State Board of Equalization*, 45 P. (2d) 307 (Mont. 1935).

To preclude the possibility that the legislative branch of the government might seek to exercise influence over the judicial department by control over tenure and payment of salaries, it was unanimously agreed in the constitutional convention that the salaries of Federal judges should not "be diminished during their continuance in office." Documents Illustrative of the Formation of the Union of American States, 155, 403 (1927); U.S. Const. art. 3, § 1. State constitutions have incorporated provisions excluding increases, as well as decreases, in compensation. Ill. Const. art. 5, § 23. Some states have not restricted the protective provisions against diminution in salaries to judges but have extended them to all public officers of the state. Mont. Const. § 29, art. 8; Ky. Const. § 235. Where the latter provisions are in force, it has been generally held that judges are public officers within the meaning of the constitution. *Henderson v. Board of Comm'rs of Boulder County*, 51 Col. 364, 117 Pac. 997 (1911); *State v. Moores*, 61 Neb. 9, 84 N.W. 399 (1900); *McCracken County v. Reed*, 125 Ky. 420, 101 S.W. 348 (1907). Some jurisdictions have held that even a general income tax, subjecting all citizens to its provisions and not including judges, violates the constitutional safeguard