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BILLS AND NOTES — CHECK PAYABLE TO A PARTY UNDER ASSUMED NAME — *M* appeared at the office of the *B* building association, represented himself as *W* and requested a loan to be secured by a mortgage upon property owned by *W*. After checking the land records and also the address given by *M*, *B* drew a check on the plaintiff bank, payable to *W*, and sent it to the address which *M* had given. *M* removed the check from the mail, endorsed *W*'s name and deposited it in the defendant bank. Upon the discovery of the fraud, plaintiff bank restored the amount of the check to *B*'s account. *Held*, that the plaintiff was entitled to recover. *District Nat. Bank of Washington, D. C. v. Washington Loan & Trust Co.*, (App. D. C. 1933) 65 F. (2d) 831.

It is not clear whether the decision rests upon the doctrine that money paid out on a forged endorsement is generally recoverable on the quasi-contractual theory of "money paid out on a misreliance of a supposed duty,"¹ or upon the defendant's guaranty of prior endorsements. However, either ground involves the more basic question as to who was the payee in this situation. It is generally held,²

¹ *Canal Bank v. Bank of Albany*, 1 Hill (N. Y.) 287 (1841).

² *McHenry v. Old Citizens' Nat. Bank*, 85 Ohio St. 203, 97 N. E. 395 (1911); *United States v. Nat. Exch. Bank*, 45 Fed. 163 (1891); *Missouri Pac. R. R. v. M. M. Cohn Co.*, 164 Ark. 335, 261 S. W. 895 (1924); *Meridian Nat. Bank v. First Nat. Bank*, 7 Ind. App. 322, 33 N. E. 247 (1893); *Emporia Nat. Bank v. Shotwell*, 35 Kan. 360, 11 Pac. 141 (1886); *Robertson v. Coleman*, 141 Mass. 231, 4 N. E. 619 (1886); *Ryan v. Bank of Italy Nat. T. & S. Ass'n*, 106 Cal. App. 690, 289 Pac. 863

with some little exception,³ that where a negotiable instrument is given to an imposter in a face-to-face dealing he is regarded as the payee, so that his endorsement in the assumed name will pass title to the instrument. The theory is that payment was made to the person to whom the drawer intended it to be made; that the identity of the payee, though in truth a composite of the individual and the name, is primarily represented by the person to whom the drawer delivered the check.⁴ However, where the negotiations between the imposter and drawer have been carried on by correspondence, consummated by sending the check through the mails, it is generally held that the drawer intended that payments should be made to the person described in the check, and not to the person receiving it;⁵ although there is the same tendency now discernible to reach the same result in these cases as in the cases where the imposter has dealt face-to-face with the drawer.⁶ In this latter situation a distinction has been made where in addition to the use of another's name the imposter describes that other person by his official position.⁷ It is submitted that the view adopted by most courts in the "correspondence" cases, holding that the drawer intended the real person bearing the name being represented to receive the funds and not the person with whom he corresponded, is the preferable one in the light of the fact that there has been no physical contact with the imposter. The instant case is interesting in that it has both of the fact situations mentioned above. It is submitted, however, that in this situation the physical person (the imposter) has been firmly imprinted in the drawer's mind as the payee, and the subsequent delivery of the check through the mail should not alter the result.⁸ It is obvious that a weighing of intents is involved, but it is felt that the mental image should throw the balance in favor of the rule normally applied to face-to-face dealings.

I. W. C.

(1930). See 22 A. L. R. 1228 (1923), 52 A. L. R. 1326 (1928) for helpful annotations.

³ *Tolman v. American Nat. Bank*, 22 R. I. 462, 48 Atl. 480 (1901).

⁴ Justice Trenchard in *Montgomery Garage Co. v. Manufacturers' Liability Ins. Co.*, 94 N. J. Law 152, 109 Atl. 296 (1920).

⁵ *Palm v. Watt*, 7 Hun. (N. Y.) 317 (1876); *Mercantile Nat. Bank of City of New York v. Silverman*, 148 App. Div. 1, 132 N. Y. S. 1017 (1911), *aff'd* 210 N. Y. 567, 104 N. E. 1134 (1914).

⁶ *Boatsman v. Stockmen's Nat. Bank*, 56 Colo. 495, 138 Pac. 764, 50 L. R. A. (N. S.) 107 (1914); *Uriola v. Twin Falls Bank & Trust Co.*, 37 Idaho 332, 215 Pac. 1080 (1923); *Hoffman v. American Exchange Nat. Bank*, 2 Neb. (Unoff.) 217, 96 N. W. 112 (1901); *Metzger v. Franklin Bank*, 119 Ind. 359, 21 N. E. 973 (1889).

⁷ *Mercantile Nat. Bank of City of New York v. Silverman*, 148 App. Div. 1, 132 N. Y. S. 1017 (1911), *aff'd* 210 N. Y. 567, 104 N. E. 1134 (1914).

⁸ *Western Union Tel. Co. v. American State Bank*, (Tex. Civ. App. 1925) 277 S. W. 226, noted in 39 HARV. L. REV. 651 (1926). See also 25 MICH. L. REV. 188 (1926); 27 MICH. L. REV. 805 (1928).