



1923

The Relationship Between Bank and Depositor

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Recommended Citation

Powell, Phillip T. (1923) "The Relationship Between Bank and Depositor," *Kentucky Law Journal*: Vol. 11 : Iss. 2 , Article 9.
Available at: <https://uknowledge.uky.edu/klj/vol11/iss2/9>

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NOTES

MUNICIPAL LIABILITIES FOR PERSONAL INJURIES
RECEIVED ON ITS STREETS.

The English rule regarding municipal liability is that when a duty is imposed upon a municipal corporation for the benefit of the public, without any consideration or emolument received by the corporation it is not liable to a person who has thereby been injured. It is only when the duty is a new one, and is such as is ordinarily performed by trading corporations, that an intention to give a private action for a neglect in its performance is to be presumed. This rule is understood to mean, regarding public highways, that because the highway is to be repaired by the public, the common law does not make an injury, arising from neglect to repair, a subject of private action, but only of indictment by the government.¹

The rule regarding the common law liability of municipal corporations has found its lodgment in some jurisdictions of the United States which hold, that in the absence of statutes, the duty of a municipal corporation in regard to its streets is governmental and that it is not liable to an individual injured by its failure to keep them in repair. This holding is strictly with the common law rule, that there is no liability on the part of a municipal corporation for injuries received on its streets.²

Other jurisdictions create a municipal liability regarding

¹ *Quod nato per Hedon*, 5 E. 1V. 3. "If there be a common way, and it is not repaired, so that I am damaged by the miring of my horse. I shall not have any action for that against those who ought to repair the way, but it is a proper action, in which case no individual shall have an action on the case, but it is an action by way of presentment." Further see *Williams Case*, 5 Rep. 72, *Gibson v. Mayor of Preston*, 5 Q. B. 218, *Bartlett v. Crozier*, 17 Johns. 437.

² *Mower v. Inhabitants of Leicester*, 9 Mass. 247, Holds: No action lies, at common law, against a town for damages sustained through the defects of the highways in such town. *Hill v. Boston*, 122 Mass. 344, gives a complete analysis of the common law liability of municipal corporations. *Collier v. City of Ft. Smith*, 73 Ark. 477, holding a city is not liable for injuries resulting from a failure of its servants to display danger signals at a point where a street which was being repaired was obstructed by a barricade.

Also see *Tranter v. City of Sacramento*, 45 Cal. 36; *Roberts v. City of Detroit*, 102 Mich. 64; *Carter v. City of Rahway*, 55 N. J. 177; *Young v. City of Charleston*, 20 S. C. 116; *Town of Fishkill v. Fishkill and B. Plank Road Co.*, 22 Barb. (N. Y.) 634.

streets by holding that the duty to maintain and repair streets is a corporate duty and the municipality is liable for the neglect thereof.³

The doctrine of implied liability is adopted by the great weight of authority, that is, that where a municipal corporation is vested with the authority to keep streets in repair, for the neglect of this duty they are held liable for personal injuries resulting.⁴

The legislative authority in some jurisdictions after imposing upon the municipal corporation the authority to construct and maintain streets, creates a liability by legislative enactment for injuries received by individuals on their streets due to the negligence of the municipality in failing to keep them in proper repair.⁵ This duty imposed by the legislature has been con-

³ *Wetter v. City of St. Paul*, 40 Minn. 460, holds: That the city has the care and control of the streets, and is charged with the duty and has general authority to make improvements therein, and to construct sewers and drains. These are corporate powers and duties, and it is liable for its neglect, or the negligence of its officers, in the exercise of such powers and the performance of such duties. Also see *Denver v. Dunsmore*, 7 Colo. 328; *Carson v. Genessee*, 9 Ida. 244; *Fritsch v. Allegheny*, 91 Pa. St. 226; *Knowville v. Bell*, 12 Lea. (Tenn.) 157, and *Sutton v. Sonhomish*, 11 Wash. 24.

⁴ *Smoot v. Westumpha*, 24 Ala. 116. By the court: "When a particular duty is positively enjoined and no discretion is vested in the corporation as to whether it will or will not perform it and having the means for performing this duty the corporation wilfully or negligently fails to perform it, in consequence of which failure extraordinary injury happens to an individual we see no reason why an action will not lie as will against an individual for a similar omission of duty that works an injury to another." Also see *Albritton v. Mayor and Aldermen of Huntsville*, 60 Ala. 486; *Denver v. Williams*, 12 Colo 475; *Lanson v. City of Grand Forks*, 3 Dak. 307. Held, that where a city had full control of its streets, and the improvement thereof, the power being conferred by the legislature, it is incumbent upon it to keep them in reasonably safe condition, and it will be liable for negligence in failing so to do. *City of Mt. Sterling v. Thomas*, 60 Ill. 264; *Grover v. City of Fort Wayne*, 45 Ind. 429; *Nacks v. Town of Whiting*, 126 Iowa 405. Other states holding this rule are Kan., Md., Minn., Miss., Mo., Mont., Nebr., Nev., (N. Y. to limited extent), N. D., Okla, Oregon, Tex., Va., Wash., W. Va.

⁵ Mass. Statute: Revised St. 25 sec. 1. All highways, townways, causeways and bridges within the bounds of any town are required to be kept in repair at the expense of such town, so that the same may be safe and convenient for travellers, with their horses, teams and carriages, at all seasons of the year. Sec. 22: If any person shall receive any injury in his person or property by reason of any defect or want of repair, which has existed for the space of twenty-four hours in any highway, he may recover compensation therefor. This section was modified by the act of 1877 that the town had reasonable notice of the

strued to mean that the municipality is to use due care to see that its streets (including sidewalks) are reasonably safe for persons exercising ordinary care and prudence.⁶

MUNICIPAL LIABILITY FOR INJURIES RECEIVED ON THE STREETS OF MUNICIPAL CORPORATION IN KENTUCKY.

The municipal liability in Kentucky is based upon an implication resulting from the power given it by the legislative authority to keep its streets in repair. The cases hold that when the duty to keep streets in repair is devolved on a municipal corporation, and the power is conferred on it to raise money for that purpose it is liable in a civil action for special injuries resulting from neglect to perform this duty. That is the corporation being vested with the authority by the legislature to keep its streets in repair is held liable for any personal injuries resulting from its negligence or failure to do so.⁷

The duty imposed upon a municipal corporation is to keep its streets in a reasonably safe condition for public travel by persons exercising ordinary care for their own safety.⁸ The municipality is not an insurer against injuries to persons using its thoroughfares, and is not to be held liable in damages for every injury that may befall a traveler who through thoughtlessness or negligence meets with some accident.⁹

defect, or might have had notice thereof by the exercise of proper care and diligence, and that the defect could have been prevented by reasonable care and diligence on the part of the town. The following states have similar statutes: Vt., Conn., N. H., Me., and Mich.

⁶ *Stanton v. City of Springfield*, 12 Allen (Mass.) 566 and *Mason v. City of Boston*, 14 Allen (Mass.) 508.

⁷ *Town of Irvine v. Wagers*, 9 Ky. L. R. 51; *City of Henderson v. White*, 20 Ky. L. R. 1525; *City of Covington v. Bryant*, 70 Ky. 248; *Schmidt v. City of Newport*, 184 Ky. 342.

⁸ *City of Midway v. Floyd*, 24 Ky. L. R. 1903. Held, that it was a prejudicial error to instruct the jury that it was the duty of the city to use ordinary care to keep its pavements "safe" for the use of pedestrians, as the duty of the city goes no further than to use such ordinary care to keep its pavements in a reasonably safe condition for use. Also see *Town of Elsmere v. Tanner*, 158 Ky. 681; *City of Louisville v. Johnson*, 24 Ky. L. R. 685; *City of Louisville v. Arrowsmith*, 145 Ky. 498; *City of Louisville v. Hugh*, 157 Ky. 643.

⁹ *Schmidt v. City of Newport*, 184 Ky. 342, held that a municipality is under the duty to exercise ordinary care to keep and maintain its streets and pavements in a reasonably safe condition for travel, but it is not an insurer of the safety of persons traveling therein. Also see *City of Ashland v. Bogg*, 161 Ky. 728.

A municipal corporation is charged with negligence for the ill repair of its streets when it has been brought to its notice,¹⁰ or when the street has been out of repair a sufficient length of time that it is chargeable with knowledge that this condition exists.¹¹ The question as to the notice of the municipality is generally one for the jury.¹²

The question as to when a street shall be improved is at the discretion of the municipality and it is not liable merely because the street has not been improved.¹³ A city is only bound to keep such streets and parts of streets in good repair as are necessary for the convenience of the traveling public, and as streets are required for use they must be placed in a reasonably safe condition.¹⁴ After a city has accepted and improved a street it assumes the duty of maintaining it through its breadth in a reasonably safe condition for travel.¹⁵

A city cannot delegate its duty to keep a street in a reasonably safe condition so as to avoid liability from injury resulting from the defective condition of the street.¹⁶ When material for building purposes is allowed to be placed in the street if the city fails to see that the traveling public is properly protected it may be held liable for personal injuries resulting from

¹⁰ *Bell v. City of Henderson*, 24 Ky. L. R. 2434; *City of Henderson v. Schlamp*, 14 Ky. L. R. 575; *Canfield v. City of Newport*, 24 Ky. L. R. 2213. In this case some boys opened a manhole in the street one forenoon and a barrel was immediately placed over it by a citizen. This was removed at night by some unauthorized person, and before daylight an accident was occasioned. Held, that in the absence of actual notice, the city was not liable. *City of Henderson v. White*, 20 Ky. L. R. 1525. This case held that if a sidewalk was so out of repair as to be unsafe, and the city had notice of its condition, or might have known thereof by the use of ordinary diligence, and plaintiff fell and injured herself by reason of that condition, the city is liable.

¹¹ *City of Newport v. Miller*, 93 Ky. 22. Where a stump intended for a hitching post had been standing for sixteen months without being provided with rings or in any way for use as a hitching post, the period was sufficient to charge the city with knowledge of its existence and character. Also see *City of Henderson v. Reed*, 23 Ky. L. R. 463; *City of Bowling Green v. Duncan*, 28 Ky. L. R. 1177; and *City of Louisville v. Brewer's Admr.*, 24 Ky. L. R. 1671.

¹² *Town of Bromley v. Bodkin*, 25 Ky. L. R. 1245.

¹³ *Harney v. City of Lexington*, 28 Ky. L. R. 1177.

¹⁴ *City of Henderson v. Sandefur and Co.*, 74 Ky. 550.

¹⁵ *City of Maysville v. Guilfoyle*, 110 Ky. 670.

¹⁶ In *City of Louisville v. Arrowsmith*, 145 Ky. 498. the court said: "It is next urged that, as it is the primary duty of the railway company (speaking of the street railway) to keep the streets between and near its tracks in repair, the city should not be held liable, even

this negligence. When cities are improving streets and material is placed in the street, reasonable care should be used to avoid injuries therefrom.¹⁸

Before a municipal corporation is answerable for damages from injuries received from an alleged negligence due to the ill repair of the street, the street must be opened by the city.¹⁹ When a city has graded one of its streets, and put in a curbing and citizens have placed cinders therein for a walk, there is a sufficient opening or taking charge of the street to render the city liable for a defect in the sidewalk.²⁰ When a sidewalk is built at a place so dangerous that barriers should be erected to prevent a false step or movement from causing injury, municipalities are under a duty to protect such places by barriers or guards.²¹ If a city permits a citizen to construct a platform over a gutter the same degree of care towards keeping it in a safe condition for pedestrians is required as if the city had made the construction.²² When citizens have been allowed to dig in the sidewalk, municipalities are charged with the duty of seeing that this place is properly protected. Municipalities, however, are not answerable for damages received from shade trees, lamp posts, hydrants or any other article placed upon the street, as they are needed for the good and convenience of the public; provided they are properly placed and constructed.²⁴

In *City of Richmond v. Hill* a recent case decided in June, 1922, reported in 195 Ky. 566, the question of municipal liability

though the accident resulted from a defective condition of the street near or between the rails. If the question were one between the city and the railway company, a consideration of this point would be entered into; but as between the travelling public and the city the duty of the city to maintain its streets in a reasonably safe condition for public travel is one which it cannot delegate to another so as to avoid liability from injury resulting from the defective condition."

¹⁸ *Elam v. City of Mt. Sterling*, 132 Ky. 657. Held, that cities and towns must keep their streets in reasonably safe condition for travel, but in repairing a street they may place therein material, etc. properly used in work, though reasonable care should be used to avoid injury therefrom.

¹⁹ *Gochran v. Town of Shepherdsville*, 19 Ky. L. R. 1192; Ky. Stat. sec. 2832

²⁰ *City of Madisonville v. Pemberton's Admr.*, 25 Ky. L. R. 347.

²¹ *Town of Elsmere v. Tanner*, 153 Ky. 681.

²² *Bell v. City of Henderson*, 24 Ky. L. R. 2434.

²⁴ *Teager v. City of Flemingsburg*, 109 Ky. 746.

was considered by the court. In this case the plaintiff was injured by a defective street crossing. It was shown that the defect causing the injury had existed for several months. Held, that the municipality was charged with the duty of exercising ordinary care to keep and maintain its streets and pavements in a reasonably safe condition. Regarding notice as to the defect, the court held, that where a defect in a public street had existed for several months, knowledge of such defect will be imputed to the city.

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THE RELATIONSHIP BETWEEN BANK AND DEPOSITOR.

The relation between bank and depositor is always based on contract.¹ It is voluntarily assumed. A bank has a right to select those with whom it will do business and its refusal to accept an account is not open to question.²

Bank deposits may be divided into two classes; general and special.³ The former are deposits generally to the credit of the depositor and which may be drawn upon by him in the usual course of the banking business. The latter are deposits for safe-keeping to be returned intact on demand, or for some specific purpose not contemplating a credit on one's general account;⁴ as for instance, money left with a bank to be paid to a certain person upon his delivery to the bank of a deed conveying a tract of land to the depositor.⁵

The relation between a bank and a general depositor is that of debtor and creditor.⁶ The money, check, draft, or promissory note deposited becomes the property of the bank. There is no bailment or trust relationship established in such a case. The depositor is given credit for the amount deposited and payments made on his checks are charged to this account. The

¹ *Sagre v. Weil*, 94 Ala. 466, 10 So. 546.

² *Second National Bank of Washington v. Averell*, 2 App. Cas. (D. C.) 470.

³ *Marine Bank v. Fulton Bank*, 2 Wall. 256.

⁴ *Fogg v. Tyler*, 109 Me. 109, 82 Atl. 1008.

⁵ *Kimmel v. Dickson*, 58 N. W. 561.

⁶ *Champion Ice Mfg. & Cold Storage Co. v. American Bonding & Trust Co.*, 115 Ky. 863, 75 S. W. 197; *Williams v. Rogers*, 14 Bush (Ky.) 776

bank has title to the money deposited and can use it as it sees fit. If it is stolen the bank is the loser. When a check, draft, or promissory note is indorsed in blank, and credit is given to the depositor as for cash, the bank becomes the owner of the instrument by virtue of the indorsement. In case it is not paid at maturity the bank has the usual remedies of indorseees of such instruments.⁷ The debt created by the deposit is payable on demand and is subject at all times to the check of the depositor to the extent of his deposit.⁸

However a different result is obtained in the case of a special deposit. The relation here is that of bailor and bailee.⁹ The bank has no authority to use the property and the depositor has the right to receive back the identical money or thing deposited.

When a check or draft drawn on another bank is deposited without special agreement, it is deemed to be for collection only. Although credit may be given to the depositor on the books of the bank, if it is returned dishonored the credit may be cancelled and the instrument returned to the depositor.¹⁰ The relationship here is that of principal and agent; not debtor and creditor. However, when the bank receives such deposits as money deposits and credits the depositor with so much money, the title to the instruments passes immediately to the bank and its only rights against the depositor, in case they are not paid, result from the relation of indorser and indorsee.¹¹

When checks are deposited as checks the title to them remains in the depositor and the bank acts as his agent for the purpose of making the collection.¹² But when there is an understanding that the check is accepted as cash, title passes to the bank at once.¹³ Most of the cases on this point come up when the check is indorsed in blank and deposited with no definite understanding or agreement as to its status and the bank gives the depositor credit in his pass book and on the books of the bank for so much cash. We have in this situation two lines of cases: one holding that prima facie the passing of the check

⁷ *Tyson v. Western National Bank*, 77 Md. 412, 26 Atl. 520.

⁸ *Elliott v. Capital City State Bank*, 128 Iowa 275, 103 N. W. 777.

⁹ *Alston v. State*, 92 Ala. 124, 9 So. 732.

¹⁰ *National Commercial Bank v. Miller*, 77 Ala. 168.

¹¹ *Aebi v. Bank of Evansville*, 124 Wis. 73, 102 N. W. 329.

¹² *Fayette National Bank v. Summers*, 105 Va. 689, 54 S. E. 862.

¹³ *Ibid.*

to the credit of the depositor, without an indorsement stating it is for collection only, passes the title to the bank;¹⁴ the other holds that prima facie the title remains in the depositor and that something else, definitely indicating a contrary intention, is necessary to pass title to the bank. However, neither rule is held to be absolute, but is merely prima facie and yields to the intention of the parties.¹⁵ The question of intent is one of fact to be determined by the jury.¹⁶

When a check is offered for deposit to the bank drawn on it by another customer and the bank accepts it and credits the depositor with the amount, this is similar to a payment of money and if the depositor is acting in good faith the bank cannot later cancel the credit, upon discovery that the drawer had insufficient funds to meet it.¹⁷ But if the depositor knew the drawer did not have sufficient funds in the bank to meet the check, he is guilty of fraud if he presents the check for payment, and in that case the bank can later cancel the credit.¹⁸ The presentment for deposit is a demand for payment and if the bank credits the depositor without looking to see if the drawer has sufficient funds, it cannot later repudiate the payment.

If one presents for deposit a forged check which he holds in good faith, which purports to have been drawn on the bank by another depositor, and the bank credits his account with the amount of the check and charges it to the supposed drawer, this is in effect a payment and this credit cannot be cancelled upon discovery that the drawer's name was forged.¹⁹

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¹⁴ *Burton v. United States*, 196 U. S. 283.

¹⁵ *In re State Bank*, 56 Minn. 119, 57 N. W. 336.

¹⁶ *Fayette National Bank v. Summers*, 105 Va. 689, 54 S. E. 862.

¹⁷ *Cincinnati First National Bank v. Burkhardt*, 100 U. S. 686.

¹⁸ *Peterson v. Union National Bank*, 52 Pa. 206, 91 Am. Dec. 146.

¹⁹ *Deposit Bank of Georgetown v. Fayette National Bank*, 90 Ky. 10, 13 S. W. 339.