

1934

BANKS AND BANKING--HOLDER OF DRAFT PAID FOR BY CHECK ON ISSUING BANK AS PREFERRED CLAIM UPON DRAWER'S INSOLVENCY

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--HOLDER OF DRAFT PAID FOR BY CHECK ON ISSUING BANK AS PREFERRED CLAIM UPON DRAWER'S INSOLVENCY, 32 MICH. L. REV. 1161 (1934).

Available at: <https://repository.law.umich.edu/mlr/vol32/iss8/13>

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.

BANKS AND BANKING—HOLDER OF DRAFT PAID FOR BY CHECK ON ISSUING BANK AS PREFERRED CLAIM UPON DRAWER'S INSOLVENCY—A depositor presented his own check to his bank and received in exchange a New York draft drawn by the bank payable to a third person. The drawer bank was closed and the draft was dishonored. The depositor redeemed the draft and sought to establish a preferred claim against the bank's assets. In *Fulton v. Baker-Toledo Co.*¹ the court held that a trust existed in favor of the depositor, under an Ohio statute² which declares that when a check drawn by a depositor is presented to his bank for "collection and payment," and such check is charged against the depositor's account and in payment thereof a draft is drawn on another bank, the assets of the drawer of the draft shall be impressed with a trust for the payment of such draft. This decision established the depositor's preferred claim. The depositor thereafter amended his petition so as to claim interest on the item. *Held*, the depositor is not entitled to interest on his preferred claim. *Fulton v. B. R. Baker-Toledo Co.*, (Ohio Sup. Ct. 1934, Adv. Op. No. 24209).

The court briefly disposed of the question of the interest claim, and then proceeded to review its former interpretation of the Ohio statute, and on reconsideration overruled the former decision. As is pointed out in a note on the earlier decision,³ the statute was meant to apply to the common problem arising when checks are sent by holders thereof to the banks upon which they are drawn for collection and remittance. In the first case the court declared that, since the law was already settled as to this situation, the legislature must have intended the statute to apply to "every instance where a draft is purchased by a depositor by issuing and delivering to the bank a check against his own account."⁴ On reconsideration in the principal case the court decided that the statute was in derogation of the common law, and therefore to be

¹ 125 Ohio St. 518, 182 N. E. 513 (1932).

² 4 Ohio Gen. Code (Page Ann. 1931), sec. 713.

³ 31 MICH. L. REV. 843 (1933). It is interesting to note that the court in the instant decision, in declaring that the statutes were meant to apply to the "collection and remittance" problem, quoted from this decision note.

⁴ *Fulton v. B. R. Baker-Toledo Co.*, 125 Ohio St. 518 at 524 (1932). As is pointed out in the earlier Law Review note, the law of Ohio was not unequivocally settled on the question of establishing a trust where an item sent for collection and remittance has been received by the drawee bank, and a remittance draft has been issued, but uncollected before the insolvency of the collecting bank. In *Union Savings Bank of Bryan v. Department of Commerce*, 34 Ohio App. 6, 170 N. E. 186 (1927) (aff'd on different grounds in *Blair v. Union Savings Bank*, 119 Ohio St. 142, 162 N. E. 423 (1928)), which was decided after the statutes here involved were passed, on facts arising prior to the enactment of said statutes, the question was treated as an open one in Ohio, but the preferred claim was upheld. This is the only Ohio decision before the statute on the point and the decisions of other States are nearly equally divided. See cases cited in 31 MICH. L. REV. 843 (1933). See also, for interpretation of similar statutes, *People ex rel. Nelson v. Dennhardt*, 354 Ill. 450, 188 N. E. 464 (1933); *Brown v. Fors*, 266 Mich. 150, 253 N. W. 249 (1934).

For cases denying preference where a depositor has purchased a bank draft or cashier's check for cash, see note, 31 MICH. L. REV. 844, notes 6, 7 (1933);

construed strictly, and recognized the proper purpose of the statute, when read in conjunction with three other sections passed at the same time⁵ and applying to the same situation, i. e., the collection and remittance problem. Although dictum, this clear and positive expression of the court's views has undoubtedly changed the law of Ohio from the decision in *Fulton v. Baker-Toledo Co.*,⁶ and has correctly interpreted the statute in question.

S. G. W.

State ex rel. Sorensen v. South Omaha State Bank, (Neb. 1934) 252 N. W. 476;
Grosner v. First Nat. Bank of Detroit, (D. C. E. D. Mich. 1933) 5 F. Supp. 468.

⁵ 4 Ohio Gen. Code (Page Anno. 1931), secs. 711-714.

⁶ 125 Ohio St. 518, 182 N. E. 513 (1932).