stances of misconduct, confer a preference over other creditors. The pledge here challenged having failed because illegal, the Railway is entitled only to a dividend as a general creditor.[20] Its right thereto is conceded.

Affirmed.

CITY OF MARION *v.* SNEEDEN, RECEIVER, ET AL.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

No. 400. Argued December 7, 8, 1933.—Decided February 5, 1934.

1. Under the national banking laws, a national bank has no power to pledge its assets to secure a deposit of public money of a State, or of a subdivision of a State, unless it is located in a State in which state banks are so authorized. Act of June 25, 1930. P. 268.
2. The State of Illinois has not conferred upon its banks the power to pledge assets to secure deposits of political subdivisions of the State. P. 269.
3. Where a national bank, before becoming insolvent, made an *ultra vires* pledge of bonds to secure a deposit, its receiver was entitled to recover them unconditionally, for the benefit of the general creditors of the bank. *Texas & Pacific Ry. Co.* v. *Pottorff*, *ante*, p. 245. P. 272 .

64 F. (2d) 721, affirmed.

CERTIORARI, 290 U.S. 617, to review a decree which reversed a decree of the District Court, 58 F. (2d) 341, dismissing a bill brought by the receiver of an insolvent national bank to obtain possession of bonds which the bank had pledged as collateral security for a deposit of public moneys by a city.

Messrs. Richard Mayer and *Henry F. Driemeyer*, with whom *Messrs. Carl Meyer, David F. Rosenthal, C. E.*

Bank v. *Blackmore*, 75 Fed. 771; compare *St. Louis & S. F. R. Co.* v. *Spiller*, 274 U.S. 304, 311; *Cunningham* v. *Brown*, 265 U.S. 1.

[20] Compare *Blakey* v. *Brinson*, 286 U.S. 254; *Handelsman* v. *Chicago Fuel Co.*, 6 F. (2d) 163.

Pope, and *R. T. Cook* were on the brief, for petitioner. *Mr. William Cattron Rigby* also participated in the oral argument in behalf of petitioner.

Solvent national banks have always had the power to pledge assets as security for deposits of public funds. Act of June 3, 1864, c. 106, 13 Stat. 99, 101; Rev. Stats., § 5136; 12 U.S.C., § 24; *Smith* v. *Lansing,* 22 N.Y. 520; *United States* v. *Robertson,* 5 Pet. 641; *Planters Bank* v. *Sharp,* 6 How. 300; § 45, Act of June 3, 1864, *supra;* Rev. Stats., § 5153; *National Bank* v. *Graham,* 100 U.S. 699.

The power is likewise necessarily implied from the provision in the National Bank Act forbidding transfers of assets by an insolvent bank with a view to a preference of one creditor to another. § 52.

Congress further recognized the power, as incidental to the right to receive deposits, in statutes requiring custodians of public funds to obtain collateral security from the state or national banks in which such funds are deposited. See Rev. Stats., § 5234, as amended by 12 U.S.C., § 192; Federal Reserve Act, § 9, as amended by 45 Stat. 492; 12 U.S.C., § 332; 39 U.S.C., § 759; 25 U.S.C., §§ 156, 162; 31 U.S.C., § 771. In each of these Congress has assumed that not only national banks, but state banks as well, have general power to pledge their assets as security for deposits of public money and that the exercise of such power is merely an ordinary incident of the business of banks of deposit. See opinion by Sparks, J., in the court below in this case.

The Comptroller of the Currency has consistently taken the position that national banks have the right to secure deposits of public money. *Pottorff* v. *Road District,* 62 F. (2d) 498; *Smith* v. *Baltimore & Ohio R. Co.,* 48 F. (2d) 861, aff'd, 56 F. (2d) 799.

The question of the power of banks to secure deposits has arisen in the following cases: *Mothersead* v. *U.S.*

F. & G. Co., 22 F. (2d) 644, cert. den., 276 U.S. 637; *Parks* v. *Knapp*, 29 F. (2d) 547, cert. den., 278 U.S. 660; *Burrowes* v. *Nimocks*, 35 F. (2d) 152; *Baltimore & Ohio R. Co.* v. *Smith*, 56 F. (2d) 799; *Texas & Pacific Ry. Co.* v. *Pottorff*, 63 F. (2d) 1; *Illinois Central R. Co.* v. *Rawlings*, 66 F. (2d) 146; *Feather* v. *School District*, June 7, 1933, Dist. Ct., Western Dist. of Penna.; *Friend* v. *School District*, October 19, 1933, Dist. Ct., Western Dist. of Penna.; *Evans* v. *New Haven Bank*, September 21, 1933, Dist. Ct., Dist. of Conn.; *Pottorff* v. *Road District*, 62 F. (2d) 498; *Fidelity & Deposit Co.* v. *Kokrda*, 66 F. (2d) 641; *Mays* v. *Board of Comm'rs*, 164 Okla. 231; *Interstate Nat. Bank* v. *Ferguson*, 48 Kan. 732.

The amendment of June 25, 1930, to § 5153, Rev. Stats., clarified and enlarged, but did not limit the powers previously possessed by national banks to pledge assets as security for the deposit of public moneys of States or political subdivisions thereof. Sen. Rep. No. 67, 71st Cong., 3d Sess.; H.Rep. No. 1657, 71 Cong., 2d Sess. See *Pottorff* v. *Road District*, 62 F. (2d) 498; dissenting opinion in case at bar. Also 58 F. (2d) 341, 347; *Fidelity & Deposit Co.* v. *Kokrda*, 66 F. (2d) 641.

State banks in Illinois have this general power. There is no constitutional or statutory prohibition of any kind. *Ward* v. *Johnson*, 95 Ill. 215, upholds the power. This decision has never been questioned, but long been relied upon. No subsequent legislation has been inconsistent with it.

The inherent power of banks to pledge assets as security for deposits of public funds is generally recognized. *McFerson* v. *National Surety Co.*, 75 Colo. 482; *First American Bank & T. Co.* v. *Palm Beach*, 96 Fla. 247; *Schornick* v. *Butler*, 185 N.E. 111; *Richards* v. *Osceola Bank*, 79 Iowa 707; *Interstate Nat. Bank* v. *Ferguson*, 48 Kan. 732; *U.S. Fidelity & G. Co.* v. *Bassfield*, 148 Miss. 109; *French* v.

School District, 223 Mo. App. 53; *Consolidated School District* v. *Citizens Savings Bank,* 223 Mo. App. 940; *Ainsworth* v. *Kruger,* 89 Mont. 468; *Melaven* v. *Hunker,* 35 N.M. 408; *Smith* v. *Lansing,* 22 N.Y. 520; *Application of Broderick,* 140 Misc. Rep. 861; *In re Bank of Spencerport,* 143 Misc. Rep. 196; *State Bank* v. *Stone,* 261 N.Y. 175; *Page Trust Co.* v. *Rose,* 192 N.C. 673; *Snider* v. *Fulton,* 44 Ohio App. 238; *Mays* v. *Board of Comm'rs,* 164 Okla. 231; *Maryland Casualty Co.* v. *Board of Comm'rs,* 128 Okla. 58; *Mothersead* v. *U.S. F. & G. Co.,* 22 F. (2d) 664; *Cameron* v. *Christy,* 286 Pa. 405; *Ahl* v. *Rhoads,* 84 Pa. 319; *Grigsby* v. *Peoples Bank,* 158 Tenn. 182; *Pixton* v. *Perry,* 72 Utah 129; *Millard County School District* v. *State Bank,* 80 Utah 170. Cf. *Williams* v. *Hall,* 30 Ariz. 581; *Williams* v. *Earhart,* 34 Ariz. 565; *Bliss* v. *Mason,* 121 Neb. 484; *Bliss* v. *Pathfinder Irrigation Dist.,* 122 Neb. 203.

The courts in the following States, denying this power, represent the minority view. *Arkansas-Louisiana Highway Imp. Dist.* v. *Taylor,* 177 Ark. 440; *Arkansas County Road Imp. Dist.* v. *Taylor,* 185 Ark. 293; *Wood* v. *Imperial Irrigation Dist.,* 216 Cal. 748; *Commercial Bank & T. Co.* v. *Citizens T. & G. Co.,* 154 Ky. 566; *Farmers & Merchants State Bank* v. *Consolidated School Dist.,* 174 Minn. 278; *Divide County* v. *Baird,* 55 N.D. 45; *Foster* v. *Longview,* 26 S.W. (2d) 1059; *Austin* v. *Lamar County,* 26 S.W. (2d) 1062. Cf. op. of Alschuler, J., in this case, 64 F. (2d) 731; and *Grigsby* v. *Peoples Bank,* 158 Tenn. 182; *First American Bank & T. Co.* v. *Palm Beach,* 96 Fla. 247.

State statutes, generally, recognize that the public welfare demands that public funds deposited in banks be adequately protected, and have utilized the power of banks to pledge their assets as security for public funds.

In any event, the Receiver of the Bank can not, after the pledge has been fully executed and deposits made in reliance thereon, come into a court of equity and disaffirm the transaction consummated in good faith while the Bank was solvent.

Messrs. Hosea V. Ferrell and *John Hay,* with whom *Mr. Charles C. Murrah* was on the brief, for respondents.

By leave of Court, briefs of *amici curiae* were filed as follows: by *Messrs. William Cattron Rigby, Fred W. Llewellyn, Serafin P. Hilado,* and *Kyle Rucker,* on behalf of the Philippine Islands; *Messrs. William H. Sexton* and *Leon Hornstein,* on behalf of the City of Chicago; and *Mr. Leland K. Neeves.*

Mr. Justice Brandeis delivered the opinion of the Court.

The Act of June 25, 1930, c. 604, 46 Stat. 809, amends § 45 of the National Bank Act of 1864 [1] by adding thereto the following:

"Any association may, upon the deposit with it of public money of a State or any political subdivision thereof, give security for the safe-keeping and prompt payment of the money so deposited, of the same kind as is authorized by the law of the State in which such association is located in the case of other banking institutions in the State."

The controlling question is whether Illinois has conferred upon banks organized under its laws power to pledge assets as security for deposits of public moneys of political subdivisions of the State.

In 1931, the city of Marion, Illinois, was operating under the "Commission Form of Government." Cahill's 1931 Rev. Stat., Chap. 24. Pars. 323–384. That statute

[1] Act of June 3, 1864, c. 106, § 8, 13 Stat. 101; R.S. 5336; 12 U.S.C. § 24, Seventh.

required the treasurer of a city to give a bond; and to "make his daily deposits of such sums of money as shall be received by him from all sources of revenue whatsoever, to his credit, as treasurer of said city . . . in one or more banks to be selected by the president of said council, the commissioner of accounts and finance, and the treasurer of such city . . . or any two of them, and any such bank before any such deposit is made therein . . . shall also execute a good and sufficient bond with sureties to be approved by the president of said council and conditioned that such bank will safely keep and account for and pay over said money . . ." (Par. 374.)

Carroll having been appointed treasurer of Marion, applied to the Fidelity and Casualty Company of New York to become surety on his official bond. Although Marion has a population of 9,000, it was then without a bank. The Fidelity Company agreed to become surety on Carroll's bond provided he would get elsewhere a bank which would give satisfactory collateral security for the repayment of his deposits of the public moneys. The City National Bank of Herrin agreed to do this. Thereafter, it delivered to the Continental Illinois National Bank and Trust Company of Chicago, as escrow agent, negotiable bonds of the par value of $23,000, under an agreement so to secure the City's deposit; the Fidelity Company executed Carroll's official bond; and he made his initial deposit in the Herrin bank of the City's moneys. That bank was then solvent. On October 31, 1931, it failed and a receiver was appointed. At the time of the failure the City's deposit was $16,430.00.

Ben Sneeden, the receiver, brought, in the federal court for eastern Illinois, this suit against the City, its treasurer, the surety and the escrow agent. Setting forth the above facts, he prayed that the pledge be declared *ultra vires* and void; that the bonds be delivered to him as receiver; and that, meanwhile, the defendants be enjoined from dis-

posing of them. The District Court dismissed the bill. 58 F. (2d) 341. Its decree was reversed by the Circuit Court of Appeals, one judge dissenting. 64 F. (2d) 721. This Court granted certiorari.

The petitioners contend that the pledge is valid because the Act of 1864, as originally enacted, conferred upon national banks, as a necessary incident of the business of deposit banking, the power to pledge assets to secure deposits; and that the amendment of June 25, 1930, did not limit the power so originally conferred. They contend further that even if the 1930 amendment be construed as denying to a national bank power to make such a pledge unless it is located in a State which grants the power to its state banks, the pledge here challenged is valid, because in Illinois, state banks have the power to pledge assets as security for deposits of public moneys of any political subdivision of the state. The petitioners contend also that even if the pledge was without authority in law, the bill was properly dismissed by the District Court, because the bank could not have required return of the bonds without repaying the deposit and that it would be inequitable to permit the receiver to do so. We think these contentions are unsound.

First. For the reasons stated in *Texas & Pacific Ry. Co.* v. *Pottorff*, decided this day, *ante*, p. 245, we are of opinion that the Act of 1864 did not confer the power to pledge assets to secure any public deposits except those made under § 45 by the Secretary of the Treasury of the United States. The power conferred by each later act, except that of 1930, was limited to securing specific federal funds.[2] A national bank could not legally pledge assets to secure funds of a State, or of a political subdivision thereof, prior to the 1930 amendment; and since then it

[2] See *Texas & Pacific Ry.* v. *Pottorff*, *ante*, p. 245, note 11.

can do so legally only if it is located in a State in which state banks are so authorized. In some States national banks had, prior to the 1930 amendment, frequently pledged assets to secure public deposits of the State or of a political subdivision thereof; comptrollers of the currency knew that this was being done; and they assumed that the banks had the power so to do. But the assumption was erroneous. The contention that such power is generally necessary in the business of deposit banking has not been sustained.

Second. Banks organized under the laws of Illinois do not appear to possess the power of pledging assets to secure the deposit of public moneys of a political subdivision of the State. Illinois corporations have only such powers as are conferred by statute either expressly or by implication; and only those powers are conferred by implication which are reasonably necessary to carry out the powers expressly granted, *People* v. *Chicago Gas Trust Co.,* 130 Ill. 268; 22 N.E. 798; *Calumet Dock Co.* v. *Conkling,* 273 Ill. 318; 112 N.E. 982. No Illinois statute confers in express terms upon banks organized under its laws either the general power to pledge assets to secure a deposit; or the general power to pledge assets to secure public deposits. A statute confers in terms the power to pledge assets to secure deposits of the State but there is none which so confers the power to pledge assets to secure public deposits of a political subdivision of the State.[3] No

[3] In the Banking Act of 1919, Cahill's 1931 Ill. Rev. Stats., c. 16a, Par. 1, which, reënacting the law of 1887, provides for the organization of banks "for the purpose of . . . deposit" there is complete silence on this subject. The only references in any Illinois statute concerning the pledge of assets to secure a deposit are the following:

(a) Section 10 of the State Depositary Act of 1919 (Cahill's 1931 Ill. Rev. Stat., c. 130, Par. 29) provides: "No moneys in the State Treasury shall be deposited in any bank approved as a depositary

reported decision rendered by any Illinois court since the enactment of the General Banking Law of 1887 holds that the alleged power exists as one incidental to the business of deposit banking. Nor is there any evidence that in Illinois such power is necessary in the conduct of the business of deposit banking.

Ward v. *Johnson,* 95 Ill. 215, 217, decided in 1880, is relied upon as authority for the proposition that Illinois banks have power to pledge assets to secure deposits. That case arose under the charter of "The Merchants, Farmers and Mechanics Savings Bank," which was granted long before the General Banking Act of 1887. The pledge involved therein was given to secure a transaction which appears to have been a loan as distinguished from a deposit. The transaction dealt with private funds. The statement was there made that banks have authority to pledge assets to secure deposits. If that statement expresses the law of the State, Illinois banks have had for more than half a century power to pledge their assets to secure private deposits as well as deposits of public moneys of its political subdivisions. But the case has never been referred to since on this point in any reported opinion of any Illinois court.[4] During that period, many state

---

under the terms of this Act until such bank shall have deposited security with the State Treasurer equal in market value to the amount of moneys deposited.

(b) Section 11 of the Banking Act as amended in 1929 (Cahill's 1931 Ill. Rev. Stat., c. 16a, par. 11) provides that a receiver of a closed bank:

"Shall deposit daily all moneys collected by him in any state or national bank selected by the auditor, who shall require of such depository satisfactory securities or satisfactory surety bond for the safe keeping and prompt payment of the money so deposited."

[4] Courts of other States have referred to it as authority for the proposition that banks have the power to pledge assets to secure deposits. See *Williams* v. *Earhart,* 34 Ariz. 565; 273 Pac. 728; *First*

banks have failed;[5] and there must have been much litigation arising therefrom; but no exertion of the alleged power on the part of any state bank has been shown.

An authoritative determination of the question whether Illinois banks have power to pledge assets to secure the deposit of public moneys of a political subdivision of the State can be given only by its highest court. The District Court discussed, but did not decide, that question. Its decision dismissing the bill was rested on the ground that the National Bank Act as enacted in 1864 had conferred the general power to pledge assets to secure deposits; and that the power so granted had not been lessened by the later legislation. The majority of the Circuit Court of Appeals being of opinion that national banks lacked the power to pledge assets to secure deposits (except so far as conferred by the 1930 amendment) necessarily passed upon the applicable Illinois law. After careful consideration, it reached the conclusion that Illinois had not conferred upon its banks the power to pledge assets to secure deposits of political subdivisions of the State. Its reasons are set forth fully and persuasively; and the decisions of the courts of other States

---

Amer. Bank & T. Co. v. *Palm Beach,* 96 Fla. 247; 117 So. 900; *U.S. Fidelity Co.* v. *Bassfield,* 148 Miss. 109; 114 So. 26; *Melaven* v. *Hunker,* 35 N.M. 408; 299 Pac. 1075; *Page Trust Co.* v. *Rose,* 192 N.C. 673; 135 S.E. 795; *Cameron* v. *Christy,* 286 Pa. St. 405; 133 Atl. 551; *Grigsby* v. *People's Bank,* 158 Tenn. 182; 11 S.W. (2d) 673; *Pixton* v. *Perry,* 72 Utah 129; 269 Pac. 144.

[5] The Auditor of Public Accounts in his annual statement on the condition of state banks (p. 42) gives (Dec. 31, 1932) 1,866 as the aggregate number of the banks existing on Dec. 6, 1888 and organized since. Of these 26 had charters granted prior to Dec. 6, 1888; and 1,840 were organized thereafter under the general law. The number of banks in operation Dec. 31, 1932 was 742. The number then in receivership was 444. Between Dec. 31, 1932 and March 1, 1933, 32 more state banks failed. Federal Reserve Bulletin, 1933, pp. 105, 201.

involving similar questions are fully reviewed. We cannot say that the Circuit Court erred in the conclusion reached.

Third. Since the Herrin bank was without power to make the pledge of bonds here in question, its receiver is entitled to recover them unconditionally in order that they may be administered for the benefit of the general creditors of the bank. See *Texas & Pacific Ry. Co.* v. *Pottorff, ante,* p. 245.

Affirmed.

UNITED STATES *v.* PROVIDENT TRUST CO., ADMINISTRATOR.

CERTIORARI TO THE COURT OF CLAIMS.

No. 224. Argued January 11, 12, 1934.—Decided February 5, 1934.

1. In determining the value of a devise to charities of a remainder contingent upon the death without issue of a female life tenant in order that such value may be deducted from gross income in computing the federal estate tax, it is permissible to prove that before the death of the testator the life tenant became incapable of having issue, as the result of a surgical operation by which her procreative organs were removed. P. 281.
2. The ancient rule that a woman is conclusively presumed to be capable of bearing children as long as she lives, was, like other irrebuttable presumptions, a rule of expediency or policy, based upon the belief that to permit proof of the facts would result in injuries of greater consequence than the predominance of truth over error in the cases to which it applied. P. 281.
3. Applicability of this presumption remains a proper subject of judicial inquiry in the light of modern knowledge and experience. Pp. 282, 285.
4. Application of a conclusive presumption of possibility of issue in the present case would be subversive of the policy of the estate tax statute to encourage bequests to charitable organizations. P. 286.

77 Ct. Cls. 37; 2 F.Supp. 472, affirmed.

CERTIORARI, 290 U.S. 614, to review a judgment allowing a claim for overpayment of federal estate tax.