Is a Bank Check an Assignment Pro Tanto of the Fund or Deposit?

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Recommended Citation
Aigler, Ralph W. "Is a Bank Check an Assignment Pro Tanto of the Fund or Deposit?" Mich. L. Rev. 10 (1912): 395-6.
Is a Bank Check an Assignment pro Tanto of the Fund on Deposit?

—Before the Negotiable Instruments Law there was a clear conflict of authority as to whether a check for a portion of the account to the credit of the drawer was an assignment pro tanto of the fund. The grounds of these decisions have been so well stated and so thoroughly discussed that it would be idle to repeat them here. See Zane, Banks and Banking, § 146 et seq.; Daniel, Negotiable Instruments, § 1635 et seq.; Morse, Banks and Banking, § 450 et seq.; 2 Randoph, Commercial Paper, § 643 et seq. In the following cases it was held that the check did not operate as an assignment:


Munn v. Burch, 25 III. 21; Brown v. Schinte, 202 Ill. 509; Kuhnes v. Cahill, 128 Iowa 594, 104 N. W. 1025; Blades v. Bank, 101 Ky. 163; Gordon v. Muchler, 34 La. Ann. 604; Fonner v. Smith, 31 Neb. 107; Simmons v. Bank, 41 S. C. 177; Raesser v. Bank, 112 Wis. 591. In Illinois, Iowa, Kentucky, Nebraska and Wisconsin, since the decisions in the above cited cases, the Negotiable Instruments Law has been enacted, by express provision of which a check shall not operate as an assignment of the fund. Thus it seems that until a very short time ago it was only in South Carolina and Louisiana that a check operated as an assignment, and in Gordon v. Muchler, supra, the Louisiana court pointed out that on this point their law differed from the common law.

In Wasgatt v. First National Bank of Blue Earth, decided January 26, 1912, (134 N. W. 224) the supreme court of Minnesota held that a check on a bank in which the drawer has funds subject to check is an assignment of such funds of the drawer to the amount of the check. The defendant bank on which the check was drawn refused to pay same for the reason that the drawer had died before presentment. The court, by Bunn, J., said: "The record presents squarely the mooted question whether a check on a bank, given for only a part of the funds of the drawer on deposit, is an assignment pro tanto as between the drawer and the payee, and as between the payee and the bank when the check is presented for payment. This question is an open one in this state."

The uniform Negotiable Instruments Law, which is not in force in Minnesota, has been adopted in 34 states and territories. For years business men and the bar generally have urged uniformity in the law of commercial paper...
in the several states, with the result, as above stated, that in over two-thirds of the states and territories there is now in force the so-called Negotiable Instruments Law. In view of this effort for uniformity the decision in the principal case seems especially unfortunate. The court conceded that the matter was with them an open question and that there were the two lines of authority. As pointed out above the very great weight of authority even in the absence of statutory provision is opposed to the Minnesota court’s conclusion. Not only is the numerical weight of authority opposed, but the best reason, it is believed, is with the cases holding the check not an assignment. Here was an opportunity for the court to manifest a broad minded appreciation of the situation and the effort of years for uniformity in this branch of the law. The court’s inability to look beyond the borders of its own state is very much to be regretted.  

R. W. A.