

Chapter 711

Merger and Conversion; Reorganization; Liquidation; Insolvency

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711.020

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711.030

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711.115

ATTY. GEN. OPINIONS: Effect of depositors' waiver agreements in connection with reorganization of bank, 1932-34, p 649.

711.225

LAW REVIEW CITATIONS: 37 OLR 73.

711.250

NOTES OF DECISIONS

A bank retained its corporate existence for the purpose of enabling it to liquidate a residue which consisted of the remaining assets which were delivered to a bank's liquidating committee after the Superintendent of Banks had liquidated enough of the corporate assets to pay depositors in full. *Bank of Commerce v. Ryan*, (1937) 157 Or 231, 69 P2d 964.

ATTY. GEN. OPINIONS: Condition under which banks and trust companies are dissolved by force of statute, 1928-30, p 253.

711.305

NOTES OF DECISIONS

The object and the purpose of this statutory requirement is the protection of the public in dealing with the banks. *Skinner v. Rich*, (1936) 153 Or 416, 55 P2d 1146.

711.310

CASE CITATIONS: *Harrison v. Skinner*, (1939) 160 Or 43, 83 P2d 437.

ATTY. GEN. OPINIONS: Procedure where capital of bank becomes impaired, 1926-28, p 546.

711.315

ATTY. GEN. OPINIONS: Effect of sale of pledged bank stock for failure of owner to pay assessment, 1924-26, p 356.

LAW REVIEW CITATIONS: 11 OLR 100.

711.410

LAW REVIEW CITATIONS: 5 OLR 341.

711.415

ATTY. GEN. OPINIONS: Section as applying to officers of national banks, 1926-28, p 312.

711.425

NOTES OF DECISIONS

Under a former similar statute, the voluntary transfer of a bank and its property to the Superintendent of Banks and the submission thereof to his administration in liquidation and disposition of the proceeds was in substance putting "a receiver or trustee" in charge within the meaning of the Bankruptcy Act. *Bramwell v. United States Fid. & Guar. Co.*, (1924) 299 Fed 705, aff'd, 269 US 483, 46 S Ct 176, 70 L Ed 368; *United States v. Adams*, (1925) 9 F2d 624.

FURTHER CITATIONS: *United States Fid. & Guar. Co. v. Bramwell*, (1923) 108 Or 261, 217 P 332, 32 ALR 829; *Harrison v. Skinner*, (1939) 160 Or 43, 83 P2d 437.

711.430

NOTES OF DECISIONS

The state superintendent's duties are the same as those of a trustee having legal title of property for the purpose of converting it into money to be paid over to specified persons. *Old First Nat. Bank & Trust Co. v. Barrett*, (1936) 14 F Supp 778.

711.435

CASE CITATIONS: *Harrison v. Skinner*, (1939) 160 Or 43, 83 P2d 437.

ATTY. GEN. OPINIONS: Right of Superintendent of Banks to a loan from Reconstruction Finance Corporation to preserve assets and business of banks under his control, 1930-32, p 576.

711.460

ATTY. GEN. OPINIONS: Sufficiency of bond submitted for approval, 1966-68, p 83.

711.480

CASE CITATIONS: Sargent v. Am. Bank & Trust Co., (1916) 80 Or 16, 26, 154 P 759, 156 P 431.

711.495

CASE CITATIONS: Sargent v. Am. Bank & Trust Co., (1916) 80 Or 16, 154 P 759, 156 P 431.

711.510

NOTES OF DECISIONS

In the liquidation of an insolvent bank, the Superintendent of Banks acts as trustee for the creditors and stockholders of the bank. Skinner v. Davis, (1937) 156 Or 174, 67 P2d 176.

In view of this provision, action may not be maintained against the Superintendent of Banks for the recovery of an alleged trust fund without first filing a claim with the superintendent. Harrisburg Nat. Bank v. Skinner, (1937) 157 Or 569, 73 P2d 363.

ATTY. GEN. OPINIONS: Authority of superintendent in connection with deposits of funds of bank in process of liquidation and acceptance of security from depositories, 1934-36, p 582; authority of superintendent to pay interest of funds of private depositors or payments that come into his hands in the course of liquidation of a bank, 1932-34, p 597.

711.515

NOTES OF DECISIONS

The beneficiary of funds held in trust by an insolvent bank is not deprived by this statute of the right to enforce a trust against the insolvent bank's fund. American Can Co. v. Schramm, (1931) 137 Or 328, 2 P2d 924.

The purpose of the Bank Act, of which this section is a part, is, with certain specific exceptions, to preserve the assets of banks free from all liens except the one granted to the depositors. Schramm v. Bank of Calif., Nat. Assn., (1933) 143 Or 546, 20 P2d 1093, 23 P2d 327.

A bailor of property delivered to a bank for safe keeping is not a depositor. Beck v. Junction City State Bank, (1935) 149 Or 352, 37 P2d 1089, 40 P2d 1017.

This section was not intended to provide an exclusive remedy for the recovery of trust funds when the funds of an insolvent bank have passed into the hands of the Superintendent of Banks. *Id.* Distinguished in Harrisburg Nat. Bank v. Skinner, (1937) 157 Or 569, 73 P2d 363.

The remedies prescribed by OC 22-2009 [ORS 711.530 to 711.570] in favor of persons having claims against an insolvent bank which has passed into the hands of the superintendent are exclusive. Harrisburg Nat. Bank v. Skinner, (1937) 157 Or 569, 73 P2d 363.

ATTY. GEN. OPINIONS: Claims of states and municipal corporations against insolvent banks, 1930-32, p 450; game license fund in an insolvent bank as a trust fund, 1930-32, p 663; owners of fund held by bank as administrator, executor or trustee, and deposited in its own banking department, as entitled to preference in case of insolvency, 1934-36, p 287.

711.520

ATTY. GEN. OPINIONS: Order in which proceeds of insolvent bank are to be applied as to depositors and other claimants, 1920-22, p 632; right to set off deposit against note which is secured by collateral, 1928-30, p 270; preferred claim of Veterans' State Aid Commission against insolvent bank for money deposited with it in escrow, 1934-36, p 182; owners of fund held by bank as administrator, executor or trustee, and deposited in its own banking department, as entitled to preference in case of insolvency, 1934-36, p 287.

711.525

NOTES OF DECISIONS

Interest is not allowable on noninterest-bearing accounts after a bank is placed in the hands of a Superintendent of Banks for liquidation. Ledford v. Skinner, (1937) 156 Or 651, 69 P2d 519.

By this section the legislature intended to and did enact an administrative law restricted to cases of insolvency, and further restricted the section under consideration to interest-bearing deposits only. Jones v. Skinner, (1938) 159 Or 325, 80 P2d 60.

This section, both originally and as amended, treats only of interest-bearing deposits in insolvent banks, that is, of those deposits which bear interest by the express terms of the contract of deposit or by reason of statutory provisions applicable to specific deposits. *Id.*

This section does not preclude payment of interest on either interest-bearing or noninterest-bearing deposits where a surplus remains over and above the amounts necessary to pay all creditors in full. *Id.*

ATTY. GEN. OPINIONS: Effect of this statute on state deposits in national banks, 1932-34, p 191.

711.530

NOTES OF DECISIONS

The published notice is for the benefit of persons whose status as creditors may not be discovered by a mere inspection of the books. Harrisburg Nat. Bank v. Skinner, (1937) 157 Or 569, 73 P2d 363.

711.535

NOTES OF DECISIONS

In order to recover personal property from an insolvent bank which has been delivered to it as bailee for safe keeping, it is not necessary to file a claim with the Superintendent of Banks within the meaning of OC 22-2009 [ORS 711.530 to 711.570]. Beck v. Junction City State Bank, (1935) 149 Or 352, 37 P2d 1089, 40 P2d 1017.

A claim for money held in trust, which money was commingled with bank's own funds, may not be maintained where the claimant has not filed a claim with the Superintendent of Banks within the required time. Harrisburg Nat. Bank v. Skinner, (1937) 157 Or 569, 73 P2d 363.

711.540

NOTES OF DECISIONS

The presentation of a claim to the Superintendent of Banks for approval or rejection is a condition precedent to the creditor's right thereafter to maintain any action thereon, but the filing within the prescribed period of a depositor's claim is not a condition precedent to recovery, where assets remain applicable to such claim. Harrisburg Nat. Bank v. Skinner, (1937) 157 Or 569, 73 P2d 363.

It is doubtful if the Superintendent of Banks under any

circumstances has authority to waive the timely filing of claims. Id.

711.555

NOTES OF DECISIONS

Where the Superintendent of Banks in control of an insolvent bank fails and refuses to deliver to the owner property held by the bank as bailee, ORS 711.530 to 711.570 do not protect him against an action for claim and delivery by the owner of such property nor do they limit the time at which such action may be brought for the recovery thereof. *Beck v. Junction City State Bank*, (1935) 149 Or 352, 37 P2d 1089, 40 P2d 1017.

The remedies prescribed by ORS 711.530 to 711.570 in favor of persons having claims against an insolvent bank which has passed into the hands of the Superintendent of Banks are exclusive. *Harrisburg Nat. Bank v. Skinner*, (1937) 157 Or 569, 73 P2d 363.

711.585

NOTES OF DECISIONS

The superintendent may allow claims of depositors, and possibly of other general creditors, after the expiration of the time fixed in the notice. *Harrisburg Nat. Bank v. Skinner*, (1937) 157 Or 569, 73 P2d 363.

711.580

NOTES OF DECISIONS

In view of this statute a person attempting to recover personal property from an insolvent bank which has been delivered to the bank as bailee for safe keeping is not required to comply with OC 22-2009 [ORS 711.530 to 711.570]. *Beck v. Junction City State Bank*, (1935) 149 Or 352, 37 P2d 1089, 40 P2d 1017.

The owner of property bailed as provided in this statute is not foreclosed of his right to recover possession thereof because of the absence of any notice from the Superintendent of Banks as provided by the statute. Id.

This statute is not limited to those cases where the records of the bank affirmatively show that the bank is not the owner of the securities in question. Id.

ATTY. GEN. OPINIONS: Items deductible as necessary expenses of Superintendent of Banks in sale of unclaimed articles, 1944-46, p 219.

711.585

NOTES OF DECISIONS

This section is invalid in so far as it permits noncontributing stockholders to share in the sums paid by those who have met their assessments. *Harrison v. Skinner*, (1939) 160 Or 43, 83 P2d 437.

The validity of an assessment against stockholders of an insolvent bank is not affected by the alleged invalidity of this section. Id.

711.590

ATTY. GEN. OPINIONS: Correction of small overdraft in special dividend account of the Superintendent of Banks, 1940-42, p 302.

711.600

ATTY. GEN. OPINIONS: Authority of Superintendent of Banks to employ counsel for liquidation proceedings in connection with insolvent bank, 1926-28, p 320; salaries and compensation of employes of the State Banking Department as chargeable against estate of insolvent banks and trust companies in proportion to amount of expenses incurred in behalf of them, 1926-28, p 557; acceptance of employment as attorney to assist in liquidation as vacating membership in legislature, 1936-38, p 149.

711.605

CASE CITATIONS: *Re Astoria Savings Bank*, (1932) 139 Or 573, 11 P2d 1062.

711.610

CASE CITATIONS: *Breese v. Bramwell*, (1924) 110 Or 105, 223 P 239.