

THE LAW OF DEPOSITS

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The Law of Deposits by Fred W. Weitzel

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FRED W. WEITZEL

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UNIV. OF
CALIFORNIA

THE LAW OF DEPOSITS

BY

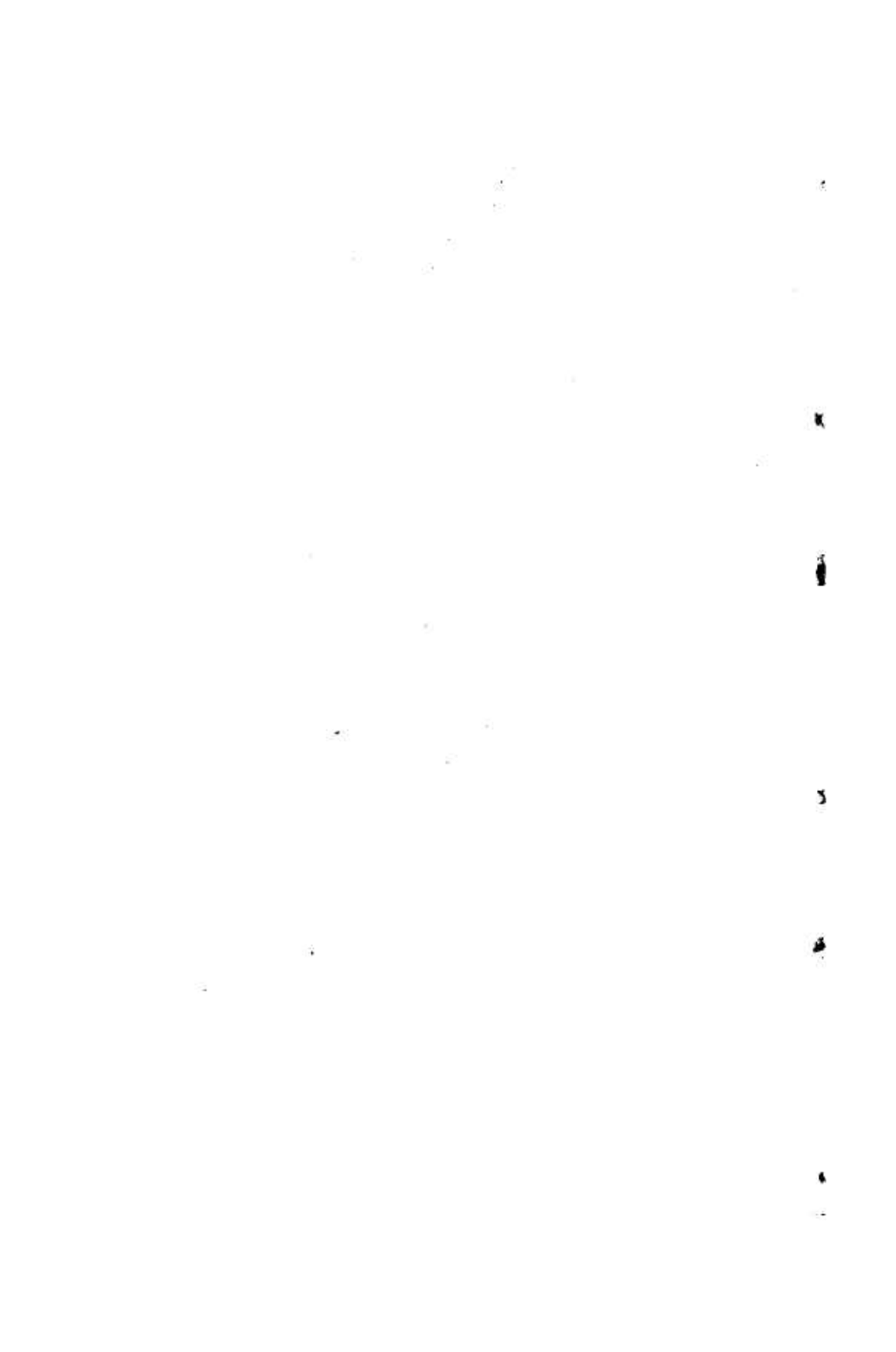
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TO HON. FRANCIS FOX OLDHAM,
This volume is respectfully dedicated,
as a token of appreciation.

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PREFACE.

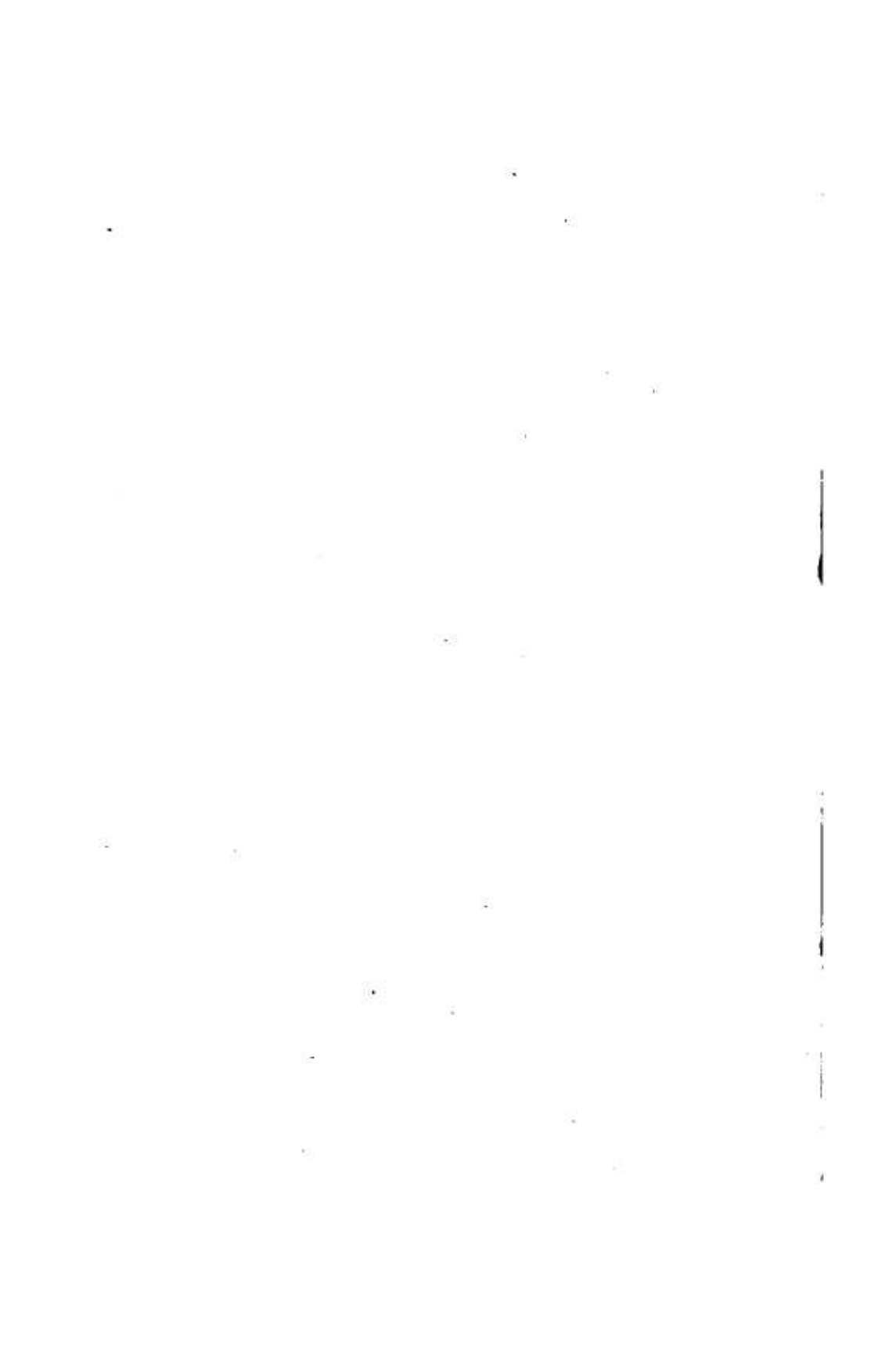
This volume is prepared for the special use of bankers and their assistants, the bank clerks, whose sincere and active ambition to improve in efficiency never lags, but whose time is so much occupied with the duties crowded upon them that a general law course is impracticable, while the average law book is incomprehensible. It is hoped that business men will also find it useful.

The author's purpose has been to make a clear statement of the principles governing the law of deposits, explain statutes and, where there is a conflict, indicate to the reader in each state the law in his jurisdiction or the better practice to follow in view of the conflict. Some cases are cited, a reading of which will be profitable; but a general annotation has been omitted, as it would confuse more than enlighten. Most cases cited will be found to be annotated in the reports, and in the National Reporter System the last case is a key to all earlier ones. While the writer has referred to the standard works on the law of banking, such as Morse, Zane, Bolles and others, he has based most of his statements herein on the decisions of the courts as found in the reports of the cases themselves. It is believed that the statements are fully sustained by the authorities.

If the volume is found practical and useful by the banker the author will be more than satisfied. If the legal profession finds it reliable, he will feel well repaid for his labor.

FRED W. WEITZEL.

Washington, March 1, 1910.



CHAPTER I.**DEPOSITS.**

1. Relation of Depositor to Bank.—Where A delivers to B an article of personal property, which B is to keep for A and return to him when the purpose for which the article was delivered has been accomplished, this is in law called a bailment. A, the one who delivers the thing, is called the bailor; B, the one to whom it is delivered, is called the bailee. The thing which is the subject of the bailment may be left with the bailee for repairs, it may be that the bailee is borrowing it for his own purpose, or it may be that it is simply for safe keeping for the bailor. Where the bailment is made for the benefit of the bailor and the bailee receives no compensation or benefit for keeping the thing bailed, but must return that very thing to the bailor, we have what is properly called a deposit, and such is the special deposit.

A general deposit of money in bank differs much from such deposit as is mentioned above. In the case of the bailment the thing deposited remains the property of the bailor and if the bailee use the thing for any purpose other than that for which it was delivered, he will be liable for trespass or conversion. If the thing be destroyed without the gross negligence of the bailee the loss will be on the bailor. With an ordinary deposit in bank, however, a different legal relation arises. The depositor does not expect to receive back the identical pieces of money, as in the case of the bailment. He expects to receive money of equal value, or a credit, and the bank becomes indebted to him for the amount of the deposit. While a deposit is, in effect, a

loan of money to the bank, there are some differences between a loan and a deposit. By various regulations of the business of banks the law places restrictions upon the use which a bank may make of its deposits, while one may make any use he pleases of money he borrows.

2. **Classes of Deposits**—Bank deposits are usually divided into three classes: general, special and specific.

GENERAL DEPOSITS.

3. When a party opens an account by depositing money, and when a regular customer makes a deposit, unless there is an agreement to the contrary, the bank mingles the amount received with its other funds, the entire fund is the property of the bank, and the depositor becomes, not a bailor, but a creditor of the bank. The relationship, therefore, between a bank and its general depositors, is that of debtor and creditor. The bank is indebted to the depositor in the sum of his deposit and the bank is the absolute owner of the money which it has accepted as soon as the same has been passed over the counter. The depositor has no right to any specific money. He has only a claim against the bank as a general creditor. *Bank of Blackwell v. Dean*, 9 Okla., 626; *Butcher v. Butler*, 114 S. W., 564, a Missouri case; *Burton v. U. S.*, 196 U. S., 283. A deposit will be presumed to be intended as a general deposit unless there is an agreement to the contrary, especially where loose money is deposited. If a sealed box, bag or package, or marked envelope containing money were deposited it would be reasonable to presume that it was intended as a special deposit, but evidence of a custom or of intent would be admissible to show whether it was actually a general deposit. Loose money or paper deposited without any agreement or custom to the contrary will be presumed to be a general deposit.

4. **In Case of Insolvency**—In case of insolvency of the