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Relationship Between Depositor of Commercial Paper and Bank-Bank Collection Code

RELATIONSHIP BETWEEN DEPOSITOR OF COMMERCIAL PAPER AND BANK—BANK COLLECTION CODE.—The defendant, a Louisiana manufacturer, drew a draft on a milling company in South Carolina for the purchase price of a shipment of rice. The draft was made payable to a local Louisiana bank and was deposited in that bank under a deposit slip customarily used by it for cash items which contained a provision printed at the top, "In receiving items for deposit or collection, this bank acts only as depositor's collecting agent and assumes no responsibility beyond the exercise of due care. All items are credited subject to final payment in cash or solvent credits whether returned or not." The evidence was that unconditional credit was immediately given the milling company. The bank received interest, termed a discount, on the amount of the draft for the time that the draft was outstanding. In due course, the draft and attached papers were sent to correspondent bank in South Carolina. The day the draft was collected by the correspondent, the plaintiff attached the proceeds in South Carolina for satisfaction of an unliquidated demand against the defendant depositor. The initial bank intervened on the appeal, claiming to be the owner of the fund. Held, title passed to the initial bank at time of the deposit and therefore the plaintiff could not attach the proceeds. *Campbell v. Noble-Trotter Rice Milling Co.* (S. C. 1938), 198 S. E. 373.

The increase in use of commercial paper in the United States under our great credit system of business has left a multitude of irreconcilable decisions on the circumstances under which a bank, in taking from a customer a check or draft in the usual course of its banking business, will become the owner of such check or draft as distinguished from a mere collecting agent for the customer. It has been generally recognized in regard to bank deposits that where a deposit is made in a bank in the ordinary course of business, the title to the money or to the drafts or checks deposited, in the absence of any special agreement or direction, passes to the bank, and the relation of debtor and creditor arises between the depositor and the bank.[1] Where the facts and circumstances accompanying the deposit indicate an understanding between the parties that the commercial paper is deposited for collection only, the

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15 Comment, Responsibility for the torts of an independent contractor, 39 Yale L. J. 861 (1930), suggests the possibility and advantages of giving the injured party his election to sue the general employer or the independent contractor, as well as the feasibility of allowing the exceptions to the general rule to supersede the rule itself; Harper, The Law of Tort, Sec. 292; Morris, The Torts of an Independent Contractor, 29 Illinois L. Rev. 339 (1934); Harper, The Basis of the Immunity of an Employer of an Independent Contractor, 10 Indiana L. J. 494 (1935), suggesting that "upon both 'judge's reasoning' and 'law professor's rationalizations' we are entitled to expect a uniform rule of joint liability of the independent contractor and his employer," but that such rule does not exist and will not be immediately forthcoming.

1 Downey v. National Exchange Bank (1912), 52 Ind. App. 672, 96 N. E. 403; Burton v. U. S. (1905), 196 U. S. 283, 25 S. Ct. 243; Michie on Banks & Banking, Vol. 5, page 9.

weight of authority is that title does not pass to the bank. Since, however, most deposits are made without any express agreement the intent of the parties is deemed to control.[2] As to the application of the various tests as determining factors in ascertaining the intention of the parties there is a great conflict of authority.

Where the depositor has made a deposit for a special purpose or has restrictively indorsed "for collection" the authorities seem settled that title to the paper does not pass to the bank.[3] In situations in which credit is given the depositor, but it is not determined whether the depositor has an immediate right to draw on the same, the cases are in great dispute but with a numerical majority of cases holding that title passes.[4] According to the cases which adhere to the rule that title remains in the depositor, the courts will always stress the factor of the bank's right to charge back upon dishonor as being inconsistent with ownership in the bank;[5] but cases holding that title passes, reconcile this as merely a method of enforcing the depositor's liability as indorser.[6] The strongest point of intention of title passing appears in the depositor having a right to draw on the credit;[7] cases holding that the agency relation may still exist rationalize the right to draw against a credit so

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[2] In Olinger v. Sanders (1931), 92 Ind. App. 358, 174 N. E. 513, the court stated that whether or not a deposit was general or special was a question of fact for the jury. Facts to be considered are: depositor is immediately given credit for the amount in his passbook, and upon the books of the bank; that he is immediately given the right to check against the deposit, that he actually does check against the same.

[3] Boston Continental Nat'l Bank v. Hub Fruit Co. (1934), 285 Mass. 187, 189 N. E. 89; First Nat'l Bank v. First Nat'l Bank (1881), 76 Ind. 561, 40 Am. Rep. 261.

[4] Mudd v. Farmer Bank (1913), 175 Mo. 378, 162 S. W. 314. See 11 A. L. R. 1060, 16 A. L. R. 1084, 42 A. L. R. 495, 68 A. L. R. 730, 99 A. L. R. 490, for compilation of cases.

[5] Armour Packing Co. v. Davis (1896), 18 N. C. 548, 24 S. E. 365; Joppe v. Clark Commission Co. (1929), 132 Ore. 21, 281 P. 834. Also see Bolles, "When Is a Bank the B. F. P. of a Check Left for Deposit or Collection?" (1908), 58 U. of Pennsylvania L. Rev. 375, 378.

[6] Equitable Trust v. Rochling (1927), 275 U. S. 248; Beacher v. Nat'l Bank (1926), 151 Md. 514, 35 Atl. 383. Prior to 1905, the majority of courts were moved by the factor of a right to charge back as inconsistent with ownership, but after the United States Supreme Court in Burton v. United States (1905), 196 United States 283, held this merely a method of enforcing the depositor's liability as endorser, a distinct trend following this change in view can be noticed. Townsend in "Bank Deposits of Commercial Paper," 7 New York U. L. Quarterly Rev. 272, compares bank deposits of commercial paper with a sale of chattels on the sale and return basis.

[7] The Georgia Court in Fourth Nat'l Bank v. Myer (1892), 89 Ga. 108, 14 S. E. 891, with a factual situation similar to the noted case, held title passed; therefore, a creditor couldn't garnishee, and distinguished it from a previous Georgia case, Freeman v. Exchange Bank (1891), 87 Ga. 45, 13 S. E. 160, where facts were almost identical, except it did not appear that the depositor had the right to draw against the proceeds of the check before they were collected. Also see American Trust & Saving Bank v. Gueder & P. Mfg. Co. (1894), 150 Ill. 336, 37 N. E. 227; National City Bank v. Macon Creamery Co. (1932), 329 Mo. 639, 46 S. W. (2d) 127; Olinger v. Sanders (1931), 92 Ind. App. 358, 174 N. E. 513.

obtained as a mere gratuitous privilege and a bank may have a lien on the paper as collateral security.[8]

The closest approach to an agreement between the parties is usually found in notices in the deposit slips and pass-books which most generally state that the bank takes paper as an agent or that drafts and commercial paper are "entered for collection." In considering cases as a whole there appear to be two theories; one, that such agreements prevent title from passing, and the other, which is the majority, that this is evidence to be considered along with other factors as to the intent of the parties but not conclusive.[9] Another method of determining the intent is whether the paper is deposited as "paper" or as "cash." In discussing this, the Indiana court has said, "There can be no reason why, if parties choose to treat a deposit of paper or other securities as cash, so that it is available to the depositor as cash, the transaction should not be regarded as equivalent to a deposit of money."[10]

Motivated by the conflict of decisions, there have been two attempts to make the law on this subject of deposit of commercial paper more definite and uniform by legislation; the American Banker's Association through the Bank Collection Code, and the Commissioners on Uniform State Laws by the Uniform Bank Collection Act. The former has been adopted in Indiana and seventeen other states[11] while the latter is still in tentative form.[12]

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[8] Joppe v. Clark Commission Co. (1929), 132 Ore. 21, 281 P. 834; Studebaker Bros. Mfg. Co. v. First Nat'l Bank (Tex. Civ. App. 1897), 42 S. W. 573. It should be noted that Section 2 of the Banker's Code expressly provides that, "where any such bank allows any revocable credit for an item to be withdrawn, such agency relation shall nevertheless continue, except the bank shall have all the rights of an owner thereof against prior and subsequent parties to the extent of the amount withdrawn." Burns 1933, 18-2502.

[9] Held title didn't pass if notice in slip or pass-book: People's State Bank v. Miller (1915), 185 Mich. 565, 152 N. W. 257; South Park Foundry & Machine Co. v. Chicago G. W. R. C. (1897), 75 Minn. 186, 771 N. W. 796; Macon Grocery Co. v. Citizens' Bank (1930), 42 Ga. App. 74, 155 S. E. 57. Held—Only evidence to be considered. Douglas v. Federal Res. Bank (1926), 271 U. S. 489, 70 L. Ed. 105; Western Creamery Co. v. Malia (Utah 1936), 57 P. (2d) 743.

[10] Wasson v. Lamb (1889), 120 Ind. 514, 22 N. E. 729. It should also be noted that the cases involving paper payable directly to the bank have been treated very much the same as those involving paper payable to the depositor or another, and indorsed to the bank. In some cases, the fact that the paper is payable directly to the bank is emphasized; where a creditor draws a draft on his customer and makes it payable directly to his bank, and it is then credited to his account, with the right to draw thereon, it is held that title passes; Merchants Bank v. Seary Wholesale Groc. Co. (1924), 66 Ark. 153, 265 S. W. 961; but Dubuque Fruit Co. v. C. C. Emerson & Co. (1926), 201 Iowa 129, 206 N. W. 672, held it a matter of presumption only.

[11] Indiana Burns' Ann. Statutes (1933), 18-2501 to 18-2517; Acts of 1929, Ch. 164, p. 514. This Code should not be confused with any of the uniform acts put out by the Commissioners on Uniform State Laws, for this act is a creation of the Counsel for the American Bankers' Assoc., Mr. Paton. Section 2 of the Code (18-2502)—"Except as otherwise provided by agreement and except as to subsequent holders of a negotiable instrument payable to bearer or indorsed specially or in blank, where an item is deposited or received for collection, the bank of deposit shall be agent of the depositor for its collection."

[12] For Fifth Tentative Draft of Uniform Bank Collection Act see Handbook of the National Conference of Commissioners on Uniform State Laws

The Bankers' Code (Section 2) is designed to place all paper received by a bank on an agency basis except where "otherwise provided by agreement." No test of what fact will evidence an agreement to the contrary is stated in the statute, and the provision has already been subjected to conflicting interpretation.

The Missouri Appellate Court[13] has found an implied agreement to the contrary out of the factors which under the common law were evidence of an intent of a purchase rather than an agency. However, on appeal to the Missouri Supreme Court,[14] the court refused to defeat the purpose of the code, and said, "We cannot give effect to an implied agreement of the sale of the check to the bank; implied, if at all, from the very facts which the statute says shall not change the agency relation." The South Carolina Supreme Court, in *Lawton v. Lower Main Street Bank,*[15] by means of restrictive statutory construction held Section Two not applicable to a deposit similar to case at bar by saying that the words of the section, "Where an item is deposited or received for collection" means "Where an item is deposited for collection or is received for collection," (by the use of a comma this interpretation might have been prevented) and hence under the general rule such a deposit and credit make the bank a purchaser and the item is not deposited for collection.

In the noted case although it was tried in South Carolina, the court was bound by the rules of conflicts of law to apply the law of Louisiana, which has not adopted the Bankers' Code and still follows the general common law rule, and thus found a sale instead of a creditor-debtor relation. However, in light of the Lawton case, it appears that the South Carolina court would have reached the same result under the code.

Thus the attempt by the Banker's Association to draft a statute which would not only definitely determine the relation of the depositor with the bank in regard to the deposit of commercial paper, but protect the bank in case of failure of the correspondent bank,[16] has not completely fulfilled its purpose. It is a matter of conjecture to determine how the Indiana courts will apply Section Two of the code where a bank has given credit and a right to the depositor to draw upon same. It is the opinion of the writer

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for 1934, p. 160. Section 16 of the Act provides that—"in the absence of instructions to the contrary, an item received by a bank from a customer having an account with such bank, will be deemed offered for immediate credit to his account, . . . the bank will be deemed to have purchased it, notwithstanding any stipulation on its part to the contrary." Thus this section is contrary to Section 2 of the Bankers' Code, in that this act provides that it is a purchase while the Code says such paper is received on an agency basis.

13 Farmers' Exchange Bank of Marshfield v. Farm & Home Savings & Loan Ass'n of Missouri (Mo. App. 1932), 52 S. W. (2d) 608.

14 (1933) 332 Mo. 1041, 61 S. W. (2d) 717.

15 Lawton v. Lower Main St. Bank (1933), 170 S. C. 334, 170 S. E. 469.

16 Mr. Paton Jr., one of the drawers of the code, writes in 46 Bankers' Law Journal, that it removes the danger to a collecting bank of being held as owner of collection items which are indorsed by the depositors in blank. This danger is due to the fact that the owner bank takes the risk in case there is a default in the remittance after the item has been paid and its depositors discharged. By making the bank an agent of the depositor, for any credit extended or checked out the bank has full recourse against the depositor.

that although to do so would change the past decisions of our state courts,[17] the proper construction of the statute would be that given by the Missouri Supreme Court;[18] namely, that an agency relation exists, unless there is an *express* agreement otherwise. It is only by such a construction that the statute can be given its intended operation. I. K.

STATUTES—TIME OF TAKING EFFECT.—Mandamus against a township trustee to compel payment of the salary of the justice of the peace and an allowance for office rent. Complainant relied on Chapter 308 and respondent on Chapter 323 of the Indiana Acts of 1913. Both acts were passed at the same session of the legislature, both received executive approval on the same day, both became effective at the same time, and both carried clauses repealing all laws in conflict therewith. Chapter 308 was applicable to townships containing a city having from 45,000 to 100,000 population and included an allowance for office rent. Chapter 323 was applicable to townships containing one or more cities with a combined population from 45,000 to 60,000, and there was no allowance for office rent, though the same provision as to salary was made. This chapter contained a phrase referring to fees "as now provided by law." A prior act, Chapter 91, Acts of 1903, referred to the collection of fees by justices of the peace in townships containing a city from 45,000 to 60,000 population. As the two acts of 1913 were inconsistent, it was necessary to determine which was controlling, and the court affirmed judgment for the complainant. *Ross v. Chambers,* (Ind. 1938), 14 N. E. (2d) 1012.

The problem here turns on a question of the time an act takes effect. When a single act is involved the rule in England once was that acts took effect from the date of the beginning of the session of Parliament, but this was changed by statute to make the effective date the day the act received the royal assent.[1] In the United States a statute takes effect from the date of its passage unless the time is fixed otherwise, either by the constitution, or by a general satutory provision applicable to all enactments, or within the act itself.[2] The date of passage is defined by the courts as the date of the last act necessary to give the bill the force and effect of law.[3]

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[17] Downey v. National Exchange Bank (1912), 52 Ind. App. 672, 96 N. E. 403; Olinger v. Sanders (1931), 92 Ind. App. 358, 174 N. E. 513.

[18] See Note 14, *supra.*

[1] See stat. 33 Geo. III, ch. 13. Rex. v. Justices of Middlesex (1831), 2 Barn. & Ad. 818, 109 Eng. Rep. 1347; Lattless, executrix, and Patton v. Holmes (1792), 4 T. R. 660, 100 Eng. Rep. 1230; King v. Smith (1910), 1 K. B. 17.

[2] Indiana's constitution provides that acts shall not be in effect until published and circulated. Ind. Const. Art. IV, § 28. This provision has been construed to mean that the statute takes effect at the precise time of publication. State v. Williams (1909), 173 Ind. 414, 90 N. E. 754, 140 Am. S. R. 261, 21 Ann. Cas. 986. The constitutional provisions vary widely. States requiring publication date to determine date of passage are: Ind. Const. Art. IV, § 28; Kan. Const. Art. II, § 19; N. M. Const. Art. IV, § 15; La. Const. § 42; Wis. Const. Art. VII, § 21. States fixing effective dates at definite time after adjournment or passage are: Ariz. Const. Art. IV, Pt. I, § 1; Cal. Const. Art. IV, § 1; Colo. Const. Art. VI, § 19; Fla. Const. Art. III, § 18; Ida. Const. Art. III, § 22; Ill. Const. Art. III, § 22; Iowa Const. Art. III, § 26; Ky. Const. § 55; Md. Const. Art. III, § 31; Mass. Const., Referendum Amendment I; Me. Const. Art. IV, § 23; Nebr. Const. Art. III, § 24; Ohio Const. Art. II, § 1c; Okla. Const. Art. V, § 58; Ore. Const. Art. IV, § 28; S. D. Const.