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BANKS AND BANKING — COLLECTIONS —"CASH OR SOLVENT CREDITS"— The plaintiff drew an out of town draft and deposited it with the *A* bank for collection. The *A* bank sent the draft to its correspondent, *B* bank, to collect and make return when actually paid. The *B* bank collected the amount of the draft

and, according to a custom between the two institutions, credited the account of the *A* bank and sent them a notice of collection. On the very day this notice was received the *B* bank closed its doors. A statute [1] provided that items deposited for collection should be credited subject to final payment in cash or solvent credits. In a suit by the plaintiff against his insurance company, the question submitted was whether the *A* bank was liable to the plaintiff on the draft. *Held,* under the statute, the final payment had not been made, and would not be considered as made until a draft, had a draft been sent in payment, could have been collected in the ordinary course of business. *Bay State Milling Co. v. Hartford Accident & Indemnity Co.,* 193 Minn. 517, 259 N. W. 4 (1935).

The statute in question is but another indication of the recent attempts of legislators and codifiers to clear away the confusion in the conflicting decisions arising out of the rights of the many parties to items in the process of collection through banking channels.[2] Upon the question as to when the depositor is made to assume the position of a creditor of the forwarding bank, from his prior presumptive status of principal,[3] the decisive factor has been the determination of when, in legal contemplation, the forwarding bank can be considered paid.[4] Of course, there can be no question in the situation where the forwarding bank is in receipt of actual cash; the more difficult question concerns itself with those procedures short of actual payment in cash. Prior to the statutes and codes, the *ratio dispondendi* of the cases has been the intent of the parties as evidenced from their agreements, either express or implied.[5] On this analysis, different decisions were

[1] "All such [collection] items shall be credited subject to final payment in cash or solvent credits. . . . It [collecting bank] may charge back any item at any time before final payment, whether returned or not." MINN. STAT. (Mason 1927), § 7233-1.

[2] Uniform Bank Collection Code proposed by the American Bankers' Association, now adopted in 18 states and cited as Bank Collection Code. The Commissioners on Uniform State Laws have a proposed act now in its fifth tentative draft and cited as the Uniform Act. Besides these two major efforts seeking to cover the whole collection picture, are individual statutes, such as the Minnesota statute in question, which cover only smaller parts of the general subject.

For an exhaustive treatment of the Bank Collection Code see Townsend, "The Bank Collection Code," 8 TULANE L. REV. 21, 236, 376 (1933-1934), criticizing in part an inadequate treatment of the subject in 43 HARV. L. REV. 307 (1929). For a comparison of the Bank Collection Code with the Uniform Act see Donley, "Some Problems in the Collection of Checks," 38 W. VA. L. REV. 195 (1932).

[3] In all the statutes and codes, provisions are made for the adoption of the so called Massachusetts rule of collection which provides, unless there is agreement to the contrary, that the relation between the customer and the bank shall be that of principal and agent. Under this rule the collecting bank is held only to the exercise of due care in the selection of a subsequent correspondent bank in the collection chain and each succeeding bank is made the agent of the customer. See Bank Collection Code, § 2, 122 C. C. H., § 14,308 (1935), and Uniform Act, § 33, HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS 186-187 (1934). This was § 42 in the third and fourth tentative drafts.

[4] 6 MICHIE, BANKS AND BANKING 11 (1932); Arnold v. Wachovia Bank & Trust Co., 195 N. C. 345, 142 S. E. 217 (1928).

[5] Bassett v. City Bank & Trust Co., 115 Conn. 1, 160 A. 60 (1932); Arnold v. Wachovia Bank & Trust Co., 195 N. C. 345, 142 S. C. 217 (1928); In re Bank of

justified according as the facts varied. For example, a court would be justified in reaching a different conclusion in the case where an item was sent for collection and remittance from the case where it was forwarded for collection only, or from the case where the two institutions were in the habit of crediting each other's acount and balancing them by sending remittances at irregular or periodic intervals. As between the customer and the forwarding bank, in the case where the latter cannot be considered a purchaser [6] of the item, the governing purpose of all the legislative and codifying efforts has been to shift the liability for the default of subsequent parties in the collection chain [7] upon the customer. More often than not the bank is performing a mere gratuity. It is submitted that these efforts should be interpreted so as to give the effect of a presumption that payment has not been made until actual cash rests in the coffers of the bank or until it has had opportunity, with the exercise of due diligence, to convert the credits into cash. This presumption may be rebutted by agreements, express or implied, between the forwarding bank and its correspondent, in which case it would be fair to say that the forwarding bank had assumed the risk of its correspondent bank's integrity.

E. W. A.

Cuba in New York, 198 App. Div. 733, 191 N. Y. S. 88 (1921); Daniel v. St. Louis Nat. Bank, 67 Ark. 233, 54 S. W. 214 (1899); Howard v. Walker, 92 Tenn. 452, 21 S. W. 897 (1893); Commercial Bank v. Armstrong, 148 U. S. 50, 13 S. Ct. 533 (1893).

[6] The statutes and codes agree that where there is a restrictive indorsement the Massachusetts rule (n. 3, supra) will apply. The Bank Collection Code and the Uniform Act, however, differ as to what types of indorsements will be considered restrictive. The Bank Collection Code takes a broader view on this subject than the Uniform Act. See Bank Collection Code, § 4, 122 C. C. H., § 14,316 (1935); Uniform Act, § 2, HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS 161 (1934); 20 IOWA L. REV. 140 at 142 (1934).

[7] 2 Bank Collection Code, § 2, 122 C. C. H., § 14,308 (1935). The Code, however, eases the position of the customer somewhat by providing in § 13 that the depositor shall be entitled to a preference against the assets of the correspondent bank and dispensing with the necessity of tracing in any case where he can prove actual collection and failure to remit the proceeds before default. The Uniform Act, § 31, has a similar provision but limits its application to the case where the item was sent for collection and remittance.