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Banks—Holder for Value—Collection Agreement.—Pike v. First Nat'l Bank.

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petition is unsound cannot be questioned. Thus the interpretation of the Bankruptcy Act requiring an objectively substantial basis for application seems appropriate to further the protection provided by the Act.

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Banks—Holder for Value—Collection Agreement.—***Pike v. First Nat'l Bank.***[1]—The plaintiff collecting bank sued the drawer on two checks totaling $2,300.00, drawn in payment of two automobiles sold to the drawer. The payee, Auto Auction, endorsed the checks to J. C. Andrews Motor Co., from whom the cars had been received for sale. Andrews in turn endorsed them "for deposit only" and deposited them to his account with the plaintiff bank. Subsequently on the day of deposit, he drew against his account leaving a balance of only $66.44 therein. Five days later defendant drawer, learning of an outstanding lien against the automobiles, effectively stopped payment on the checks. In the lower court, a verdict was directed in favor of the bank, and the drawer appealed. The Court of Appeals of Georgia affirmed, holding: regardless of whether initially an express deposit agreement between depositor and the collecting bank created merely a principal agent relation, where the depositor, pursuant to the bank's custom, withdrew substantially the entire proceeds of deposited checks prior to collection and before notice of their infirmity, the bank thereby gave value and became a holder in due course as to the amount withdrawn with the right to enforce payment against the drawer.

The question presented by this case was whether the collecting bank was a holder[2] for value[3] with respect to the checks or only a collection agent for the depositor, in the course of which relation it merely loaned its depositor the value of the checks. If the bank were the latter, any defense of the drawer, such as failure of consideration as in this case, good against the depositor could be successfully urged in a suit brought by the depositor's agent, the collecting bank.[4] As a holder for value, however, the bank would be free from defenses that would be available to the prior parties among themselves.[5]

It is generally held that a check deposited merely for collection does not transfer title, for the collecting bank undertakes to act only as an agent for collection and not as a purchaser.[6] Even when the check is credited to the account of the depositor, but there is no right of withdrawal nor is any money advanced, most American courts hold that the check is still presumed to have been deposited for collection only, and the credit made in anticipa-

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[1] 99 Ga. App. 598, 109 S.E.2d 620 (2d Div. 1959).

[2] NIL § 52; UCC § 3-302(1)(4).

[3] NIL § 25, 26, 27, 54; UCC § 3-303(a).

[4] NIL §§ 28, 58; UCC § 3-306(b)(c).

[5] NIL § 57; UCC § 3-305.

[6] Freeman v. Exchange Bank, 87 Ga. 45, 13 S.E. 160 (1891); Fourth Nat'l Bank v. Mayer, 89 Ga. 108, 14 S.E. 891 (1892).

tion of collection is deemed merely provisional. The bank may still cancel the credit or charge back the paper to the customer's account, if it is not paid by the maker. The mere crediting, without more, will not serve to overcome the agency presumption so as to make the bank the owner.[7] But if, in addition, the depositor has the privilege of drawing against the credit in advance of collection, some courts hold that such privilege will transfer title of the paper to the bank, in the absence of an agreement to the contrary.[8] Other cases say that merely an immediate credit with a right of withdrawal overcomes even the effect of a statement in the deposit slip that the bank is only an agent, for that statement yields and is governed by the course of conduct of the parties.[9]

The principal case conforms to the almost universal rule that when a bank permits its depositors to withdraw completely or partially the proceeds of any item deposited, regardless of formal statements on a deposit slip such as that deposits are accepted for collection only, or that the proceeds are credited provisionally, the bank has given value for the paper and is a holder in due course to the extent of the withdrawals.[10] The authorities, however, are not in unison as to whether the bank becomes an owner of the checks to the extent of its advances, or has only a lien on the items to such extent.[11] Since the instant case involved an action brought by the bank against the drawer, and not the depositor, the question of ownership need not have been inquired into by the court,[12] and was not expressly decided. As the only determinative question was whether the bank was a holder for value, the issue of agency would be of importance only if the bank were found to be merely an agent, and not, in addition thereto, a holder for value.[13] Although the court took the position that the deposit of paper to the credit of the depositor under an express agency agreement, gave rise to the presumption of an agency relation, it asserted that such presumption would topple before a contrary agreement between the bank and its depositor. The withdrawal by the depositor from the account was held to be conclusive evidence of an agreement that the bank should be more than a collection agent, the express agency stipulation in the deposit slip being considered merely a device determinative of the respective rights as between

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[7] Nat'l Gold Bank v. McDonald, 51 Cal. 64 (1875); First Nat'l Bank v. Southern Cotton Oil Co., 76 Ga. App. 779, 47 S.E.2d 288 (1st. & 2d Div. 1948); In re State Bank, 56 Minn. 119, 57 N.W. 336 (1894); Cases are collected in Annot., 6 A.L.R. 252 (1920).

[8] Lowrance Motor Co. v. First Nat'l Bank, 238 F.2d 625 (5th Cir. 1957); First Nat'l Bank v. McMillan, 15 Ga. App. 319, 83 S.E. 149 (1914); cf. UCC § 4-208(b).

[9] In re Liquidation of Canal Bank, 181 La. 856, 160 So. 609 (1935).

[10] Lowrance Motor Co. v. First Nat'l Bank, 238 F.2d 625 (5th Cir. 1957); America Fruit Growers, Inc. v. Chase Nat'l Bank, 30 F.2d 936 (5th Cir. 1929); Cases are collected in Annot., 59 A.L.R.2d 1187 (1958); 8 Am. Jur., Bills and Notes, § 442, pp. 191-3.

[11] Cases are collected in Annot., 11 A.L.R. 1043, 1058 (1921); Standard Trust Co. v. Commercial Nat'l Bank, 166 N.C. 112, 81 S.E. 1074 (1914); Balback v. Frelinghuysen, 15 Fed. 675 (C.C.D. N.J., 1883).

[12] NIL § 51; UCC §§ 3-301.

[13] NIL § 52; UCC § 3-302(1)(4); NIL §§ 25, 26, 27, 54; UCC § 3-303(a).

the bank and the depositor and not necessarily conclusive of the status of the paper. The court held the bank was at least a pledgee-type security holder, in addition to being an agent, having to the extent of the debt secured, all the rights of an owner. The instant case is consonant with the provisions of the Bank Collection Code[14] and the holding of the case has been embodied in substance in the Uniform Commercial Code.[15]

When the withdrawal of credit amounts to only a partial portion of the checks deposited, it appears to be the preferable approach to follow the language of the instant case in labelling the bank a pledgee to the extent of the fund advanced, in addition to being an agent, rather than denoting it as an owner of the checks pro tanto. It would clarify the status of the parties and be more consonant with the juridical realities for a court to draw a decision founded on a single owner-pledgee relation encompassing the entire deposit, rather than to dissect the deposit into two entities, the credit retained in the bank and the fund advanced. The latter distinction would necessitate the court considering the same deposit as being held by two owners. A double title concept and a truncated agency relation, subsisting only to the extent of the credit retained, would lend vigor to the view that the law is replete with obscure conceptualisms and not at all concerned with rendering lucid concrete relations in their empiric context.

EDWARD F. HARRINGTON

Brokerage Commissions Under Clayton Act—Seller's Reduction of Prices Through Elimination of its Own Brokers.—*Robinson v. Stanley Home Products.*[1]—Plaintiff was the sales agent of a Pennsylvania firm which manufactured plastic cups. He had previously procured two orders from the defendant, a Massachusetts corporation, when the defendant sought to deal directly with the manufacturer. The manufacturer agreed and plaintiff was later discharged. He claimed that the commission he would have been paid as exclusive agent for the seller was in fact given to the defendant in the form of a reduction in price. It was his contention that this reduction was in violation of § 2(c) of the Clayton Act which forbids the ". . . commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered . . ."[2] Plaintiff alleged that by receiving a reduced price, the defendant was in fact accepting a discount in lieu of a commission, and that he was a person injured by such violation and entitled to recover treble damages under § 4 of the Clayton Act.[3] The plaintiff further alleged that the reduced price was not offered to other customers of the manufacturer and as such is a violation of § 2(a) of the Clayton Act.

[14] § 2.
[15] UCC §§ 4-208. 4-209.

[1] 272 F.2d 601 (1st Cir. 1959).
[2] 49 Stat. 1526 (1936), 15 U.S.C. § 13 (1958).
[3] 49 Stat. 1526 (1936), 15 U.S.C. § 15 (1958).