debts against, but assets of, the corporation. Bidwell v. Railroad Co. (Pa. Sup.) 6 Atl. 729; Leavitt v. Mining Co. (Utah) 1 Pac. 360; 2 Thomp. Corp., § 1717. While there is some conflict in the oral testimony as to the nature of the transaction which eventuated in the raising of the $50,000 of which defendant's payment of $20,500 was a part, careful consideration of all the evidence satisfies me that the advances thus made were not loans, but voluntary contributions by the stockholders, for the betterment of their stock, and to enable the bank to resume business. The chief contention of the defendant is that where money is deposited with a bank generally, without any special agreement in reference thereto, such deposit is a loan, and therefore a debt against the bank in favor of the depositor. This proposition, rightly understood, is unquestionably correct, and abundantly sustained by authority. In the case of Scammon v. Kimball, 92 U. S. 370, cited and quoted from in defendant's brief, the principle is thus stated:

"Sums which are paid, said Lord Denman, to the credit of a customer with a banker, though usually called deposits, are, in truth, loans by the customer to the banker; and the party who seeks to recover the balance of such an account must prove that the loan was in reality intended to be his, and that it was received as such. Sims v. Bond, 5 Barn. & Adol. 392.

"Exactly the same rule was laid down in the court of exchequer, where it was held that money deposited with a banker by his customer, in the ordinary way, is money lent to the banker, with a superadded obligation that it is to be paid when demanded by a check. Pott v. Clegg, 16 Mees. & W. 327."

From this quotation, particularly the latter paragraph, it will be seen that to make the deposit of money in bank a loan, in the absence of an express contract, it is essential that the money be deposited "in the ordinary way." This statement of the law reveals the vulnerable point in defendant's argument, for manifestly the money paid by defendant to J. B. Lazier, the bank examiner, for the use of the bank, was not money deposited "in the ordinary way." The bank, at the time, was not doing business "in the ordinary way"; indeed, there was an entire suspension of its usual business. The bank was closed, and in the charge of the comptroller of the currency of the United States. There was no one who could on its account have received deposits "in the ordinary way." No such power resided even in the comptroller. The most and all that he could do was to prescribe the conditions on which there could be a resumption of business. This course he did adopt, and the prescribed condition was that the stockholders should raise, and turn over for the use of the bank, $50,000. This condition was complied with. The money thus raised and turned over could not have been a loan, for the obvious reason that no one at the time was authorized to borrow money for the bank. The only possible theory consistent with the situation of the bank and the circumstances of the parties is that the transaction was a voluntary assessment. Furthermore, and as showing the defendant's understanding, on five different occasions between and including October 10, 1893, and October 12, 1894, this money was reported to the comptroller of the currency as "Surplus #2, $50,000," and each one of said reports was

signed by the defendant. It is incredible that the defendant would have thus habitually and constantly reported this money as surplus,—that is, an asset of the bank,—had he believed it to be a liability. Again, the facts that at the time defendant's advance was made the bank held his notes, one for $3,000 and the other for $5,000, being two of the three notes sued on, and that no account was taken of those notes; and that, a few days before the expiration of one year from the time of the advance, the defendant executed another note to the bank, for $7,000, also one of the notes sued on,—are circumstances tending to discredit defendant's contention of a loan, and to strengthen the position of the plaintiff that the transaction was a voluntary assessment. Furthermore, all the entries upon the books of the bank, made by the examiner during the time he had charge, point in the same direction; and when it is remembered that the defendant was president of the bank, largely interested, and actively participating in the efforts then being made for its resumption of business, it is a fair inference that he had knowledge of and was familiar with these entries. The fact that after the whole arrangement had been consummated, and the money paid thereunder, the defendant objected to one of these entries at a meeting of the directors, cannot alter or affect the nature of the transaction, which had already been accomplished. Again, the receipts given by the examiner to two or three of the stockholders at the time their advances were made, as well as the entries above mentioned, show conclusively that he considered the arrangement a voluntary assessment. In view of the close relations which the defendant bore to the bank, and his efforts for reopening the same, can it be presumed for a moment that he was ignorant of or at war with the views of the examiner? I think not.

For the reasons above indicated, my finding is that the $20,500 mentioned in defendant's answer was a voluntary contribution for the betterment of his stock, and therefore is not a debt against the bank. This view of the facts renders it unnecessary for me to decide the other question, made in argument, as to the right of set-off. Judgment will be entered for plaintiff in accordance with the demand of his complaint.

BARBER et al. v. PITTSBURGH, FT. W. & C. RY. CO. et al.

(Circuit Court, W. D. Pennsylvania. August 2, 1895.)

No. 10.

1. FEDERAL COURTS—CONCLUSIVENESS OF STATE DECISIONS—EJECTMENT SUITS.
   A single verdict and judgment in ejectment in Pennsylvania not being conclusive in the state courts, a decision by the supreme court of the state upon the construction of a will, in a first ejectment suit, is not conclusive in a federal court, but is entitled to peculiar regard as a precedent.
2. EVIDENCE IN EJECTMENT SUITS—RECORD OF PROBATE—ADMISSIBILITY.
   It seems that, where both parties to an ejectment suit claim under the probate of a will, a statement in the record of such probate to the effect that the attesting witnesses deposed before the register that on a date named they subscribed their names to the will as witnesses, at the request