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BANKS AND BANKING — APPLICATION OF BANK COLLECTION CODE TO NATIONAL BANKS — Defendant national bank received from an out-of-town correspondent bank for collection a check drawn on another local bank. Through the local clearing house this check was presented and paid, whereupon defendant bank sent to its correspondent its draft in payment. Before presentment of the draft, however, defendant bank failed and the draft was dishonored. In an action by the payee of the check, from whom the correspondent bank had taken it, to impress a trust on the assets of defendant bank, it was *held*, reversing the lower courts, that the state statute (the Bank Collection Code)¹ which was applied below in affecting the preference was inapplicable because of inconsistency with federal law.² *Jennings v. United States Fidelity & Guaranty Co.*, 294 U. S. 216, 55 S. Ct. 394 (1935).

National banks, being the agencies of the federal government,³ are subject

¹ IND. STAT. ANN. (Burns 1933), § 18-2513 (3).

² U. S. REV. STAT., § 5236; 12 U. S. C., § 194.

³ *McCulloch v. Maryland*, 4 Wheat. (17 U. S.) 316 (1819); *Davis v. Elmira Savings Bank*, 161 U. S. 275, 16 S. Ct. 502 (1896); *City of Pittsburgh v. First Nat. Bank of Pittsburgh*, 55 Pa. 45 (1867); *Iowa-Des Moines Nat. Bank v. Bennett*, 284 U. S. 239, 52 S. Ct. 133 (1931). See cases collected in 7 MICHIE, BANKS AND BANKING 9 (1932).

to regulation and control only by the powers of Congress.⁴ Attempts by states to control national banks or define their duties in any respect are usually sustained, however, unless there is express conflict with the laws of the United States or an interference with the purpose of the creation of the bank or a destruction of its efficiency.⁵ Typical state statutes which have been held applicable to national banks are those restricting the taking of real estate in order to prevent preferences in case of insolvency,⁶ giving stockholders access to inspection and examination of the books of a bank,⁷ providing for levy on and sale under execution of bank stock,⁸ prohibiting branch banks,⁹ and taxing the shares of national banks held by stockholders.¹⁰ The state statutes held invalid in their application to national banks include those providing for preference to a class of claims in the distribution of assets of an insolvent bank,¹¹ requiring every corporation formed in any state to file in the office of the secretary of state a statement of its location and the name of the agent on whom process must be served,¹² providing for escheat to the state

⁴ *Easton v. Iowa*, 188 U. S. 220, 23 S. Ct. 288 (1903); *Coon v. Smith*, (D. C. E. D. Ill. 1933) 4 F. Supp. 960; *Farmers' and Mechanics' Nat. Bank v. Dearing*, 91 U. S. 29 (1875). But see *Petition of Worcester County Nat. Bank*, 263 Mass. 444, 162 N. E. 217 (1928), in which the state held unconstitutional that part of an act of Congress which allowed national banks to take over the fiduciary duties of a state bank as executor without provision for judicial determination of the fitness of the national bank to perform those duties. The statute, however, in providing for consolidation of state and national banks had said that such consolidations were not to be in contravention to the laws of the states. See also cases in 7 MICHIE, BANKS AND BANKING, § 5 (1932).

⁵ *First Nat. Bank v. California*, 262 U. S. 366, 43 S. Ct. 602 (1923); *First Nat. Bank v. Comr. of Corporations*, 279 Mass. 168, 181 N. E. 205 (1932); *Missouri ex rel. Burnes Nat. Bank v. Duncan*, 265 U. S. 17, 44 S. Ct. 427 (1924).

For other cases, besides those cited in notes 6, 7, 8, 9, and 10, below, in which state statutes were held applicable to national banks, see the following: *Schramm v. Bank of California*, 143 Ore. 546, 20 P. (2d) 1093, 23 P. (2d) 327 (1933); *Middletown Trust Co. v. Middletown Nat. Bank*, 110 Conn. 13, 147 A. 22 (1929); *Hanover Nat. Bank v. Johnson*, 90 Ala. 549, 8 So. 42 (1889); *Waite v. Dowley*, 94 U. S. 527 (1876); *National Bank of Fairhaven v. Phoenix Warehousing Co.*, 6 Hun. (N. Y.) 71 (1875); *Thomas v. Farmers' Bank*, 46 Md. 43 (1876); *Merchants' Nat. Bank v. Ford*, 124 Ky. 403, 99 S. W. 260 (1907); *State v. People's Nat. Bank*, 75 N. H. 27, 70 A. 542 (1908); *Farmers' & Merchants' Bank v. Federal Reserve Bank*, 262 U. S. 649, 43 S. Ct. 651, 30 A. L. R. 635 (1923); *Holland v. Nakdimen*, 177 Ark. 920, 9 S. W. (2d) 307 (1928).

⁶ *McClellan v. Chipman*, 164 U. S. 347, 17 S. Ct. 85 (1896); *Witters v. Sowles*, (C. C. Vt. 1887) 32 F. 758.

⁷ *Winter v. Baldwin*, 89 Ala. 483, 7 So. 734 (1889).

⁸ *Braden's Estate*, 165 Pa. 184, 30 A. 746 (1894).

⁹ *First Nat. Bank v. Missouri ex inf. Barrett*, 263 U. S. 640, 44 S. Ct. 213 (1924).

¹⁰ *National Bank v. Commonwealth*, 9 Wall. (76 U. S.) 353 (1869).

¹¹ *Davis v. Elmira Savings Bank*, 161 U. S. 275, 16 S. Ct. 502 (1896); *Old Company's Lehigh, Inc. v. Meeker*, 294 U. S. 227, 55 S. Ct. 392 (1935); *Spradlin v. Royal Mfg. Co.*, (C. C. A. 4th, 1934) 73 F. (2d) 776.

¹² *First Nat. Bank v. Commonwealth*, 17 Ky. L. Rep. 1167, 33 S. W. 1105 (1896). In this case the statute was construed to apply only to state banks.

of unclaimed deposits,¹³ and others.¹⁴ The conflict in the instant case is between two statutes of opposite effect, and the preference accorded to the federal statute is directly in line with a well established principle, both of federal and state courts,¹⁵ the identical question of distribution of assets of insolvent national banks having been raised before.¹⁶ Disregarding any questions as to the merits of the respective statutes involved in the principal case,¹⁷ there seems to be no reason to question the decision in its application of the established doctrine of the superiority of federal law when there was no necessity for departure from that doctrine. Other sections of the Bank Collection Code will undoubtedly be given the same treatment whenever they conflict with the federal law. Insofar as there is this conflict between the Bank Collection Code and the federal law on national banks, the avowed purpose of the Bank Collection Code to secure uniformity in collection laws¹⁸ is defeated by the differences in the rules for state and national banks. It has been suggested by the Commissioners on Uniform State Laws, apparently without authoritative support for their view, that the proposed Uniform Bank Collection Act, which the Commissioners are now considering, will remedy this defect by means of minor changes.¹⁹ Application of the proposed act to national banks would provide uniformity in collection laws, but the proposed act appears so similar to the present Bank Collection Code that its ability to overcome the rule of the principal case is at best doubtful.

M. K. G.

¹³ First Nat. Bank v. California, 262 U. S. 366, 43 S. Ct. 602 (1923).

¹⁴ For other cases in which state statutes were held inapplicable to national banks see the following: Allen v. Carter, 119 Pa. 192, 13 A. 70 (1888); Easton v. Iowa, 188 U. S. 220, 23 S. Ct. 288 (1903); First Nat. Bank of Opp v. Weaver, 225 Ala. 160, 142 So. 420 (1932); First Nat. Bank v. Slagle, 165 Wash. 435, 5 P. (2d) 1013 (1931).

¹⁵ Note 5, supra.

¹⁶ First Nat. Bank v. Selden, (C. C. A. 7th, 1903) 120 F. 212.

¹⁷ For a severe criticism of the Bank Collection Code, see Townsend, "The Bank Collection Code of the American Bankers' Association," 8 TULANE L. REV. 21, 236, 376 (1933-1934).

¹⁸ Ibid. 21.

¹⁹ HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS 273 (1931). In reporting on a tentative draft of the Uniform Bank Collection Act, the Commissioners stated that the proposed act may not conflict with the federal law on national banks, since the proposed act, while establishing a trust on items in the hands of insolvent collecting banks (Section 31 of the proposed act), does so on the expressed provision for a conclusive presumption of ability to trace into the general assets of the bank, exclusive of previously acquired realty and the attached personalty. The Bank Collection Code fails to exclude such realty and personalty from the assets subject to the preferred claim. The Indiana statute is identical with the Bank Collection Code criticized by the Commission and by Townsend. "The Bank Collection Code of the American Bankers' Association," 8 TULANE L. REV. 21, 236, 376 (1933-1934).