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BANKS AND BANKING - BANK COLLECTION CODE - PREFERENCE FOR CERTIFIED CHECK ON DRAWEE BANK'S INSOLVENCY

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RECENT DECISIONS

BANKS AND BANKING — BANK COLLECTION CODE — PREFERENCE FOR CERTIFIED CHECK ON DRAWEE BANK'S INSOLVENCY — The petitioner accompanied a bid on construction work with two certified checks drawn on the *M* Bank and payable to the government. On rejection of the bid the checks were returned, but in the meantime the drawee bank had been closed. The petitioner presented the checks to the receiver of the defunct bank who refused to honor them as preferred claims. An Illinois statute provided that when a bank has presented to it for payment an item drawn upon such bank, and such bank shall fail after having charged such item to the account of the drawer but without having paid the same, the assets of the bank shall be impressed with a trust in favor of the owner of the item. *Held*, that the statute applied and the petitioner was entitled to a preferred claim. *McQueen v. Randall*, (Ill. 1933) 187 N. E. 286.

The instant case is in accord with a recent case, *Fulton v. Baker-Toledo Co.*,¹ criticized in a previous issue of this Review.² Certification of a check is an acceptance and by it the drawee bank becomes primarily liable to the holder but is not placed under an obligation to set aside currency for payment of the debt.³ Nor does a practice of that sort exist. The mere fact that the evidence of the debt is a certified check, cashier's check, or bank draft as in the *Fulton* case, does not entitle the holder thereof to a preference.⁴ The Illinois statute in the

¹ 125 Ohio 518, 182 N. E. 513 (1932), where the statute provided in effect that a preference shall be given to the owner of a draft issued in payment of a check drawn on an account in the insolvent bank, and presented to the bank for collection and payment.

² 31 MICH. L. REV. 843 (1933).

³ *Drovers' Nat. Bank v. Anglo-American Co.*, 117 Ill. 100, 7 N. E. 601 (1886); *Lloyd v. Butler State Bank*, 122 Kan. 835, 253 Pac. 906, 51 A. L. R. 1030 (1927); *Suburban Construction Co. v. Page*, 162 Md. 355, 159 Atl. 777 (1932).

⁴ *Clark v. Chicago Title and Trust Co.*, 186 Ill. 440, 57 N. E. 1061, 53 L. R. A. 232 (1900); note, 21 A. L. R. 680 (1922).

principal case is a part of the Bank Collection Code.⁵ It is submitted that a reading of the section in question with reference to the context and purpose of the whole code leads to the conclusion that it was not meant to control the instant problem⁶ but was aimed at the situation in which an item is sent to the drawee bank for collection and remittance and the drawee bank pays it with a check or draft.⁷ This limited application was adopted in one late case on facts almost identical with those of the principal case.⁸ In other States courts have similarly interpreted statutes which, though enacted in somewhat different language, were prompted by like considerations.⁹ It would seem that courts should be reluctant to strain the construction of bank collection legislation to permit a purely fortuitous circumstance to create a preference for one creditor over others where the statutory language does not clearly specify such a preference.

W. A. B.

⁵ Bank Collection Code, Ill. Rev. Stat. (Cahill 1933), c. 16a, sec. 37, par. 2.

⁶ For a collection of cases to the effect that a purchaser of a draft or cashier's check is not entitled to a preference at common law, see 31 MICH. L. REV. 844 (1933). See also Schwab & Co. v. Bank of Rosedale, (Kan. 1933) 22 Pac. (2d) 442, and Perry Bank and Trust Co. v. Riggins, 233 Ky. 257, 25 S. W. (2d) 386 (1930), where the courts distinguish the collection type of case. *Contra*, Fletcher v. Cantley, 226 Mo. 1060, 47 S. W. (2d) 217 (1932), cashier's check payable to third party.

⁷ For collection of conflicting views as to whether there is a preference at common law, see 31 MICH. L. REV. 843 (1933). See also *In re Jayne and Mason*, 140 Misc. 822, 251 N. Y. S. 768 (1931), decided under the Bank Collection Code. For the Illinois holding before the adoption of the code see *People ex rel. Nelson v. Bank of Rushville*, 270 Ill. App. 416 (1933).

⁸ *Suburban Construction Co. v. Page*, 162 Md. 355, 159 Atl. 777 (1932).

⁹ *Morecock v. Hood*, 202 N. C. 321, 162 S. E. 730 (1932); *Taylor v. Dermott Grocery Co.*, 185 Ark. 7, 45 S. W. (2d) 23 (1932).