

## RECENT CASES

**Banks and Banking—Prohibition of Branch Banking—School Savings Plan as Branch Banking—[Illinois].**—The plaintiff, a corporation engaged in the promotion of school savings systems, contracted with the defendant bank, in consideration for a fixed sum, to install and maintain such a program in certain public schools. The plan involved the opening of student accounts, the acceptance of deposits by the teachers, and the collection of such deposits by the defendant's messenger. Finding the arrangement unprofitable, the defendant discontinued the plan before the time stipulated in the contract. On appeal from a judgment awarding the plaintiff contract damages, *held*, reversed. The contract violated the Illinois statute prohibiting branch banking,<sup>1</sup> and was therefore *ultra vires*. *Thrift, Inc. v. State Bank & Trust Co.*<sup>2</sup>

That the court was justified in declaring the contract *ultra vires* and, therefore, unenforceable because of an Illinois statute prohibiting branch banking<sup>3</sup> seems unlikely in view of the fact that apparently neither counsel called the court's attention to a statute which sanctions school savings arrangements by Illinois banks.<sup>4</sup> Had this statute been given consideration, damages for breach of the contract would doubtless have been allowed.

The Illinois statute prohibiting branch banking is admittedly explicit, but, it is submitted, was not intended to outlaw school savings systems. The statute expressly forbids any bank from receiving deposits or cashing checks in any place other than the corporate charter *situs* and from having any other "banking house," "agency," "branch office," or "branch bank."<sup>5</sup> This and similar statutes<sup>6</sup> have been adopted because of the many objections to branch banking. It is maintained that branch banking prevents adequate supervision and inspection,<sup>7</sup> encourages absentee control,<sup>8</sup> aggravates disturbances in the whole banking system,<sup>9</sup> and results in concentration of financial resources and the disappearance of the independent banker.<sup>10</sup> These objections, however, do not apply to a school savings system. Such a plan requires but little

<sup>1</sup> Smith-Hurd's Ill. Rev. Stat. 1937, c. 16½, § 9.

<sup>2</sup> 298 Ill. App. 501, 19 N.E. (2d) 126 (1939).

<sup>3</sup> Smith-Hurd's Ill. Rev. Stat. 1937, c. 16½, § 9.

<sup>4</sup> Smith-Hurd's Ill. Rev. Stat. 1937, c. 16½, § 16.

<sup>5</sup> Smith-Hurd's Ill. Rev. Stat. 1937, c. 16½, § 9.

<sup>6</sup> See Fordham, *Branch Banking as Separate Entities*, 31 Col. L. Rev. 975 (1931) for state branch banking legislation. Cf. *State ex rel. Barrett v. First Nat'l Bank*, 297 Mo. 397, 249 S.W. 619 (1923) which held that a state may prohibit national banking branches; 44 Stat. 1228 (1927), 48 Stat. 189, 190 (1933), 49 Stat. 708 (1935), 12 U.S.C.A. § 36 (1936).

<sup>7</sup> Fordham, *op. cit. supra* note 6, at 977.

<sup>8</sup> Collins, *The Branch Banking Question* 9 (1926); 2 Zollman, *Banks and Banking* § 1292 (1936). See also Willis, *Branch Banking*, 2 Encyc. Soc. Sci. 679, 680 (1930).

<sup>9</sup> Brink, *Branch or Chain Banking—Its Effect on the Community*, 35 Com. L. League J. 188, 190 (1930).

<sup>10</sup> Collins, *op. cit. supra* note 8, at 8.

additional supervision, inasmuch as a separate bookkeeping system is not needed.<sup>11</sup> Absentee control is dangerous only where widely-separated, independent banking units are involved, a situation non-existent in a school savings system.<sup>12</sup> Nor should the fear of monopoly or of the disappearance of the independent banker be of any concern; student banking comprises but a small part of total bank deposits,<sup>13</sup> and consequently deprives competing banks of little or no business. Thus, no main objection to branch banking<sup>14</sup> is applicable to a school savings system.<sup>15</sup> Nor would the express provision prohibiting the acceptance of deposits at a place other than the bank<sup>16</sup> seem to apply to school savings, for such a provision was undoubtedly designed to prevent the development of city-wide branch banking, allegedly the forerunner of state-wide operations.<sup>17</sup>

Failure of the branch banking statute to prohibit school savings plans, however, does not sanction such arrangements. Banks, being affected with a public interest,<sup>18</sup> may exercise no powers not clearly given by the constitution, statute, or corporate charter;<sup>19</sup> silence or failure clearly to prohibit is not tantamount to authorization. But Illinois law is not silent on this question. The statute prohibiting private banking expressly states that nothing within that act shall be construed to prevent banks incorporated under Illinois or federal law from having agents receive savings deposits "in and through the public schools."<sup>20</sup> Thus, although the act does not affirmatively provide for school savings, the legislature has, by explicit exception, unequivocally given its approval to such plans.

It is submitted, furthermore, that even if the branch banking statute were intended to prohibit school savings, such plans may be adopted by Illinois banks. The act prohibiting private banking, which contains the clause allowing school savings by express exception, was passed after the branch banking statute.<sup>21</sup> Thus, if the two

<sup>11</sup> American Bankers Ass'n, *School Savings Banking 120 et seq.* (1923) illustrating the accounting system.

<sup>12</sup> The absentee control criticism is aimed at branch banking as a state-wide activity. See *Marvin v. Kentucky Title and Trust Co.*, 218 Ky. 135, 291 S.W. 17 (1927).

<sup>13</sup> In 1927 school savings deposits amounted to only 39 million dollars, while all deposits totaled 32,063 million dollars. See *Murphey, Thrift through Education* (1929); *The World Almanac* 298 (1938).

<sup>14</sup> See *Cartinhour, Branch, Group and Chain Banking 298 et seq.* (1931) for a discussion of the objections to branch banking.

<sup>15</sup> See *In re Commissioner of Banks*, Mass. Att'y-Gen. Rep. 276 (1922) where it was held that a school savings arrangement was not a "branch office" within the Massachusetts statute prohibiting trust companies from having branch offices.

<sup>16</sup> *Smith-Hurd's Ill. Rev. Stat. 1937, c. 16½, § 9.*

<sup>17</sup> *Collins, op. cit. supra*, note 8, at 11.

<sup>18</sup> *Bruner v. Citizens Bank*, 134 Ky. 283, 293, 120 S.W. 345, 348 (1909); *Bank of Italy v. Johnson*, 200 Cal. 1, 12, 251 Pac. 784, 788 (1926).

<sup>19</sup> *Knass v. Madison and Kedzie Bank*, 354 Ill. 554, 188 N.E. 836 (1933); *Continental Ill. Nat'l Bank & Trust Co. v. Peoples Trust & Savings Bank*, 366 Ill. 366, 9 N.E. (2d) 53 (1937).

<sup>20</sup> *Smith-Hurd's Ill. Rev. Stat. 1937, c. 16½, § 16.*

<sup>21</sup> The act prohibiting branch banking was passed in 1923 and approved by referendum in 1924, *Smith-Hurd's Ill. Rev. Ann. Stat. 1934 c. 16½, § 9.* Section 16 on private banking passed in 1929 and accepted by the electorate in 1930 supersedes an act of 1919 which con-

laws cannot be reconciled, the later will repeal the earlier to the extent of allowing school savings plans.<sup>22</sup> In any event, whether the acts be deemed consistent or incompatible, the decision in the instant case appears to be clearly wrong.

**Bankruptcy—Reorganization—Jurisdiction and Discretion under Section 77B and Chapter X To Proceed by Summary Process in Collection of Pledged Assets—[Federal].**—The debtor assigned and pledged certain accounts receivable to the complaining creditor. In some instances the same accounts were assigned to two or more creditors. Proceedings were then instituted under Section 77B of the Bankruptcy Act. By order of the district court, in a *summary proceeding*,<sup>2</sup> the trustee was directed to notify all debtors whose debts were assigned to pay their indebtedness to the trustee, who was to deduct one and one-half percent for "collection charges" and keep the sums collected in separate accounts to await final disposition. The creditor-pledgee of the accounts receivable objected to the jurisdiction of the trial court to proceed summarily. The Circuit Court of Appeals held that under Section 77B the debtor's uncontestable property interest in the accounts receivable was sufficient to give the reorganization court summary jurisdiction. *In re Moulding-Brownell Corp.—National Builders Bank of Chicago v. Schwartz*.<sup>2</sup>

The decision is a recognition of the broadened summary jurisdiction conferred by Section 77B of the Bankruptcy Act.<sup>3</sup> Since in ordinary bankruptcy proceedings, possession by the court is the basis of the court's power over the debtor's property,<sup>4</sup> the assertion of an adverse claim to possession may necessitate a plenary suit<sup>5</sup> to collect the assets of the debtor's estate. In reorganization proceedings, however, the reorganization court is vested by Section 77B (a) with complete and paramount control of the

tained the identical clause as to school savings. One section of this prior act had been held unconstitutional in *Wedesweiler v. Brundage*, 297 Ill. 228, 130 N.E. 520 (1921), but this section has been omitted from the amended statute.

<sup>22</sup> *Ayres v. City of Chicago*, 239 Ill. 237, 247, 87 N.E. 1073, 1076 (1909); *City of Decatur v. German*, 310 Ill. 591, 142 N.E. 252 (1924); *People v. Gould*, 345 Ill. 288, 312, 178 N.E. 133, 143 (1931).

<sup>1</sup> "A summary proceeding is one begun by petition and notice of motion or by order to show cause. The court may make its determination upon proof by affidavit or upon testimony at a hearing; upon short notice or *ex parte*. The determination and trial of issues by formal pleadings has no place in a summary proceeding." 2 Gerdes, *Corporate Reorganizations* § 849 (1936).

<sup>2</sup> 101 F. (2d) 664 (C.C.A. 7th 1939).

<sup>3</sup> 48 Stat. 912 (1934), 11 U.S.C.A. § 207 (1938). The amendment and incorporation of § 77B into Chapter X of the Bankruptcy Act probably does not diminish the summary jurisdiction of the reorganization court for if anything the provisions of Chapter X would seem to extend the court's power.

<sup>4</sup> *Wabash Ry. v. Adelbert College*, 208 U.S. 38, 53 (1908); *Taubel-Scott-Kitzmilller Co. v. Fox*, 264 U.S. 426, 433 (1924); *Mueller v. Nugent*, 184 U.S. 1 (1901); *May v. Henderson*, 268 U.S. 111 (1925); *Harrison v. Chamberlin*, 271 U.S. 191 (1926).

<sup>5</sup> "If a proceeding is treated as a suit in equity, with formal pleadings and amendments, and full opportunity for the presentation and cross-examination of witnesses is given at the trial, the proceeding is plenary rather than summary, even though begun by petition and notice of motion or by order to show cause." 2 Gerdes, *op. cit. supra* note 1, at § 849.