

5-1934

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Recommended Citation

(1934) "Banks and Banking-Disposition of Funds in Hands of Sub-Agent Collection on Insolvency," *Indiana Law Journal*: Vol. 9 : Iss. 8 , Article 4.

Available at: <https://www.repository.law.indiana.edu/ilj/vol9/iss8/4>

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RECENT CASE NOTES

BANKS AND BANKING—DISPOSITION OF FUNDS IN HANDS OF SUB-AGENT FOR COLLECTION ON INSOLVENCY—The owner of certain negotiable paper deposited it with Peoples Bank of Clearwater, Florida, by unrestricted endorsement. The Clearwater bank forwarded such paper to First National Bank of St. Petersburg, Florida, for collection. The latter bank made the collection and remitted its draft to the Clearwater bank. Before payment of such draft, the St. Petersburg bank went into the hands of a receiver and discontinued business. Its receiver brought suit against Clearwater bank on certain indebtedness owing to the insolvent bank. In such suit, defendant bank sought to set-off the amount of the unpaid draft which represented the proceeds of the collection. Held, such paper and the right of action for the proceeds thereof belonged to the depositor and the defendant bank was merely an agent to make the collection.¹

An endorsement in blank prima facie transfers title to the paper and a bank with which paper is deposited with such endorsement owns it and does not act as agent in collection.² Therefore, the general rule is that on such deposits being made in the ordinary course of business with no other facts appearing, the bank immediately becomes the owner of such paper and debtor to the depositor in the amount thereof.³ But the prima facie case made out by the blank endorsement is rebuttable,⁴ and the question is one of the agreement of the parties. Neither the fact that the endorsement was unrestricted, nor that the depositor was credited with the amount on his account with the privilege of drawing against it is conclusive on the question of ownership of the paper. If it was in fact delivered to the bank for collection or for "collection and credit," a credit to the customer before collection will be deemed merely provisional, which the bank may cancel if the paper is not paid by the maker or drawer.⁵ The intention of the parties is the controlling factor.⁶ Thus, if it is shown that the paper was deposited *for collection*, the general rule is that it

¹ Dakin v. Bayly (Nov. 20, 1933, U. S. Sup. Ct.), 78 L. ed. 95.

² Burton v. U. S., 196 U. S. 283, 25 S. Ct. 243, 49 L. ed. 482; Metropolitan Nat. Bank v. Merchants' Nat. Bank, 182 Ill. 367, 74 Am. St. Rep. 180, 55 N. E. 360; Downey v. Nat. Exchange Bank, 52 Ind. App. 672, 96 N. E. 403; Taft v. Tuinsegmond Nat. Bank, 172 Mass. 363, 52 N. E. 387; Metropolitan Nat. Bank v. Loyd, 90 N. Y. 360; Albi v. Evansville Bank, 124 Wis. 73, 109 Am. St. Rep. 925, 68 L. R. A. 964, 102 N. W. 329.

³ Wasson v. Lamb, 120 Ind. 513, 6 L. R. A. 191, 16 Am. St. Rep. 342, 22 N. E. 729; Fletcher v. Osbourn, 56 Minn. 119, 45 Am. St. Rep. 454, 57 N. W. 336; South Park Foundry Co. v. Chi., G. W. R. Co., 75 Minn. 186, 77 N. W. 796.

⁴ Walker v. Rantell, — Vt. —, 93 Atl. 1054.

⁵ Fletcher v. Osbourn, 56 Minn. 119, 45 Am. St. Rep. 454, 57 N. W. 336.

⁶ Fayette Nat. Bank v. Summer, 105 Va. 689, 54 S. E. 862. See note 7 L. R. A. (N. S.) 694.

remains the property of the depositor and the bank is his agent, even though authorized to apply the proceeds on the debt of the owner.⁷

In the instant case, the court held that a statute of Florida⁸ was applicable to the situation. This statute, the court said, which provided the degree of care to be exercised by a bank in collecting paper, coupled with the intention of the parties created the defendant bank an agent for collection of the depositor, and, as such, liable only for lack of due care in selection of a sub-agent.

On this question—the care required of a forwarding bank in case of default or misconduct of a sub-agent—there are two very definite lines of authority. One, the so called N. Y. rule, holds the agent, the defendant in this case, responsible for the conduct of every sub-agent assisting in a collection as fully as though it had performed the entire service itself.⁹ The other view, which prevails in Indiana, is that the agent is bound only to select a sub-agent who is competent and worthy of trust and to transmit the papers to him, and having done so, its duty is done, and the depositor must look to the sub-agent for any default of which he is guilty.¹⁰

⁷ First Nat. Bank of Crown Point v. First Nat. Bank of Richmond, 76 Ind. 561, 40 Am. Rep. 261.

⁸ "When a check, draft, note or other negotiable instrument is deposited in a bank for credit, or for collection, it shall be considered due diligence on the part of the bank in the collection of any check, draft, note or other negotiable instrument so deposited, to forward en route the same without delay in the usual commercial way in sue according to the regular course of business of banks, and the maker, endorser, guarantor or surety of any check, draft, note or other negotiable instrument, so deposited, shall be liable to the bank until actual final payment is received, and when a bank receives for collection any check, draft, note or other negotiable instrument and forwards the same for collection as herein provided it shall only be liable after actual final payment is received by it, except in case of want of due diligence on its part as aforesaid." Compiled General Laws of Florida. S 6834.

⁹ Arkansas: Baltimore Second Nat. Bank v. Alma Bank, 99 Ark. 386, 138 S. W. 472.

Colorado: Denver First Nat. Bank v. Manhattan Life Ins. Co., 21 Colo. App. 256, 120 Pac. 1112

Georgia: Baltic v. Augusta Sav. Bank, 95 Ga. 277, 21 S. E. 717, 51 Am. St. Rep. 74.

Kansas: Gerard First Nat. Bank v. Craig, 3 Kans. App. 166, 42 Pac. 830.

Louisiana: Martin v. Hibernia Bank, 127 La. 301, 53 So. 572.

Michigan: Simpson v. Waldby, 63 Mich. 439, 30 N. W. 199.

Minnesota: Streissguth v. Nat. German-American Bank, 43 Minn. 50, 44 N. W. 799, 19 Am. St. Rep. 213, 7 L. R. A. 363.

Montana: Power v. Fort Benton First Nat. Bank, 6 Mont. 251, 12 Pac. 597.

New Jersey: Dover v. Jones, 42 N. J. L. 28, 36 Atl. 505.

New York: Nat. Reserve Bank v. Nat. Bank of Republic, 172 N. Y. 102, 64 N. E. 799.

North Dakota: Commercial Bank v. Red River Valley Nat. Bank, 8 N. D. 382, 79 N. W. 859.

Ohio: Reeves v. State Bank, 8 O. St. 465.

South Carolina: Harter v. Brunson Bank, 92 S. C. 440, 75 S. E. 696.

Texas: Sagerstown Hardware Co. v. Garver Co., 166 S. W. 428.

West Virginia: Pinkey v. Kenawha Valley Bank, 68 W. Va. 254, 69 S. E. 1012.

¹⁰ Alabama: Enfanta Grocery Co., 118 Ala. 408, 24 So. 389.

California: San Francisco Nat. Bank v. American Nat. Bank, 5 Calif. App. 408, 90 Pac. 558.

Connecticut: East-Haddon Bank v. Scovill, 12 Conn. 303.

It will be noted that Florida has been in accord with the latter view.¹¹

A depositor for collection can recall his paper before collection on demand and can recover the proceeds wherever they may be and the insolvency of any agent or sub-agent possessing his paper or the proceeds does not affect his right to recover the same.¹² In a jurisdiction where the opposite view as to liability of the agent prevails, it was held that payment to a sub-agent was payment to the agent itself and it at once became a debtor to the depositor.¹³ But a lower federal court held that where a sub-agent made a collection and sent his own draft in payment to the principal agent, he was still liable as a trustee until the draft was paid, in the absence of any agreement to the contrary.¹⁴

Accordingly, since, in the instant case, defendant bank was merely an agent and not liable to the owner of the paper for the default of the St. Petersburg bank, and since the latter bank was liable to the owner of the paper, the set off was rightfully refused.

P. C. R.

BILLS AND NOTES—ACCOMMODATION MAKER—HOLDER FOR VALUE—The facts found by the trial court were as follows: Appellee Myers was induced by fraudulent representations to purchase worthless oil stock for which she gave her note. This note was discounted at appellant bank by the cashier who had participated in the fraud. Some time later appellant bank informed appellee Myers that before it could effect a consolidation according to an agreement into which it had entered, it would be necessary to show that the note was paid and requested her to give another note

Florida: *Brown v. Peoples Sav. Bank*, 59 Fla. 163, 52 L. R. A. (N.S.) 608, 52 So. 719.

Illinois: *Wilson v. Cartersville Nat. Bank*, 187 Ill. 222, 52 L. R. A. 632, 58 N. E. 250.

Indiana: *Irwin v. Reeves Pulley Co.*, 20 Ind. App. 101, 48 N. E. 601, 50 N. E. 317.

Iowa: *Guelich v. Nat. State Bank*, 56 Iowa 434, 41 Am. Rep. 113, 9 N. W. 328.

Kentucky: *Commercial Nat. Bank v. First Nat. Bank*, 158 Ky. 392, 165 S. W. 398.

Maryland: *Citizens Bank v. Howell*, 8 Md. 530, 63 Am. Dec. 714.

Massachusetts: *Lord v. Hingham Nat. Bank*, 186 Mass. 161, 71 N. E. 312.

Mississippi: *Louisville Third Nat. Bank v. Vicksburg Bank*, 61 Miss. 112, 48 Am. Rep. 78.

Missouri: *Daly v. Butcher's etc. Bank*, 56 Mo. 94, 17 Am. Rep. 663.

Nebraska: *Omaha First Nat. Bank v. Moline First Nat. Bank*, 55 Nebr. 303, 75 N. W. 843.

North Carolina: *Rocky Mount Bank v. Floyd*, 142 N. C. 137, 55 S. E. 95.

Pennsylvania: *Hazlett v. Commercial Nat. Bank*, 132 P. 113, 19 Atl. 55.

South Dakota: *Fansett v. Garden City State Bank*, 24 S. D. 248, 123 N. W. 686.

Tennessee: *Winchester Milling Co. v. Winchester Bank*, 120 Tenn. 225, 111 S. W. 248.

Wisconsin: *Stacy v. Dane County Bank*, 12 Wis. 629.

¹¹ *Brown v. Peoples Sav. Bank*, 29 Fla. 163, 52 L. R. A. (N. S.) 608, 52 So. 719.

¹² *Evansville Old Nat. Bank v. German-American Bank*, 155 U. S. 556, 15 S. Ct. 221, 39 L. ed. 259; *Commercial Nat. Bank v. Armstrong*, 148 U. S. 50, 13 Sup. Ct. 533, 37 L. ed. 363; *White v. Miner's Nat. Bank*, 102 U. S. 658, 26 L. ed. 250; *Crown Point First Nat. Bank v. Richmond First Nat. Bank*, 76 Ind. 561, 40 Am. Rep. 261.

¹³ *Reeves v. State Bank*, 3 O. St. 465.

¹⁴ *Holder v. Western German Bank*, 136 Fed. 90, 68 C. C. A. 554.