

BANKS & BANKING: Judgment of Circuit Court relieving bank of liability for county funds.

DEPOSITARY, COUNTY: Relieving bank of liability for county deposits by judgment of court.

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January 26, 1934.



Hon. C. H. Moberly
Commissioner of Finance
Jefferson City, Missouri

Dear Mr. Moberly:

We are in receipt of your letter of January 24, 1934, with request for an opinion; which letter is as follows:

"Will you please let me have an opinion as to whether or not the Court order, under date of January 18th, copy of which is attached hereto, is sufficient to relieve the Citizens State Bank of Niangua of any liability in connection with a deposit of County Funds in the amount of \$12,500.00.

In this connection I desire to refer you to an opinion rendered by your Department, regarding this same matter, on January 13th."

In your letter of request you refer to our opinion dated January 13th, regarding the same matter, and we reached the conclusion in that opinion that:

"In the absence of any statutory authority for a court to make an order of this kind, it is our opinion that it has no inherent right to do so and for that reason it had no jurisdiction of the subject matter. And further, if Webster County has any claim on the Citizens State Bank of Niangua by reason of the deposit of \$12,500 in question, such liability on the Citizens State Bank of Niangua was not relieved by this ex parte proceeding in vacation in which the county

was not made a part. It is, therefore, our opinion that the status of the liability of the Citizens State Bank of Niangua to Webster County was not changed by this order, and was, insofar as the County is concerned, a nullity; and the fact that said order recited that Webster County had approved and agreed to such transfer and release of liability, would not change the situation."

We now have before us, submitted with your letter of request, a copy of the petition in the cause of the Citizens State Bank of Niangua, a corporation, and Citizens Bank of Marshfield, a corporation, Plaintiffs, vs. Webster County, Missouri, Defendant, and a copy of the judgment and decree rendered in the above entitled cause in the Circuit Court of Webster County, Missouri, at the January, 1934, Term thereof, on the 18th day of January, 1934, certified to by the Circuit Clerk of Webster County, on January 20th, 1934. We are herewith setting forth in this opinion the above mentioned judgment and decree, which is as follows:

"STATE OF MISSOURI,)
 County of Webster,) ss. January Term, 1934.

In the Circuit Court of said County, on the 18th day of January 1934, the following among other proceedings were had, viz:

Citizens State Bank of Niangua, a corporation,
 and Citizens Bank of Marshfield, a corporation,
 Plaintiffs,

vs.

Webster County, Missouri, Defendant.

Now at this day this cause coming on to be heard, plaintiffs appear by attorney, and defendant, Webster County, being represented by T. C. Dugan, L. P. Williams and R. E. Morris, Judges of the County Court of said County, and Homer G. Chaffin, Prosecuting Attorney of said Webster County, appear in court for and on behalf of said County of Webster, and enter the voluntary appearance of said defendant, Webster County, herein, and consent that this case may be tried and determined at this time.

And the cause is submitted to the court for trial, and the court after hearing the evidence, and being fully advised in the premises doth find that all of the allegations of plaintiffs' petition are true, and that there is now on deposit in said Citizens Bank of Marshfield, one of the plaintiffs herein, the sum of \$12,500.00 which was deposited in said bank by the other plaintiff herein, the Citizens State Bank of Niangua, and that said sum of money belongs to Webster County, Mo., as a part of the County Funds of said County; and that said sum of \$12,500.00 was originally deposited in said Citizens State Bank of Niangua by Webster County, but was by said last named bank re-deposited in Citizens Bank of Marshfield, each of said banks having heretofore been regularly and legally designated by said County as County Depositories for the County Funds of said Webster County.

The court further finds that Citizens Bank of Marshfield has given a good and solvent bond to said county as such depository, and is willing to accept liability to said Webster County directly for said sum of \$12,500.00, as aforesaid, and that the sureties upon the said Depository Bond of said Bank to said Webster County, have in writing consented that their liability upon said bond shall cover the aforesaid sum of \$12,500.00.

The court further finds that it would be equitable and just, and to the interest of all parties hereto, plaintiffs and defendants, that the liability and obligation of said Citizens State Bank of Niangua to said Webster County, Mo., for said sum of \$12,500.00 be cancelled and that said last named bank take credit therefor, and it is hereby ordered and adjudged that said sum of \$12,500.00 become a liability and obligation of said Citizens Bank of Marshfield, and its bond as such County Depository, direct to Webster County, Mo., and that its liability and obligation therefor to Citizens State Bank of Niangua be cancelled, and that it take credit therefor

on its books, and that said Citizens State Bank of Niangua cancel, or discharge, any liability of the said Citizens Bank of Marshfield to it for said sum of \$12,500.00.

It is therefore ordered, adjudged and decreed by the court that said defendant, Webster County, so correct its books and records so as to comply with the findings and decree of this court in this cause, and to credit the Citizens State Bank of Niangua to the extent of the \$12,500.00 aforesaid of said county funds, and to charge against the Citizens Bank of Marshfield the said sum of \$12,500.00, and that the costs hereof be paid by the plaintiffs herein."

The court having had jurisdiction of the subject matter and of the parties to the suit the doctrine of res judicata would apply to this case and would be binding on all parties thereto, including the defendant Webster County, Missouri, and in support of same we cite the following authorities:

"(1) The judgment or decree of a court of competent jurisdiction upon the merits concludes the parties and privies to the litigation and constitutes a bar to a new action or suit involving the same cause of action either before the same or any other tribunal.
(2) Any right, fact, or matter in issue, and directly adjudicated upon, or necessarily involved in, the determination of an action before a competent court in which a judgment or decree is rendered upon the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and privies whether the claim or demand, purpose, or subject matter of the two suits is the same or not."

34 C. J. p. 743.

And further, it is said in 34 C. J., at page 750:

"A judgment rendered by a court of competent jurisdiction on the merits is a bar to any future suit between the same parties or

their privies, upon the same cause of action, in the same or another court, so long as it remains unreversed and not in any way vacated or annulled."

And in 34 C. J., page 990, it is said:

"As a general rule a valid and final judgment is binding and conclusive on all the parties of record in the action or proceeding in which the judgment was rendered."

In the case of Fiene v. Kirchoff, 176 Mo. 516, 1. c. 525, the Missouri Supreme Court said:

"In Hope v. Blair, 105 Mo. 1. c. 93, Macfarlane, J., aptly stated the law as follows: 'When the court has cognizance of the controversy, as it appears from the pleadings, and has the parties before it, then the judgment or order, which is authorized by the pleadings, however erroneous, irregular or informal it may be, is valid until set aside or reversed upon appeal or writ of error. This doctrine is founded upon reason and the "soundest principles of public policy." "It is one," says the court of Virginia, "which has been adopted in the interest of the peace of society, and the permanent security of titles."'"

In the case of Chouteau v. Gibson, 76 Mo. 38, 1. c. 51, Judge Norton said, quoting from the case of Sturgis v. Rodgers, 26 Ind. 1:

"A judgment of a court of nisi prius rendered under such circumstances could never be called in question collaterally before the same or any other court. It must be so, also, as to the judgment of the court of last resort when it has jurisdiction, though it mistake the law and err in its judgment. The rule is as essential in the one case as in the other to the repose of society and the stability of private rights. To say that a

judgment of affirmance here, within the power of the court to render, when the parties are before the court and the case is brought within its lawful jurisdiction, is not a final end of that litigation, would be a startling doctrine, asserting that a cause can never have a final termination."

In the case of *Brake v. Kansas City Public Service Company*, 41 S. W. (2d) 1067, the court said:

"It is not necessary to cite authorities to support the proposition that a judgment, legal upon its face, rendered by a court of competent jurisdiction, is binding and conclusive upon the parties to it. Citing *Piene v. Kirchoff*, 176 Mo. 516; 34 C. J. 990."

It is our opinion that this court having jurisdiction of the parties to the suit and of the subject matter and no timely motion for new trial having been filed and no appeal taken, so we are informed, therefore, said judgment became a binding judgment of said court upon all of the parties hereto and they are bound by said decree and judgment, which judgment, in our opinion, relieves the Citizens State Bank of Niangua, a corporation, of any liability by reason of the deposit of said \$12,500, mentioned in said decree and judgment.

Very truly yours,

GOVELL R. HEWITT
Assistant Attorney-General.

CRH:EG

APPROVED:

ROY MCKITTRICK
Attorney-General.