

1933

## BANKS AND BANKING-LIABILITY OF DRAWEE BANK FOR PAYMENT ON FORGED INDORSEMENT

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Banking and Finance Law Commons](#)

---

### Recommended Citation

*BANKS AND BANKING-LIABILITY OF DRAWEE BANK FOR PAYMENT ON FORGED INDORSEMENT*, 32 MICH. L. REV. 261 (1933).

Available at: <https://repository.law.umich.edu/mlr/vol32/iss2/9>

This Recent Important Decisions is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact [mlaw.repository@umich.edu](mailto:mlaw.repository@umich.edu).

## RECENT DECISIONS

**BANKS AND BANKING — LIABILITY OF DRAWEE BANK FOR PAYMENT ON FORGED INDORSEMENT** — Plaintiff's depositor gave to *A* a check, payable to *A* and *B*, in return for a chattel mortgage and a note, both signed by *A* and *B*. The check was indorsed and presented to the defendant bank for collection. The plaintiff paid the check, debiting the drawer's account. Two years later,

when the note came due, it was found that *B*'s name had been forged to the note, the mortgage, and the check. Plaintiff then credited its depositor's account with the amount of the check, and now seeks to recover from the defendant. The court held that the drawee was bound to reimburse the drawer for any loss due to the forged check, but, since the loss here was "due to a forgery upon a note and a mortgage" and not to the forged check, the drawee (plaintiff) owed nothing to its depositor; its payment was voluntary, and it cannot recover from the defendant. *Provident Savings Bank & Trust Co. v. Fifth-Third Union Trust Co.*, 43 Ohio App. 533, 183 N. E. 885 (1932).

The court accepts the universal rule that the bank which accepts the forged check is ultimately liable for any loss that may result from the forgery,<sup>1</sup> but proceeds to hold the defendant here free from liability. An exception to the general rule seems to be suggested by the court, *viz.*, that the collecting bank should be held liable except where the check was obtained from the drawer by fraud. In any such case it might be said that the drawer's loss was a result, not of the forgery, but of the fraud which induced the drawing of the check. No cases have been found which accept this limitation, nor does the principal case cite any authority for its position. Cases presenting almost identical fact situations have reached a contrary conclusion,<sup>2</sup> and the same judge, last year, wrote a decision incompatible with the principal case.<sup>3</sup> The court, in holding that the drawer's acceptance of the note and mortgage caused his loss, and not the forged check, seems to be making an unnecessary distinction. While it is true that the drawer would not have suffered a loss had he not accepted the note and mortgage, it is likewise true that the loss would have been prevented had the defendant bank not accepted the check. In the absence of an estoppel against the drawer there would appear to be no justification for varying the usual rule which would throw the loss upon the party accepting the forged instrument.<sup>4</sup>

V. R.

<sup>1</sup> Canal Bank v. Bank of Albany, 1 Hill (N. Y.) 287 (1841); Metropolitan Casualty Ins. Co. v. First Nat. Bank, 261 Mich. 450, 246 N. W. 178 (1933); State v. Merchants' Nat. Bank of St. Paul, 145 Minn. 322, 177 N. W. 135 (1920); Moler v. State Bank of Bigelow, 176 Minn. 449, 223 N. W. 780 (1929); Szwento Juozupo Let Draugystes v. Manhattan Savings Institution, 178 App. Div. 57, 164 N. Y. S. 498 (1917); Labor Bank & Trust Co. v. Adams, (Tex. Civ. App. 1930) 23 S. W. (2d) 814. Also notes 2 and 3, *infra*.

<sup>2</sup> Bennett v. First Nat. Bank, 47 Cal. App. 450, 190 Pac. 831 (1920); First Nat. Bank v. Harris, 25 Ga. App. 667, 104 S. E. 574 (1920); New Amsterdam Casualty Co. v. Albia State Bank, (Iowa 1931) 239 N. W. 4; State v. Globe Indemnity Co., 222 Mo. App. 918, 9 S. W. (2d) 668 (1928); Pannonia Building & Loan Ass'n v. West Side Trust Co., 93 N. J. L. 377, 108 Atl. 240 (1919); Strang v. Westchester County Nat. Bank, 191 App. Div. 787, 182 N. Y. S. 41 (1920); National Bank of Commerce v. Fish, 67 Okla. 102, 169 Pac. 1105 (1916); Pennsylvania Mutual Life Ins. Co. v. North Penn Bank, 70 Pa. Super. Ct. 34 (1918); National Union Fire Ins. Co. v. Mellon Nat. Bank, 276 Pa. 212, 119 Atl. 910 (1923); Figuers v. Fly, 137 Tenn 358, 193 S. W. 117 (1916).

<sup>3</sup> Provident Savings Bank & Trust Co. v. Western & Southern Life Ins. Co., 41 Ohio App. 261, 179 N. E. 815 (1932).

<sup>4</sup> The situation here is not to be confused with the superficially similar case in

which the drawer gives a check to the payee under a mistake as to the payee's identity. When the payee indorses the instrument in his assumed name, most, but not all, courts hold that the indorsement is not a forgery. Thus the resulting loss is thrown on the drawer, on the ground that the person to whom the drawer gave the check was the person whom he intended to benefit by the instrument, though there might have been some error as to the payee's identity. *United States v. National Exchange Bank*, (C. C. E. D. Wis. 1891) 45 Fed. 163; *Ryan v. Bank of Italy National Trust & Savings Ass'n*, 106 Cal. App. 690, 289 Pac. 863 (1930); *Robertson v. Coleman*, 141 Mass. 231, 4 N. E. 619 (1886); *Hoffman v. American Exchange Bank*, 2 Neb. (Unoff.) 217, 96 N. W. 112 (1901); *Montgomery Garage Co. v. Manufacturers' Liability Ins. Co.*, 94 N. J. L. 152, 109 Atl. 296 (1920); *Hartford v. Greenwich Bank*, 157 App. Div. 448, 142 N. Y. S. 387 (1913); *Land Title & Trust Co. v. Northwestern Nat. Bank*, 196 Pa. 230, 46 Atl. 420 (1900). *Contra*, *Tolman v. American Nat. Bank*, 22 R. I. 462, 48 Atl. 480 (1901).