claims, like the claim just referred to, do not affect government finances, the fact that they are collectible in the name of a government agency may indicate a sufficiently public nature to warrant such treatment. This is especially true when, as in the instant case, the policy of a federal act is thereby vindicated.[18]

There are, however, two advantages in considering a back-pay order as creating a wage debt. In the first place, such claims are not discharged in bankruptcy,[19] and, in the second place, they have priority over government claims.[20] In most cases these considerations would not compensate for the limitations of the wage priority, but they do suggest the inadequacy of judicial attempts to fit the back-pay order into the framework of the Bankruptcy Act. If the decision in the instant case proves unsatisfactory, legislation still provides the obvious way to solve completely the perplexing problems of priority and discharge.

Banks and Banking—Insolvency—Application of Statute of Limitations to Rights of Receiver against Depositor Secured by Ultra Vires Pledge—[Illinois].—To secure deposits of the defendant park district a bank pledged certain of its bonds to the defendant pledgee. When the bank became insolvent, the pledgee sold the bonds, kept proceeds equal to its deposits in the insolvent bank, and turned over the remainder to the auditor of public accounts. Under Illinois law the pledge of a bank's assets to secure a depositor is ultra vires and illegal.[1] The receiver of the bank therefore brought suit for conversion; five years, the period of limitations for such actions,[2] had elapsed since the date of the pledge but not since the sale. The receiver contended that, although the bank had no power to ratify the pledge, it did have power to consent to the taking of possession by the defendant pledgee, and that, no demand having been made, a cause of action for conversion did not arise until the sale of the bonds. *Held*, that possession by the defendant pledgee was wrongful and adverse to the rights of the bank from the outset and that the pledge gave rise to an immediate cause of action for the

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corporation. The Court said: "The Shipping Act contemplated a corporation in which private persons might be stockholders and which was to be formed like any business corporation under the laws of the District, with capacity to sue and be sued. The United States took all the stock, but that did not affect the legal position of the company." Ibid., at 565.

[18] The Supreme Court has adopted the technique of determining whether the purpose of the statute under which the claim arises will be furthered by according priority as a debt due the United States. See Mellon v. Michigan Trust Co., 271 U.S. 236, 239–40 (1926); United States v. Guaranty Trust Co., 280 U.S. 478, 485–86 (1930). Compare the restricted scope of these cases as applied in United States v. Emory, 62 S. Ct. 317 (1941) (National Housing Act does not defeat government priority for FHA claims).

[19] 42 Stat. 354 (1922), amended by 52 Stat. 851 (1938), 11 U.S.C.A. § 35a(5) (Supp. 1941).

[20] 3 Collier, Bankruptcy ¶ 64.201, at 2083 (14th ed. 1941).

[1] This rule is based on interpretations of Illinois banking statutes and banking provisions of the Illinois Constitution. People ex rel. Nelson v. Wiersema State Bank, 361 Ill. 75, 197 N.E. 537 (1935); Marion v. Sneeden, 291 U.S. 262 (1934) (applying Illinois law); see Knass v. Madison & Kedzie State Bank, 354 Ill. 554, 188 N.E. 836 (1934).

[2] Ill. Rev. Stat. (1941) c. 83, § 16.

recovery of the bonds, which cause of action had become barred by the statute of limitations. Two judges dissented. *O'Connell v. Chicago Park District.*[3]

In *People ex rel. Nelson v. Wiersema State Bank*,[4] the Illinois Supreme Court held that the receiver of a pledgor bank could recover from an illegally-secured depositor pledged assets or the proceeds of the sale thereof. The instant case is the first in which this court has considered the application of the statute of limitations to such a situation. Both the majority and the minority analyzed the problem as one of the law of conversion. This approach is hardly adequate in view of the *Wiersema State Bank* case, which recognized that the rule against the pledge of a bank's assets to secure a depositor rested on the strong public policy underlying the "many provisions of the Banking Act which are designed to insure, *in case of disaster*, uniformity in the treatment of depositors and a ratable distribution of the assets."[5]

Depositors are ordinarily afforded some protection by the rule that the bank and the secured depositor are charged with notice of the limits of the powers of the bank and the illegality of the transaction.[6] The present rule as to the statute of limitations, however, deprives the depositors of effective protection inasmuch as the illegal pledge will usually not be discovered until a receiver is appointed.[7] The problem is analogous to that of the right of the cestui que trust against one who has colluded in the trustee's breach of trust. The cestui has the advantage of an independent cause of action which is not barred by the running of the statute against the trustee's right to sue as a "repentant" trustee. The "practical necessity"[8] requiring the cestui's cause of action also applies in the case of the illegal pledge. Furthermore, the statute may be held to impose a fiduciary duty on the bank to refrain from such pledges. A recognition of the fiduciary character of this duty is implicit in the decisions permitting the bank to recover the pledged assets within the period of limitations. It may therefore be argued that the statute creates in the depositors independent rights of action, as in the case of the cestuis que trustent.[9] The period of limitations should not begin to run on these

[3] 376 Ill. 550, 34 N.E. (2d) 836 (1941), noted in 27 Iowa L. Rev. 131 (1941); 42 Col. L. Rev. 135 (1942). The majority, citing Ames, Lectures on Legal History 204 (1913), also held that any subsequent cause of action for conversion, such as the one alleged to have arisen on the sale, relates back to the time of the original conversion. O'Connell v. Chicago Park District, 376 Ill. 550, 561, 34 N.E. (2d) 836, 840 (1941). The minority, citing Salmond, Torts 337 (Stallybrass' ed. 1934), took a contrary position. Ibid., at 566 and 844. The court's decision is in accord with Albers v. Continental Illinois Bank & Trust Co., 296 Ill. App. 592, 17 N.E. (2d) 66 (1938); Albers v. Continental Illinois Bank & Trust Co. & Forest Preserve District, 296 Ill. App. 596, 17 N.E. (2d) 67 (1938). Contra: Fort Worth v. McCamey, 93 F. (2d) 964 (C.C.A. 5th 1937).

[4] 361 Ill. 75, 197 N.E. 537 (1935).

[5] Ibid., at 93 and 545 (italics added).

[6] Knass v. Madison & Kedzie State Bank, 354 Ill. 554, 570, 188 N.E. 836, 843 (1934) (ultra vires agreement to repurchase bonds).

[7] People ex rel. Nelson v. Wiersema State Bank, 361 Ill. 75, 92, 197 N.E. 537, 544 (1935). The court pointed out that the pledge is of necessity clandestine, stating: "That is enough to condemn it." It is possible that such secret pledges might be brought to light while the bank is solvent in the periodic audits by bank examiners. In many cases, however, these examinations have apparently been ineffective.

[8] 4 Bogert, Trusts and Trustees 2776–77 (1935).

[9] Ibid., at § 955.

rights until the existence of the pledge is likely to become known—that is, until appointment of a receiver.

The question remains whether the bank's receiver may enforce these rights of the depositors. Although a receiver succeeds only to the assets of the insolvent corporation and has no greater rights than the corporation,[10] there are well-recognized exceptions to this general rule in cases of transfers in fraud of creditors and transactions held to violate the "trust fund theory."[11] A similar exception is required in the instant case in order to carry out the legislative policy against pledges to secure favored depositors.[12] It is apparent that individual suits by the depositors of an insolvent bank cannot achieve "uniformity in the treatment of depositors and a ratable distribution of the assets."[13] While a class suit on behalf of all depositors might achieve these objectives, such a suit would require the appointment of a receiver to handle the distribution. Quite obviously it is simpler to permit enforcement by the receiver.

Constitutional Law—Power of State Civil Service Commission to Exclude Pardoned Felon from Civil Service Position—[Iowa].—The plaintiff, a pardoned felon, applied for a civil service position. The Iowa Civil Service Commission rejected the application on the ground that Section 5701 of the Iowa Code[1] provides that, "in no case shall any person be appointed or employed in . . . . any department which is governed by civil service, unless such person: . . . . (5) Has not been convicted of a felony." On appeal to the Supreme Court of Iowa from a judgment of the trial court reversing

[10] 9 Zollman, Banks and Banking § 6291 (1936); 3 Michie, Banks and Banking § 96 (1940); High, Receivers § 315 (1894); Republic Life Ins. Co. v. Swigert, 135 Ill. 150, 25 N.E. 680 (1890); Evans v. Illinois Surety Co., 298 Ill. 101, 131 N.E. 262 (1921).

[11] 9 Zollman, Banks and Banking § 6291 (1936); 3 Michie, Banks and Banking § 98 (1940); High, Receivers § 315 (1894). In Golden v. Cervenka, 278 Ill. 409, 116 N.E. 273 (1917), the court held that a receiver could not enforce a cause of action belonging to the creditors individually, since that would deprive them of a "property right," but that he could enforce a cause of action arising from a transaction in fraud of the rights of the creditors generally.

[12] Cf. Corporations—Receivers—Rights of Creditors or Receiver to Raise an Objection to Corporate Action which Would Be Open to Shareholders, 38 Mich. L. Rev. 689–95 (1940), where the author points out that some courts, when confronted with an illegal depletion of assets available for distribution to creditors, have labeled as fraud what are merely ultra vires and illegal transactions and hence have brought such transactions within the recognized exception to the general rule. In Divide County v. Baird, 55 N.D. 45, 212 N.W. 236 (1927), involving a pledge similar to the one in the instant case, but raising no question of the statute of limitations, the court permitted the receiver to recover, saying that the depositors were the victims of a "legal fraud." Ibid., at 64 and 244. The court apparently regarded as doubtful the right of the bank itself to avoid the ultra vires pledge but held that the receiver "represents more than the insolvent bank; he represents the creditors and general depositors of the bank. . . . . The latter . . . . have equities which are superior to those of [the secured depositor]. . . . ." Ibid., at 60 and 242.

[13] People ex rel. Nelson v. Wiersema State Bank, 361 Ill. 75, 93, 197 N.E. 537, 545 (1935). It is clear that the recovery of a large judgment by a single depositor or group of depositors would nullify the effect of any relief which other depositors might subsequently be afforded.

[1] Iowa Code (1939) § 5701.