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Note and Comment

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NOTE AND COMMENT.

DEATH OF GUSTAV STEIN.—Mr. Gustav Stein, one of the members of the first Board of Editorial Assistants of this Review, and later an instructor in this Law School, died in Denver on November 15th. As a student of marked ability and thoroughness, Mr. Stein made a record while in the Law School which resulted in his appointment to an instructorship a year after his graduation. As a member of the teaching staff, his record was a brilliant fulfillment of his earlier promise, and he had, during his second year of teaching, been already promoted to the rank of assistant professor, when his strength proved unequal to the task imposed by his ambition and industry, and he was ordered west in the hope that his health might be benefited. His brave and cheerful struggle for renewed health and strength has now ended; the news of his death will be heard with sorrow by his associates in the Law School, who knew and valued his fine character and ability.

"UNENFORCIBLE TRUSTS" MADE ENFORCIBLE BY STATUTE.—Since the article on "Unenforcible Trusts and the Rule Against Perpetuities" which appeared in the November number of this Review (10 MICH. L. REV. 31) was written,

a case has been decided by the Michigan Supreme Court, and a statute has been passed by the Michigan legislature, which bear upon part of the discussion in the article. In *Lounsbury, Administrator* v. *Trustees of Square Lake Burial Association,* 129 N. W. 36, one Noah Tyler had made the following bequest: "I give and bequeath the sum of one hundred dollars to the Trustees of the Square Lake Cemetery in the Town of Orion, Oakland County and State of Michigan, as a perpetual fund to be kept at interest by said Trustees and the interest used to take care of the graves on my lot in said cemetery and keep the said lot in order." The court held that the provision was void because in violation of the statute against perpetuities. It was apparently in order to destroy the effect of this decision that the Michigan legislature later amended the Charities Act of 1907 so as to make such a bequest as the one in the Lounsbury case valid and enforcible. The Michigan statute thus amended now reads as follows: "No gift, grant, bequest or devise to religious, educational, charitable or benevolent uses, *or for the purpose of providing for the care or maintenance of any part of any cemetery, public or private, or anything therein contained,* which shall in other respects be valid under the laws of this State, shall be invalid by reason of the indefiniteness or uncertainty of the persons designated as the beneficiaries thereunder in the instrument creating the same, nor by reason of the same contravening any statute or rule against perpetuities."

The words placed in italics above show the addition made by the 1911 amendment. G. L. C.

WHAT BECOMES OF THE REAL PROPERTY OF AN ELEEMOSYNARY CORPORATION UPON ITS DISSOLUTION?—The South Carolina Supreme Court recently has been called upon to decide the question of the reversion of real property in the event of corporate dissolution. The case, *McAlhany* v. *Murray et al.,* 71 S. E. 1025, was between the representatives of certain persons who were members of an association known as the "Sons of Temperance" at the time its charter expired, and the heirs of one who had conveyed a lot of land to the association. The purpose of the association was admitted to be "the promotion of temperance by corporate organization." The heirs resisted the claims of these representatives to the land in question, on the ground that, by reason of the dissolution of the corporation some years previous, the land had reverted to the heirs of the grantor. The court held that the representatives were entitled to the property to the exclusion of the heirs.

The case presents difficulties, both because of the confusing nature of the court's opinion, and because of the lack of clearly defined and well ordered adjudication of the questions involved. Throughout his opinion, WOODS, J., suffers from an evident lack of clearness, both in the matter of classification of the corporation in the suit, and in the matter of definition of the moving grounds of his decision. In his statement of the case, and in his citations of rules and cases, he throughout fails to distinguish between charitable corporations and corporations for the benefit of their members; he flatly denies material differences between business and eleemosynary corporations, as far as

concerns the matter before the court, and seems to apply the rule which he conceives to be a proper one in the case of both of these, to a corporation which he has declared to be not concerned with public charities. The facts do not fully appear. The record shows that the purpose of the association was not stated in its charter, "although it was admitted that it was the promotion of temperance by corporate organization." The court asserts that it was "a temperance society or lodge, conducted by its own members, and acquiring property by their contributions for corporate uses." It was declared, "therefore," to be a "benevolent and social, as distinguished from a trading or business, corporation." Yet the court proceeds to adduce reasons why the common law rule of reversion should be applied, or not applied, to an eleemosynary corporation, precisely as it is applied or not applied to a business corporation, and upon this reasoning seems to rest its decision.

The lines of distinction between benevolent or charitable, and beneficial or mutual benefit associations are clearly drawn, both as to the constituent elements of each, and as to the law respecting them. See 3 AM. AND ENG. ENCYC., Ed. 2, p. 1045, Note 1. Benefit societies are said to have a dual nature; a social or fraternal side, and a business side—the payment of sick or death benefits from contributions or assessments of the members. 1 BACON, BEN. SOC., § 1, 3. The tests of an eleemosynary corporation are that it shall be "founded on donations" and have "for its purpose the accomplishment of a charity, by the distribution of alms," *Am. Asylum* v. *Phoenix Bank*, 4 Conn. 172, 10 Am. Dec. 112; that it shall yield its members no money returns, and that it shall have no corporate stock. *Macdonald* v. *Mass. Gen'l Hosp.*, 120 Mass. 432. The court here seems to class the association in question with "Masons, Odd Fellows," etc. These are known as "charitable fraternities," BACON, BEN. SOC., § 12, and have been held not to be associations for charitable uses, *Babb* v. *Reed*, 5 Rawle 151, 28 Am. Dec. 650. It is true generally that corporations organized for the benefit of their members are not eleemosynary or charitable. 1 THOMP. CORP., § 18. On the other hand it has been more than once held that the promotion of the cause of "temperance" is within the range of objects to be regarded as charitable, *Haines* v. *Allen*, 78 Ind. 100; *Saltonstall* v. *Sanders*, 11 Allen 446; *Harrington* v. *Pier*, 105 Wis. 485, and we assume there was ground for the court's seeming inference that the rules governing charitable corporations might be applied in this case. What are the rules which have been, and should be, applied, with reference to the reversion of real property when an eleemosynary corporation is dissolved?

It would seem that in attempting to answer this question one should go back to COKE'S famous, and often quoted, statement of the common law as applied to all corporations, as a starting point. As found in COKE ON LITTLETON, 13 b. and in the case of *Dean and Canons of Windsor, etc.*, Godb. 211, it is "that the Donor shall have back the Lands again, for the same is a condition in Law annexed to the Gift;" "and not the lord by escheat." To the same effect are 1 BLACK, COM., Ed. 4, 484, 2 KYD, CORP., 516, 2 KENT, COM., Ed. 13, p. 307, GRANT, CORP., 303, 2 MORAWETZ, CORP., § 1031, etc., 5 THOMP., CORP., Ed. 2, § 6551, and cases generally, see 5 THOMP., CORP., Ed. 2, § 6551, Note 3.

Under this common law rule, the estate created by the gift or grant of

land to a corporation appears to be difficult of classification. In the view of Lord COKE, account being taken of a corporation's recognized ability to take the fee of land, subject to the statutes of mortmain, 2 TIFFANY, REAL PROP., § 504; 1 KYD, CORP., 78, 79, and COKE's use of the words "fee simple absolute," and "the law doth annex the condition," Co. LIT, 13 b., it would seem to possess the characteristics of a fee upon special or conditional limitation, commonly called a "base," "qualified," or "determinable" fee, 1 TIFFANY, REAL PROP., § § 78, 81; GRAY ON PERP., § 32; 2 BLACK, COM., 109, 110, 155, with its incident of "possibility of reverter" in the grantor. 1 TIFFANY, REAL PROP., § 81. This has in fact been said to be COKE's view. *Wilson* v. *Leary*, 120 N. C. 90, 94, 58 Am. St. Rep. 778. BLACKSTONE, on the other hand, while quoting from the rule laid down by COKE, appears to classify it as in the nature of a life estate, with a reversion in the grantor. "The grant is indeed, only during the life of the corporation, which may endure forever, but when that life is terminated by the dissolution of the body politic, the grantor takes it back by reversion, as in the case of every other grant for life." 2 BLACK, COM., 175; 1 TIFFANY, REAL PROP., § 113; KYD does not raise the point, 2 KYD., CORP., 516, neither does KENT, 2 KENT, COM., 307, nor MORAWETZ, 2 MORAWETZ, CORP., § 1031. ANGELL AND AMES quote COKE and BLACKSTONE as of a piece, and do not distinguish their explanations of the common law rule. ANG. & AMES, CORP., 105. Some courts have taken the view that a grant of land to a corporation does create a "base" or "determinable" fee with "possibility of reverter." *Davis* v. *Memphis, etc. R .Co.*, 87 Ala. 637, citing *State* v. *Brown*, 27 N. J. L. 13. In *Hastings Corp.* v. *Letton* [1908] K. B. 378, the "life estate" analogy of BLACKSTONE is strongly upheld. In *Nicoll* v. *N. Y., etc. Ry. Co.*, 12 Barb. 460, it was declared that corporations have a fee simple for purposes of alienation, but only a determinable fee for purposes of enjoyment because the corporation may defeat the possibility of reverter by an alienation in fee. See also *Wilson* v. *Leary*, *supra*. TIFFANY in his work on Real Property appears to dispose of the matter, and to recognize the somewhat anomalous character of the rights created under the doctrine, by naming as one of the three "rights of reverter" the right of reverter on the dissolution of a corporation as a right different from the possibility of reverter after a determinable fee, or a right by way of escheat. 1 TIFFANY, REAL PROP., § § 116, 117.

The rule is obviously one of tenure, and of the strict legal title. Conceding it to be valid, its application must be limited by these facts. Prof. GRAY in his work on Perpetuities declares that since the passage of the Statute of *Quia Emptores* in England, where there is still tenure (1 BOUVIER, DICT., 134), no possibility of reverter after a determinable fee has been sustained, GRAY, PERPETUITIES, § 32, on the ground that the statute having put an end to tenure between the feoffer of an estate in fee simple, and the feoffee, destroyed such reversionary rights. (Id., § 31. See 1 TIFFANY, REAL PROP., § 81.) By "theory and policy alike," he declares, the same rule should apply in States in this country where tenure exists and the Statute is in force (Id., § 39, 41. See also Id., § § 22-28), and in those in which there is no tenure, as well, since in these, if land is held at all, it can be held of none but the State. (Id.., §

39, 28). In South Carolina (Id., § 27), and possibly Pennsylvania (Id., § 26, 28), where there is tenure, but the Statute is not in force, it would seem that a different rule might apply. Other writers hold with GRAY on principle, (See 1 TIFFANY, REAL PROP., § 81), but the existence of such an estate has been recognized in this country in a considerable number of decisions (Id.), and GRAY himself admits some dissent from his doctrine. GRAY, PERPETUITIES, § 39.

But whatever be the view taken of the nature of the estate created by the application of the common law rule, or of the validity of determinable fees, or of the bearing of this question upon the corporate estate under discussion, it seems to be true that the doctrine enunciated by COKE has never, as a rule of strict legal title, been denied by any court before which the issue was directly raised, unless HARGRAVE'S note to Co. Lit., 13 b. be considered authority as to the final holding in *Johnson* v. *Norway*, Winch 37. See 2 HARV. L. REV., 164, Note 4. Curious as it may seem, but one case has ever been decided in accordance with it, (*Mott.* v. *Danville Seminary*, 129 Ill. 403 21 N. E. 927. See GRAY, PERPETUITIES, 51a), or possibly two (*Late Corporations, etc.* v. *United States*, 136 U. S. 1. See 1 TIFFANY, REAL PROP., § 116, Note 22a). The rule has been "vigorously questioned" by GRAY in his work on Perpetuities, § 46-51. He declares that it rests solely on a *dictum* of a judge in the fifteenth century, CHOKE, J., in the *Prior of Spalding's Case* (c) 7 Edw. IV. 10-12 (1467) cited by GRAY, PERPETUITIES, § 47, and that it is contrary to the only English case. (*Johnson* v. *Norway, supra.*) Any extended reading of cases, however, will impress one with the fact that it was quoted by at least the earlier "judges and text-writers as accurate," 2 HARV. L. REV., 164. See *State Bank* v. *State*, 1 Blackf., 267, 285, 12 Am. Dec. 234. GRAY himself says that "it has often been referred to as law," and cites to this statement an impressive list of cases and texts. GRAY, PERPETUITIES, § 51. GRAY'S conclusion is that the land would escheat, relying on *Johnson* v. *Norway, supra*, for his authority for this view. GRAY passes from his discussion of the case in 7 Edw. IV. supra, which involved a "discussion of frankalmoigne tenure" to conclude that since "in early times conveyances to corporations were generally gifts to ecclesiastical corporations * * * in frankalmoigne, and upon the dissolution of a corporation land held by it in frankalmoigne escheated to the donor" who was also the lord, a confusion as to what becomes of land upon the dissolution of non-ecclesiastical corporations arose. But it is pointed out with good reason by Prof. WILLISTON in 2 HARV. L. REV., 164, that the rule may have been based by analogy on the civil law, from which the early English law of corporations is almost wholly borrowed. However this may be, COKE wrote some three hundred and fifty years (1552-1634) after the passage of the Statute of *Quia Emptores* (1289), and it seems that, to quote Prof. WILLISTON "Lord COKE is not likely to have made such a palpable blunder in regard to a question of tenure." 2 HARV. L. REV., 163. The English rule seems to be settled, and in accordance with the common law, and as affecting all corporations. 8 HALSBURY'S LAWS OF ENGLAND, §§ 373, 875, and cases cited; 5 HALSBURY'S LAWS OF ENGLAND, § 974. In the recent case of *Hastings Corporation* v. *Letton* [1908] 1 K. B. 378, it was emphatically declared to apply to all

estates or interest in lands, whether for years or in fee, and was held to apply in the case of a leasehold interest.

Thus much being said for the doctrine as one of the strict legal title, the statement should at once be modified by one of the application of the rule in equity. More fully stated, the common law rule applying to dissolved corporations, and the reason for the same, is as follows: Upon dissolution a corporation in legal contemplation has not only lost its franchises, it has wholly ceased to exist. Not in being, it cannot sue or be sued, debts to and from it are extinguished; a nullity, its erstwhile personal property escheats to the king, or the people, as *bona vacantia;* its realty reverts. 1 BLACKSTONE, COM., 484, 2 MORAWETZ, CORP., 1031, 2 KYD, CORP., *State Bank* v. *State, supra,* etc. This rule was obviously unjust to the equitable rights of creditors and of shareholders in modern business and moneyed corporations. 2 MORAWETZ, CORP., 1032. The reasons are dwelt upon at length in *State* v. *Adams,* 44 Mo. 570 and other cases. Prof. WILLISTON in his interesting and illuminating article in 2 HARV. L. REV., 105ff, 150ff, points out how the older writers recognized no distinctions in corporations, so far as the rules of law applied to them were concerned, and that although trading corporations early developed,—the East India Company was chartered in 1600 under a modified form of joint stock arrangement,—that they were, in common with all other corporations, more or less public in their nature exercising certain governmental powers, and that the changes in their character which caused the application of different rules of law to them came only gradually. The modern business corporation did not appear in this country until late in the 18th century. It is not, perhaps, so surprising, under these circumstances, to find that the harsh rule of the common law was applied unmodified in *State Bank* v. *State, supra,* in 1823, and in *Commercial Bank* v. *Lockwood,* 2 Har. (Del.) 14, in 1841. But by 1855, in the leading case of *Bacon* v. *Robertson,* 18 How. 480, 489, in upholding a Mississippi statute, the Supreme Court of the United States established the rule that equity jurisdiction may be successfully invoked to take charge of the assets of a dissolved moneyed (banking) corporation, to apply such assets (according to the direction of the statute), to the satisfaction of creditors, and to distribute any surplus among stockholders according to their respective holdings. The rule seems never to have affected strict legal title, as it has been applied where a State statute has in effect abrogated the common law rule, by providing for trustees to take charge of assets of dissolved corporations for the benefit of creditors and stockholders, *McCoy* v *Farmer,* 65 Mo. 244, *People* v. *O'Brien,* 111 N. Y. 1-66, S. C. 45 Hun. 519, 7 Am. St. Rep. 684, 2 WILGUS CAS. 1426, although by *dictum,* a court of equity would have the undoubted right, in a proper proceeding, and in the absence of statute, to appoint a receiver to administer the property. *Havemeyer* v. *Superior Court,* 84 Cal. 327, 24 Pac. 121, 18 Am. St. 192, 10 L. R. A. 627. The reason which lies at the bottom of the equity rule is clear. "The fact that the legal title of a corporation to property held by it becomes extinguished by a dissolution, is no reason why the beneficial owners should lose their rights * * * a court of chancery will protect and enforce the rights of the beneficiaries into whosever hands the property may

fall. * * * Equity will always protect the rights of a cestui que trust." 2 MORAWETZ, CORP., 1031.

There would seem to be no persuasive reason why, in a court of equity, the property of a dissolved eleemosynary corporation might not also be administered without regard to the strict legal title. The property of a charitable corporation is, by the very definition of the corporation (*Dartmouth College* v. *Woodward*, 4 Wheat., 518, *McDonald* v. *Mass. Gen'l Hosp., supra*), in the nature of a charitable trust, and it would seem that the rules of charitable trusts should apply. This view would seem to be borne out by the common law rule relative to the visitation of eleemosynary corporations see 2 KYD, CORP., 181ff. In accordance with this view are the rules stated, and the cases in their support in 6 CYC., 974-977. But several cases in this country have held to the common law rule or modifications of the same.

In *Mott.* v. *Danville Seminary, supra,* the land of a dissolved institution of learning reverted absolutely, the court holding that the doctrine of reverter applied, even in the view of the court of equity. See also same case, 136 Ill. 403, 28 N. E. 54.

In *Late Corporations* v. *U. S., supra,* where, in one view of the case at least, land reverted, on the dissolution of a charitable corporation, to the United States as its grantor, the property was disposed of under the equitable doctrine of *cy pres.*

In *People* v. *Trustees,* 36 Cal. 166, the common law doctrine was held not to apply in the case of the dissolution of a corporation organized for literary purposes, to land acquired by purchase, there being no stockholders, and creditors being provided for. By *dictum* in the case the common law rule was held to apply to land donated to the corporation.

In *Acklin* v. *Paschal,* 48 Tex. 147, lands reverted from a dissolved educational corporation institute, in accordance with the rule laid down by KENT, *supra,* as the common law rule, the court holding that if there had been creditors, which there were not, the lands would have been subject to the claims of such, or of other grounds of defense established by the parties defendant.

The facts are not clear, but it is difficult to understand how, in the case under discussion, the South Carolina Court held that the realty in question reverted to representatives of members of the corporation. There are cases holding to the opposite. See 6 CYC., p. 977, and cases cited in note.

W. W. M.

CROSSED CHECKS IN ENGLAND, AND AN AMERICAN ANALOGY.—The practice of crossing checks, that is, of stamping or writing across the face of the check some direction as to its payment, was in vogue among the English merchants and bankers earlier than 1850. It was said in *Bellamy* v. *Marjoribanks,* 7 Exch. 389, to originate in the clearing house. The clerks of the different bankers were accustomed to write across the checks the names of their employers in order to enable the clearing house clerks to make up the accounts. It is obvious that this was not intended to produce any other effect on the check than to enable the clearing house clerks to trace the banker from whom it came. It had nothing to do with the negotiability of

the instrument as, at the time when the crossing was done, the checks were in the course of payment or presentation for payment, and all their negotiability was at an end. It afterwards became a common practice among the English merchants and bankers to cross checks, which were not intended to go through the clearing house at all, with the name of the banker or with the words "& Co." A check is generally crossed by writing the words "and company" between two parallel transverse lines, or by simply drawing two parallel transverse lines across the check.

It was held in *Bellamy* v. *Marjoribanks,* 7 Exch. 389 and *Carlon* v. *Ireland,* 5 El. & Bl. 765, that the negotiability of a check was not in any way affected by crossing. In *Carlon* v. *Ireland,* an action was brought for the conversion of a crossed check against a person who had cashed it for the clerk of the plaintiff, the payee of the check, the clerk being intrusted with it to hand to the bankers of the plaintiff, and the court held that the proper question for the jury was, whether the defendant took the check *bona fide* and for value. In other words it was held that an individual who received a crossed check *bona fide* and gave value for it, was entitled to retain the amount received through his bankers from the bankers on whom it was drawn.

The crossing of a check was made for the protection and safeguard of the true owner in case payment is made to a wrong person. When a check is crossed, bankers generally refuse to pay it to any one except a banker. If they pay it to a person other than a banker, they pay it at their peril in case the person to whom payment is made is not entitled to receive it. The object of the crossing is to secure the payment to a banker so that it may be easily traced for whose use the money is received. Suppose A, a customer of B bank draws and crosses a check intending to pay it to C to whom he is indebted, and before handing it over to C it is stolen from him. If the check, so stolen, is not presented through a banker, according to usage it would not be paid. If the banker disregards the custom and pays the check to a private individual, he would not be able to charge his customer with the payment, if the person actually presenting it is not the lawful holder of the check. As a rule in England no prudent banker will pay a crossed check otherwise than to a banker unless he is fully satisfied as to the title of the party presenting it to receive payment.

The first statute recognizing crossings is the 19 & 20 Vict. c. 25. Before the statute it was said according to the cases that the effect of crossing a check with the name of a banker was only a caution or warning to the drawees that care must be used in paying it to a person other than the banker. DANIEL, NEG. INST., 1585a. It did not limit the authority of the drawee to paying the party or firm whose name was written across it. However, if he paid it to another person, that circumstance would be strong evidence of negligence in an action against him. *Stewart* v. *Lee,* 1 Moo. & M. 101 (22 E. C. L.) The statute was passed for the purpose of enabling the drawers or holders of a check effectually to direct the payment of the same only to or through some banker. In 1857 the question whether the crossing formed an integral part of the check came before the court, and it was decided that it did not. *Simmons* v. *Taylor,* 2 C. B. (N. S.) 528, 4 C. B.

(N. S.) 463, 27 L. J. C. P. 45, 248. The facts in that case are as follows: P drew upon the London Joint Stock Bank a check for £126, payable to "George Master, Esq.," crossed it in the usual way by writing across it "& Co." between two parallel lines, and enclosed the check so crossed in an envelope addressed to George Master. Through incorrect address it never reached Master. A stranger presented it to the bank for payment, and it was paid as an ordinary check, there being then nothing upon the face of it to indicate that it was a crossed check, the lines and the words "& Co." having been obliterated from it so as to leave no trace. The court held that the statute, 19 & 20 Vict. c. 25, which made a crossed check "payable only to or through a banker," applied to the state of the instrument at the time of its presentment; and therefore the banker upon whom a check was drawn was justified in paying otherwise than through a banker, if, when presented, it did not bear any crossing on its face. It was held that the crossing formed no part of the check itself, and consequently its erasure did not amount to a forgery. Then the statute, 21 & 22 Vict. c. 79, was enacted in order to make crossing a material part of the check. It provides against obliteration of the crossing. In 1875 it was decided in *Smith* v. *Union Bank*, 1 Q. B. D. 31, that these statutes confirming the usage of crossing checks did not at all interfere with their negotiability. In that case a check payable to bearer, and crossed to the London and County Bank was stolen. It came into the hands of a holder in due course, who obtained payment through the London and Westminster Bank, notwithstanding the crossing. The court held that the true owner had no remedy against the paying bankers, because the negotiability of the check was not affected by crossing. To meet this difficulty the Crossed Check Act, 39 & 40 Vict. c. 81, was passed in 1876. It gave a remedy to the true owner of the crossed check if it was paid contrary to the crossing. It also repealed the previous statutes. The subject of crossed checks is now regulated by sections 76 to 81 of the Bills of Exchange Act of 1882, which repeals the Act of 1876, but substantially reproduces its provisions.

In this country the bank should not pay the check drawn upon it except to the actual payee, or to his order; and if it mistakes the payee's identity when the check is unindorsed, it is responsible. *Dodge* v. *National Exchange Bank*, 30 Ohio St. 1; *Risley* v. *Phoenix Bank*, 11 Hun 484; *Shipman* v. *Bank of the State of New York*, 126 N. Y. 318, 27 N. E. 371, 22 Am. St. Rep. 821; DANIEL, NEG. INST. § 1618. In England the bank is not liable for mistaking the payee's identity. It is protected by the 19th section of the 16 & 17 Vict. c. 59 which provides "that any draft or order drawn upon a banker for a sum of money payable to order on demand which shall, when presented for payment, purport to be endorsed by the person to whom the same shall be drawn payable, shall be a sufficient authority to such banker to pay the amount of such draft or order to the bearer thereof; and it shall not be incumbent on such banker to prove that such endorsement, or any subsequent endorsement, was made by or under the direction or authority of the person to whom the said draft or order was or is made payable either by the drawer or any indorser thereof." The protection which the law in this country gives to the real owner of the check is secured in England by crossing the check. Under

the statute, 16 & 17 Vict. c. 59, § 19, a banker is not liable for paying on a forged instrument, but if the check is crossed, the payee can recover from the bank if his signature is forged notwithstanding this statute. The bank can debit the drawer's account with the amount of the check which it pays although the payee's indorsement is forged, but he cannot do so if the check is crossed, and the bank pays it in contravention of the crossing. CHALMER'S BILLS OF EXCHANGE, Ed. 5, p. 209, § 60.

The practice of crossing checks does not exist in this country. It is interesting to note the case of *Commercial National Bank of Charlotte* v. *First National Bank of Gastonia,* 118 N. C. 783, because it decided a question which bears some resemblance to the usage of crossing checks. In that case D in order to prevent his business rival, Gastonia Banking Co., from ascertaining the extent of his business, stamped the following words on his check: "This check positively will not be paid to the Gastonia Cotton Manufacturing Co., the Gastonia Banking Co., or any of their agents." The court held that such restriction was valid and binding on the holder. In both this case and the case of crossed checks the mode of payment is restricted, but they differ in that a crossed check is made payable only to or through some banker, while the principle announced in this case enables the drawer of a check to prevent certain persons from receiving payment of his check. If a person is allowed to forbid payment of his check to a certain person, it seems very logical that he should also be permitted to make his check payable only to or through some quarter of known respectability and credit as in the case of a crossed check. To the writer's knowledge no such case has been found in this country. However, it will be noticed that the object sought to be attained in *Commercial National Bank of Charlotte* v. *First National Bank of Gastonia, supra,* is entirely different from that of crossing a check.

A. Z. S.