WALLACE *vs.* STATE BANK.

The principal Bank and Branches of the Bank of the State of Arkansas, taken together, constitute but one corporation, and every contract entered into by the Branch is, in law, the act of the Bank itself. *Brown et al. vs. The Bank*, 5 *Ark. R.* 235, *cited.*

Therefore, bills issued by the Branch at Fayetteville, are properly described in a declaration as bills issued by the Bank, at her Branch at Fayetteville.

W. sued the Bank, for specie, on certificates of deposit in this form: "Branch of the Bank of the State of Arkansas, at Fayetteville: 25th October 1842—Alfred Wallace has this day deposited in this Branch $875, in bills issued by this Branch Bank, which is subject to his order on the return of the certificate—J. M. Cashr."—Held that the deposits were not special, but general, and that W. was entitled to specie on the certificates.

Writ of Error to the Circuit Court of Pulaski County.

Assumpsit by Alfred Wallace against the Bank of the State of Arkansas, determined in the Pulaski circuit court, at the May term 1844, before CLENDENIN, Judge.

The suit was founded upon four certificates of deposit. The declaration contained four special counts upon the certificates of deposit, to which were added common money counts. The first of the special counts, substantially, follows:

"Alfred Wallace, by attorney, complains of the Bank of the State of Arkansas of a plea of trespass on the case upon promise. For that whereas on the 25th October 1842, the plaintiff deposited with said bank, at the Branch of said Bank at Fayetteville, subject to his order on the return of the certificate of deposit issued therefor, a large number of the notes payable, issued by said bank at her said branch, to the amount in the whole of $875, by the whole of which notes the said bank promised to pay, at her said Branch at Fayetteville, and the said plaintiff, as the holder thereof, was thereon entitled to receive from said bank, in current money of the United States, the sum, in the aggregate, of $875; and the plaintiff then received therefor the certificate of said bank, which is now here shown to the court, signed by the cashier of her said branch, certifying that the plaintiff had so deposited the same, and that the same was

subject to his order on the return of said certificate. And the plaintiff avers that afterwards, to-wit: on the 25th October 1842, he presented said certificate to said Bank, at her said Branch at Fayetteville, and then offered to return said certificate to said Bank; and demanded the amount thereof aforesaid to be paid to him, in current money of the United States, which the defendant absolutely refused to do, or so to pay any part or portion thereof. By means whereof the defendant then became liable to pay the plaintiff the said sum of money in this count mentioned on request, and being so liable, the defendant, in consideration thereof, on the day and year last aforesaid, undertook and promised to pay him said sum on request."

The three other special counts are like the above, differing only as to dates and sums, corresponding with the other three certificates of deposit. The breach is in the usual form.

The defendant craved oyer of the certificates of deposit sued on, and the originals were exhibited. The first follows:

"Branch of the Bank of the State of
Arkansas, at Fayetteville,
25th October, 1842.

Alfred Wallace has this day deposited in this Branch eight hundred & seventy-five dollars, in bills issued by this Branch Bank, which is subject to his order on the return of this certificate.

$875. JA'S McKISICK, *Cash'r.*"

The other three were in the same form, differing only as to amounts and dates.

The defendant demurred to the first four counts, and assigned as causes therefor: "1st, said counts show a deposit of the notes of the Fayetteville Branch, subject to the plaintiff's order on the return of the certificates of deposit respectively, and show, moreover, that on the presentation of said certificates in said counts mentioned, gold or silver was demanded to be returned in discharge thereof, and that the notes which such certificates called for were not demanded by the plaintiff: 2d, the counts contain no averment, that any demand was made, by the plaintiff, of the Fayetteville Branch to return the notes mentioned in said certificates respectively, and

that there was a refusal so to do, on the part of said branch: 3rd, no conversion is alleged or shown in either of said counts: 4th, the certificates relate to Arkansas money, and there is no allegation in either of said counts of the value of Arkansas money: 5th, the defendant is not liable for the notes, bills, certificates of deposit, or contracts of the Branches of said defendant, or for any misfeasance, malfeasance, or nonfeasance of said branches: and 6th, there is a variance in setting forth the said certificates of deposit respectively."

The court sustained the demurrer, the plaintiff entered a *nolle prosequi* as to the common counts, suffered final judgment to go against him on the demurrer, and brought error.

PIKE & BALDWIN, for the plaintiff. The deposit in this case was a *general* and not a *special* one. *Dawson et al. vs. The R. E. Bank,* 5 *Ark.* 283. *Com. Bank of Albany vs. Hughes,* 17 *Wend.* 100. 4 *Blackf.* 395. The Bank was not bound to return Wallace the *identical* notes. The deposit was at the risk of the Bank: it went into the mass of her funds: it was not in a package, &c. She could loan the funds out to others. If they were stolen, it was her loss. They had no earmark in the certificates.

They were *her own notes.* While Wallace held them, she owed him the amount *in specie.* When he returned them to her, the contract between her and him, evidenced by the notes, ended. *Beebe vs. The R. E. Bank,* 5 *Ark.* She then owed him $10,000 in money, because he had given her her own notes to that amount.

HEMPSTEAD, contra. This was a *special deposit*: it was for *choses* in action not *money:* the stipulation of the certificates was to return the notes on the production of the certificates, and if so there must be a *demand,* and *refusal,* before any right of action accrues (Story on Bailments, 66, 67,) and even then the suit must be predicated on the certificates themselves, for identical things deposited. That it was special, or in other words, a mere naked bailment is obvious from the fact that the bank had long before suspended

specie payments, and of which the court will judicially take notice. *Conway, Ex-parte,* 4 *Ark.* 367.

A *general* deposit in bank creates the relation of *debtor* and *creditor,* and is in substance a loan, and entitles the depositor to a *credit* on the books of the bank, and a certificate of it is invariably shaped accordingly. *The Bank of Kentucky vs. Wister,* 2 *Peters,* 319. *Foster vs. The Essex Bank,* 17 *Mass. R.* 506. *Com. Bank of Albany vs. Hughes,* 17 *Wend.* 100. *Dawson vs. Real Estate Bank,* 5 *Ark.* This does not possess any of the characteristics of a general deposit: *vide Story on Bailments, p.* 82, *sec.* 107. *Brown vs. Hotchkiss,* 9 *J. R.* 361.

JOHNSON, C. J. The question presented is whether the court below erred in sustaining the demurrer to the plaintiff's declaration. In order to a correct decision of this question it will be necessary in the first place to determine whether the deposit made with the Bank created the relation of creditor and debtor, or merely that of bailor and bailee. "In ordinary cases of deposits of money with banking corporations or bankers, the transaction amounts to a mere loan or *mutuum,* and the bank is to restore, not the same money, but an equivalent sum when it is demanded. But persons are sometimes in the habit of making what is called a special deposit of money or bills in a bank, where the specific money, as silver or gold coin, or bills, are to be restored, and not an equivalent. In such cases the transaction is a genuine deposit, and the banking company has no authority to use the money so deposited, but is bound to return it *in individuo* to the party." *Story's Com. L. B.* 66. It is urged by the defendant that the certificates of deposit declared upon are variant from those exhibited on oyer. If there be a variance it consists in the fact that the certificates call for bills issued by the Branch Bank, when they are described in the declaration as the bills of the Bank of the State of Arkansas. The decision of this court in the case of *Brown et al. vs. The Bank of the State,* 5 *Ark. R.* 235, fully settles the question. In that case the court say "that modern corporations derive their being and powers from the acts by which they are created, and must in all

things be governed thereby, is a principal generally admitted. But it has also long since been determined that acts done by, or to, a corporation by a name substantially its true name, though differing therefrom in words and syllables, are valid; and upon this principle many cases have been decided. See the case of The Mayor and Burgesses of Lynne Regis, 10 Coke Rep. 122, and the cases there referred to. Here the obligation or promise is to pay "the Branch of the Bank of the State of Arkansas at Arkansas." The true name of the corporation is "the Bank of the State of Arkansas." The question therefore is whether the words added before and after the true name are such as vary it substantially, and constitute in fact a different obligee, or, are such as only make a mere verbal difference, but are in substance and effect the same as the true name of the corporation. The law incorporating the Bank of the State of Arkansas has been held by this court to be a public law, and the Bank to be, at least, a *quasi* public corporation. We are therefore bound to know judicially that there is a branch of said bank at Arkansas, and that it is but a portion or integral part of said corporation: consequently every thing done by or to those entrusted with the management of its business at said branch in respect thereto, must be considered as done to the corporation; because, being but an integral part of the whole, it can have no existence separate from, and independent of the corporation, of which it is a member only; and therefore those who act therein cannot act for and as the agents of that particular branch only, but must act for and as the agents of the whole corporation, notwithstanding their powers may be restricted so that they can only act in reference to such portion of the business thereof as shall be transacted at that particular branch or place. This the parties were bound to know, and must be presumed to have known when the obligation or promise was made. And therefore we are inclined to believe that all such promises and obligations as purport to be made by or to "the Branch of the Bank of the State of Arkansas at Arkansas," may well be considered as promises or obligations of or to the corporation; or, in other words, as having been made by or to the Bank of the State of Arkansas: and that such words added to the true

name do not vary it in substance or effect, but only in words or syllables, so that the name in the obligation, by matter apparent therein, notwithstanding the additional words, imports a sufficient certain demonstration of the true name of the incorporation, and therefore it is binding upon the parties." In that case the controversy arose upon a writing made payable to the Branch of the Bank of the State of Arkansas at Arkansas. The court in commenting upon the legal effect of an obligation thus drawn, incidentally, but clearly and conclusively settles the question here presented. The doctrine there laid down is that the principal Bank and branches taken together constitute but one corporation, and that consequently every contract entered into by the branch is, in contemplation of law, the act of the Bank itself. We think it clear therefore that there is no variance in this particular.

We now come to consider the point upon which the whole case must necessarily turn; and that is, whether the deposit, as described by the plaintiff, is a general or special deposit, or, in other words, whether it created the relation of creditor and debtor, or merely that of bailor and bailee. The supreme court of the United States, in the case of the *Bank of Kentucky vs. Wister and others,* 2 *Peters,* 325, which was very similar to this in almost every particular, held the deposit to be general, and that the depositor was entitled to recover the nominal amount deposited. In that case the deposit was proved by an instrument of writing in these words: "J. T. Drake this day deposited to the credit of J. Wister, J. M. Price and C. J. Wister $7730 81 cents, which is subject to their order on presentation of the certificate, signed, O. G. Waggoner, cashier." It was admitted upon the trial that the deposit was made in bills of the Commonwealth Bank, that bills of that bank were then and at the time of demand passing current at half their nominal value, and that on presentation of the certificate the cashier offered bills of the bank to that amount, but the agent of the parties refused to receive payment in any thing but gold and silver. The court, in delivering their opinion, say that "The language of the certificate is expressive of a general, not a special deposit, and that the act of incorporation, section 17, is express that the bills of the

bank "shall be payable and redeemable in gold and silver." The transaction then was equivalent to receiving and depositing the gold or silver; if the bank did not so understand it, nothing would have been easier than to refuse to take the money as a formal deposit; and the holder of their bills would have been put to his action upon the bills themselves, in which case he would have received the gold or silver to the amount upon the face of the bills. The certificate in the case cited, taken in connection with the admission at the bar are substantially the same. It was admitted in the one case that it was the paper of the bank itself which was deposited, and in the other the fact is expressed upon the face of the certificate. The difference, if any exists, is not such as materially to affect the principle of the case. The principle asserted and established in the case referred to is that the bank, having received her own paper on deposit, had thereby taken out of circulation that amount of her liabilities, and that as those liabilities could only be redeemed in gold and silver, it was nothing but just and proper that she should be held responsible to the depositor for their nominal amount. It is contended by the counsel for the defendant that there is no difference between a deposit of the bank's own paper and that of the paper of the Banks of the State of Mississippi. We think otherwise. The distinction is broad and manifest. A deposit of the bank's own paper would necessarily withdraw that amount from circulation, and to that extent diminish her indebtedness, but a deposit of the paper of the banks of Mississippi, or of any other State, would leave her circulation untouched. The plaintiff deposited divers sums of the bank's own paper, which was to be subject to his order on the return of the certificate of deposit. This certificate without any restrictive words to change its legal character, must be regarded as a general deposit, and consequently as creating the relation of creditor and debtor. The bank having become liable for the amount in specie from the moment of the receipt of the paper, it should have been placed to the credit of the depositor and then used and considered as constituting a part of the funds of the institution. If the principle extracted be in accordance with the

law, and that it is we entertain no doubt, then it follows that the circuit court erred in sustaining the demurrer to the declaration, and rendering judgment for the defendant. Judgment reversed.