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BANKS AND BANKING - GUARANTY OF INDORSEMENTS - RECOVERY BY PAYER

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BANKS AND BANKING — GUARANTY OF INDORSEMENTS — RECOVERY BY PAYER — Relying on fraudulently prepared documents purporting to authorize the president to borrow money, *P* Bank loaned $100,000, taking the promissory

note of the state university executed by such president. The amount of the loan was advanced by means of a cashier's check payable to the order of the university. This check, indorsed by the president without authority, was taken by *D* Bank and the amount thereof added to the credit balance of the university in a checking account carried in that bank. Through the clearing house *P* Bank paid *D* Bank the amount of the check, which bore the customary "Indorsements Guaranteed" stamp. The day after the deposit, *D* Bank permitted the president, again without authority from his institution, to withdraw from the account the amount of the previous day's deposit. The funds so withdrawn were misappropriated by the president. The university repudiated the entire transaction, and *P* Bank sued *D* Bank for breach of the guaranty of prior indorsements, thus endeavoring to make good its loss due to the refusal by the university to pay the note on which the money was advanced. *Held*, reversing the trial court, that *P* Bank should recover. *Hibernia Nat. Bank v. Nat. Bank of Commerce*, (La. 1943) 16 So. (2d) 352.

If the university had elected not to repudiate the loan and the deposit with *D* Bank, its right to recover from that bank the amount involved in this litigation would seem clear, for the report of the case shows a lack of authority in the president to make withdrawals. This would not be one of those cases in which it is necessary to show knowledge on the part of the bank as to the intended diversion by the fiduciary;[1] the liability of the bank would rest upon payments made without authority. The decision in the principal case, then, throws the loss upon the party on which it would rest if developments had taken the other course. The result might well have been the same, at least in a jurisdiction applying common-law principles, if *P* Bank had chosen to sue *D* Bank to recover money paid by mistake, the mistake being as to ownership. Indeed that quasi contractual action generally suffices to afford relief to the paying bank in such situations, without reference to any guaranty of indorsements. This, however, does not mean that a contractual guaranty of that character is never worth while. Certainly the nature of the action is different, which in some states may be significant, and the statute of limitations may well be different. Moreover, the mistake theory involves an equitable action, though legal in form, and conceivably equitable factors might afford a defense in such action when in a straight contractual action they may not be available. Indorsements in the chain of title, of course, import guaranties of the genuineness of prior indorsements which effect transfers of ownership, but an indorsement by the presenter to the drawee or other payer, not being a title transaction, has no such effect. This indicates an additional use for express guaranties of prior indorsements—to cover irregular or anomalous indorsements.

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[1] See "Trusts—Participation by Banks in Diversion of Trust Funds," 42 MICH. L. REV. 694 (1944).