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## BANKS AND BANKING - LIABILITY OF BANK FOR PAYING CHECK AFTER "STOP-PAYMENT ORDER"

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## RECENT DECISIONS

**BANKS AND BANKING — LIABILITY OF BANK FOR PAYING CHECK AFTER "STOP-PAYMENT ORDER"** — The plaintiff drew a check on the defendant bank in which he had deposited sufficient funds to meet his order. Before the check was presented, the plaintiff telephoned the defendant bank to stop payment. He described the check as to payee, date, number and amount and in the course of his conversation informed the bank employee that he was "Shude, from the Anchor Steel Co." The countermanding order was applied to the account of the Anchor Steel Co. and plaintiff's check was paid. *Held*, plaintiff should recover. *Shude v. American State Bank*, 263 Mich. 519, 248 N. W. 886 (1933).

In the absence of a special agreement entered into between a bank and a depositor regulating the form of notice or the measure of liability,<sup>1</sup> a bank is liable for paying a check after a "stop-payment order" sufficiently describing the check has been seasonably communicated.<sup>2</sup> Such an order may be written or verbal. Telephoned countermanding orders have repeatedly been held sufficient.<sup>3</sup> Whether or not a particular "stop-payment order" is sufficient is essentially a factual question. The instant case presents a situation in which it is difficult to assert dogmatically that the order was or was not sufficient. It is suggested that in a close case the doubt should be resolved in favor of the bank. The issuance of a countermanding order is, after all, an abnormal procedure which may be initiated by a depositor at will and after he has given a definite contrary order to pay. As a result the ordinary bank, dealing with numerous checks daily, is subjected to an unusual strain.<sup>4</sup> As a matter of policy it is not likely that a bank depending upon the good will of its customers will relax its vigilance because of such a construction. On the other hand, it is conceivable that such a course will encourage depositors to render their countermanding orders as explicit as the written order which they are superseding.<sup>5</sup>

J. H.

<sup>1</sup> *Gaita v. Windsor Bank*, 251 N. Y. 152, 167 N. E. 203 (1929); *Tremont Trust Co. v. Burack*, 235 Mass. 398, 126 N. E. 782 (1920). But see *Levine v. Bank*, 132 Misc. 130, 229 N. Y. S. 108 (1928).

<sup>2</sup> *Bank of Hamilton v. Williams*, 146 Ga. 96, 90 S. E. 718 (1916). See also *Rogers Park Nat. Bank v. Peterson*, 233 Ill. App. 99 (1924).

<sup>3</sup> *People's Savings Bank and Trust Co. v. Lacey*, 146 Ala. 688, 40 So. 346 (1906); *Hewitt v. First Nat. Bank*, 113 Tex. 100, 252 S. W. 161 (1923).

<sup>4</sup> See comment in 39 *YALE L. J.* 542 at 547, n. 21 (1930).

<sup>5</sup> For a general discussion of the entire subject see Moore, Sussman and Brand, "Legal and Institutional Methods Applied to Orders to Stop Payment of Checks — I. Legal Method," 42 *YALE L. J.* 817 (1933).