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BILLS AND NOTES — HOLDER'S RIGHT ON CONTRACT TO PAY CHECKS —

Defendant bank agreed to honor checks drawn by a cattle buyer and carry them as cash items until funds were deposited from sales of stock. During an illness of the buyer the bank authorized buyer's agent to continue the practice, without informing said agent of large overdrafts on the account. The agent ordered the bank to draw a sight draft on a Chicago commission house and credit it to the account for the purpose of covering, among others, a check given to plaintiff, who apparently knew nothing of the arrangement between the drawer and drawee. The bank, however, applied the proceeds of the draft on buyer's debt to the bank and refused to honor plaintiff's check. *Held*, defendant bank impliedly contracted to pay all checks drawn by the agent for the purchase of stock regardless of the sufficiency of buyer's account. Plaintiff is entitled to recover the amount of the check. *Pascoe v. Franklin County State Bank*, 217 Iowa 205, 251 N. W. 63 (1933).

In cases upon facts similar to the principal case the courts have ordinarily adopted one or more of the following views: (1) that the bank held the subsequent deposit as a trust; (2) that there was an assignment of the funds in the hands of the bank; (3) that there was a contract for the benefit of the payee on which payee might recover from the drawee.¹ Logically the result of the principal case could not be reached on a trust theory because of indefiniteness of *cestui* and lack of an existing *res*.² Neither does the assignment theory seem

¹ Aigler, "Rights of Holder of Bill of Exchange Against the Drawee," 38 HARV. L. REV. 857 (1925).

² The courts have not found the logic of the strict trust theory to be an insurmountable obstacle. There are a number of cases suggesting this pseudo trust doctrine

applicable since it is difficult to conceive of an assignment of a fund not yet in existence. Consequently, plaintiff seems to have adopted the only available course in bringing this action to enforce the promisor's promise to pay the checks drawn by the promisee. The result is in accord with the Iowa and the majority view³ on the third party beneficiary doctrine, although the opinion in the principal case does not refer to it. Query, would the chose in action arising from breach of such a contract also be an asset of the promisee's estate subject to claims of other creditors?⁴

J. C. W.

which are open to the objections raised. *Morton v. Woolery*, 48 N. D. 1132, 189 N. W. 232, 24 A. L. R. 1107 (1922); *Blummer v. Scandinavian American State Bank of Badger*, 169 Minn. 89, 210 N. W. 865 (1926); *State ex rel. Sorensen v. Bank of Otoe*, (Neb. 1933) 251 N. W. 111.

³ 1 WILLISTON, *CONTRACTS*, sec. 381 (1920); *Johnson v. Collins*, 14 Iowa 63 (1862); *Poole v. Hintrager*, 60 Iowa 180, 14 N. W. 223 (1882); *Knott v. Du-buque & S. C. Ry.*, 84 Iowa 462, 51 N. W. 57 (1892).

⁴ See 1 WILLISTON, *CONTRACTS*, sec. 363 (1920) for suggestions on this problem.