

4-1-1963

Bailey: Brady on Bank Checks

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Recommended Citation

J E. Collins, *Bailey: Brady on Bank Checks*, 4 B.C.L. Rev. 784 (1963), <http://lawdigitalcommons.bc.edu/bclr/vol4/iss3/28>

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BOOK REVIEWS

Brady on Bank Checks, 3d Edition, Revised and Enlarged. By Henry J. Bailey: Banking Law Journal, Boston, 1962, pp. xiii, 653.

Brady on Bank Checks, first published in 1915, passed into a second edition in 1926, and was thereafter supplemented by bound volumes in 1929 and 1933. Since then it has laid dormant until, almost thirty years later, a third edition has been prepared by Henry J. Bailey, of the New York Bar and an attorney for the American Bankers Association. Much has occurred in the intervening three and a half decades since the last edition. At that time the Bank Collection Code had only recently been formulated and was as yet not adopted by any state legislature. The litigation resulting from the extensive bank failures of the great depression of the thirties was a thing of the unpleasant future. Articles Three and Four of the Uniform Commercial Code were undreamed of. The post-World War II ballooning of credit with the corresponding explosive growth in the use of credit instruments was a development beyond the most far sighted imagination of the generation of the twenties. It is not inappropriate to suggest, consequently, that a legal work that adequately incorporates the legal developments of the last thirty-five years is not so much the work of the original author as it is that of his successor. This then is Bailey on Bank Checks, not Brady.

In one unfortunate respect, however, the old has not given way to the new. The reviews of the second edition contained such comments as: "The book does not purport to discuss the reasons behind the rules and decisions, but confines itself to a short statement of the rules and exceptions, supplementing these liberally with citations,"¹ and "There is little attempt at any critical appreciation of the cases or of the doctrines laid down by them, but looked at simply as an uncritical running account of the holdings of cases it performs its task adequately and clearly."² A criticism of the Third Edition could not be more succinctly stated. Indeed, the treatment of the case of *Price v. Neal* is symptomatic. Rather than any extended discussion of the case, the rule, and the reasons behind it pro and con, the author summarizes the decision, commenting that it has been followed with more or less consistency by the courts in this country. He further observes that the rule is demanded by the necessities of business in these times, and embodies a doctrine found by continuous application to be so workable that "its plainness and certainty should not be obscured by fine judicial discriminations confusing to the lay mind."³ One gathers the impression that the book in its entirety is aimed at keeping the reader free of fine judicial discriminations. As a consequence while it does contain a lucid and simplified (possibly oversimplified) explanation of the basic principles of the law of bank checks, and would be suitable as an indoctrinal tool for young bank employees, or as a background

¹ Hougen, Book Review, 1 Dakota L. Rev. 151 (1927).

² Puttkammer, Book Review, 13 A.B.A.J. 405 (1927).

³ Page 483. This is an observation of Judge Emery in his opinion in the case of *Neal v. Coburn*, 92 Me. 139, 42 Atl. 348, 351 (1898). It is interesting to note that this observation appears in the text of the original 1915 edition of Brady.

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primer for law students sticking their toes for the first time in the somewhat murky waters of negotiable instrument law, it can hardly be said to reach its stated objective "to bring together all of the law affecting this class of commercial paper."⁴

While any hornbook, by its very nature and limitations of size must keep critical case and doctrinal analysis at a minimum, this volume is weaker than most in this regard. A comparison of Brady with the second edition of Britton makes clear the severe limitations of the former both as a sourcebook of original thought in the field or as an effective research tool.⁵

On the affirmative side, the author has gathered together the major cases dealing with bank checks, has touched upon the significant problems raised by the decisions, and has pointed out the salient provisions of the Negotiable Instruments Law, the Bank Collection Code, and the Uniform Commercial Code and Comments. In addition, he has supplemented his lucid commentary with sufficient non-legal materials to indoctrinate the uninitiated in much of the mystique of banking activities, has furnished admirable reference tables by which statutory sections of the three major pieces of legislation in the area can be traced into the text, and has raised some provocative questions arising out of the mechanization of check processing, and particularly the handling of encoded checks by electronic machinery. He has synthesized the law of bank checks into palatable proportions, particularly from the viewpoint of the American Bankers Association.

Undoubtedly Brady would make a most valuable desk book for the junior bank officer, but a less valuable book for a law student, although helpful as a last minute cram aid for a negotiable instruments examination. It is hoped that a senior bank officer would not turn to it to answer his problems, but would rather consult the bank's attorney, and I am sure that the latter would prefer other sources of the law of bank checks.

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Sales and Secured Financing, Cases and Materials. By Calvin W. Corman: Bobbs-Merrill Co., Inc., Indianapolis, 1960, pp. xviii, 759, with Statutory Supplement. \$12.00.

The publishing of law students' study books as "Cases and Materials" rather than as "Cases" is now nearly universal.¹ In examining any such class publication, this reviewer is immediately interested in discovering what is

⁴ Preface, iii.

⁵ It should be observed that there is a tendency, in the footnotes of this work, to make no reference to the date of law review articles (e.g., footnote 6, page 4) and on occasion to published books as well. Thus references to Britton on Bills and Notes, e.g. footnote 7, page 4, are not to the current second edition of that work, but to the 1943 edition.

¹ An early example in the law of Sales is Llewellyn, *Cases and Materials on the Law of Sales* (1930). Cf. Frankfurter and Katz, *Cases and Other Authorities on Federal Jurisdiction and Procedure* (1931). But see Britton, *Cases on the Law of Bills and Notes* (5th ed. 1961).