in violation of the Act, is answered by what was said in *Marion* v. *Sneeden* (p. 269):

"comptrollers of the currency knew that this was being done; and they assumed that the banks had power so to do. But the assumption was erroneous."

I think that as the Court of Appeals followed the principle rightly applied in the decisions of this court its judgment should be affirmed.

The Chief Justice and Mr. Justice McReynolds join in this opinion.

WOODRING, SECRETARY OF WAR, ET AL. *v.* WARDELL, RECEIVER.

CERTIORARI TO THE COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

No. 5. Argued October 10, 11, 1939.—Decided March 25, 1940.

Decided upon the authority of the case last preceding.

69 App. D. C. 280; 100 F. 2d 690, reversed.

Certiorari, 306 U. S. 626, to review the affirmance of a judgment recovered by the receiver of a national bank against the petitioners.

Assistant Attorney General Shea, with whom *Solicitor General Jackson* and *Mr. Paul A. Sweeney* were on the brief, for petitioners.

Messrs. Brice Clagett and *George P. Barse*, with whom *Messrs. Charles E. Wainwright* and *George B. Springston* were on the brief, for respondent.

There is no congressional policy giving preference to Government deposits. Though Congress gave claims of the United States against insolvents priority over all others, the rule is inapplicable to claims against insolvent national banks.

The general power given to national banks to secure public deposits relates specifically to public money of the United States. Whenever Congress designed to authorize the securing of deposits of funds which, strictly speaking, might not be United States public money, it has done so by a specific Act.

It was recognized at the time these deposits were made, and since, that they did not constitute public money of the United States and did not fall under any statute authorizing the securing of deposits in national banks.

The pledges admittedly were not made under U. S. C., Title 12, § 90.

There is no specific Act of Congress, and no rule or regulation having the effect of such an Act, authorizing the pledge of securities by national banks to secure deposits of Canal Zone money order funds.

The lack of statutory authority can not be supplied either by custom or usage, or by the sanction and approval of the Comptroller of the Currency or other executive officers.

Being unauthorized, the pledge was void, and neither the pledgees, the Canal Zone, nor the United States acquired any right or interest in the illegally pledged bonds or the proceeds thereof, which remained the property of the bank. And the receiver is entitled to recover the property.

Since the possession of petitioners derives from a void act, their possession is personal, not official, and a suit against them is not a suit against the United States.

The doctrine of sovereign immunity does not apply, because the United States, having no interest in the fund sought to be recovered, is not an indispensable party to the suit.

MR. JUSTICE FRANKFURTER delivered the opinion of the Court.

This is a companion case to *Inland Waterways Corp.* v. *Young, ante,* p. 517. The District National Bank pledged some of its assets to secure deposits made by the Secretary of War on behalf of the Panama Canal Zone. The Bank became insolvent in 1933, and the pledged assets were sold. Respondent, the Bank's receiver, brought this action to recover that part of the proceeds which represented an amount in excess of dividends paid to the ordinary depositors. The District Court held that the pledges were *ultra vires* and gave judgment for the respondent. The Court of Appeals affirmed. 69 App. D. C. 280; 100 F. 2d 690.

For the reasons stated in *Inland Waterways Corp.* v. *Young, ante,* we are of opinion that the pledges given by the Bank were valid, and that the judgment below should be

Reversed.

THE CHIEF JUSTICE, MR. JUSTICE MCREYNOLDS, and MR. JUSTICE ROBERTS, for the reasons set forth in their dissenting opinion in *Inland Waterways Corp.* v. *Young, ante,* p. 525, dissent here.

MR. JUSTICE REED and MR. JUSTICE MURPHY took no part in the disposition of this case.

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