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to be excluded from the grant of section 1331, in that they arise under the laws³¹ of the United States.³²

The *Romero* case firmly settles the controversy between the circuits by overruling the contentions set forth by the First Circuit in *Doucette v. Vincent*.³³ while supporting the position taken by the Second and Third Circuits in the *Paduano*³⁴ and *Jordine*³⁵ cases. In so doing, the question, of whether a federal district court has the jurisdiction in maritime matters to hear a claim on its law side, in the absence of diversity of citizenship, is definitely answered in the negative. This position reaffirms a long period of judicial acceptance of the distinction between general maritime law and that of cases "arising under" and is clearly consistent with an understanding of the historical background of admiralty jurisdiction.

DAVID P. KARCHER

WORTHLESS CHECK STATUTE — PENALTY PROVISION

Petitioner sought release from the state prison by writ of habeas corpus on the ground that the worthless check statute under which he was convicted of a felony set forth a misdemeanor at most. The statute analogizes the punishment for uttering a bad check to that of larceny, the grade of which offense, whether grand (felony) or petit (misdemeanor), is established *according to the value of the property stolen*. But the information filed against petitioner failed to charge that he had received value for his check. *Held*, issuance of a bad check without receipt of value must be classified as a misdemeanor since it is not otherwise classified as a felony, either by definition or by penalty. *State ex rel. Shargaa v. Culver*, 113 So.2d 383 (Fla. 1959).

In addition to statutes in every jurisdiction which penalize the obtaining of property by worthless check,¹ forty-one states have also condemned

31. Here the dissent cites the *Erie* case in support of the contention that the word "laws" includes court decisions.

32. Mr. Justice Black, with whom Mr. Justice Douglas joined, dissented from the major question under discussion for the reasons stated by Mr. Justice Brennan and as set forth by Judge Magruder in *Doucette v. Vincent*. This dissent felt that the "real core of the jurisdictional controversy is whether a few more seamen can have their suits for damages passed on by federal juries instead of judges."

33. 194 F.2d 834 (1st Cir. 1952).

34. *Paduano v. Yamashita Kisen Kabushiki Kaisha*, 221 F.2d 615 (2d Cir. 1955).

35. *Jordine v. Walling*, 185 F.2d 662 (3d Cir. 1950).

1. A survey of statutes reveals that all states have protected themselves against the issuance of worthless checks when property is obtained thereby. Only in Oklahoma does this protection take the form of a standard false pretenses statute and nothing more. OKLA. STAT. ANN. tit. 21, § 1541 (1951) itemizes a bogus check as one of several "false pretenses." In all other states additional laws specifically cover obtaining property by bogus check. Florida's provisions are typical. A bad check passer might be indicted under a general false pretenses statute, FLA. STAT. § 811.021(1)(a) (1957), or a statute condemning the obtaining of property by issuance of a worthless check, FLA. STAT. § 832.05(3) (1957). (A third and separate charge might be pressed under a statute condemning the mere issuance of bogus checks, FLA. STAT. § 832.05(2) (1957)).

the issuance of bad checks *per se*,² regardless of whether property was obtained thereby. Such "worthless check statutes," besides their anti-nuisance value,³ plug certain painful gaps in familiar false pretense statutes as applied to bad check passing. For example, although payment of a pre-existing debt by worthless check is no violation of those laws which require the obtaining of property, it is usually held to be an offense under the "worthless check statutes."⁴

The penalty provisions of bad check laws are diverse in the extreme, both as to actual punishment inflicted⁵ and as to denomination of the offense as a felony or misdemeanor.⁶ At least four approaches to the

2. *Ala.*: ALA. CODE tit. 14, § 234(2) (Supp. 1953); *Alaska*: ALASKA COMP. LAWS ANN. § 65-5-48 (Supp. 1958); *Ariz.*: ARIZ. REV. STAT. § 13-316 (Supp. 1959); *Ark.*: ARK. STAT. § 67-714 (1957); *Cal.*: CAL. PEN. CODE § 476a (1959); *Colo.*: COLO. REV. STAT. § 40-14-20 (Supp. 1957); *Conn.*: CONN. GEN. STAT. § 53-361 (1958); *Del.*: DEL. CODE ANN. tit. 11, § 555 (1953); *Fla.*: FLA. STAT. § 832.05(2) (1957); *Ga.*: GA. CODE ANN. § 13-9933 (1933); *Hawaii*: HAWAII REV. LAWS ch. 286: § 3 (1955); *Idaho*: IDAHO CODE ANN. § 18-3106 (Supp. 1959); *Ill.*: ILL. ANN. STAT. ch. 38, § 255 (Supp. 1959); *Ind.*: IND. ANN. STAT. § 10-2105 (1956); *Kan.*: KAN. GEN. STAT. § 21-554, 555 (1949), as amended by Kan. Laws 1959, ch. 161, § 1; *Ky.*: KY. REV. STAT. § 434.070 (1953); *Me.*: ME. REV. STAT. ch. 133, § 14 (1954); *Mass.*: MASS. ANN. LAWS ch. 266, § 37 (1956); *Mich.*: MICH. COMP. LAWS § 750.131 (1948); *Minn.*: MINN. STAT. ANN. § 622.04 (1945); *Mo.*: MO. ANN. STAT. § 561.460 (1949); *Mont.*: MONT. REV. CODES ANN. § 94-2702 (Supp. 1959); *Neb.*: NEB. REV. STAT. § 28-1213 (1949); *Nev.*: NEV. REV. STAT. § 205.130 (1957); *N.H.*: N.H. REV. STAT. ANN. ch. 582, § 12 (Supp. 1957); *N.J.*: N.J. STAT. ANN. § 2A: 111-15 (1953); *N.M.*: N.M. STAT. ANN. § 40-21-8 (1953); *N.Y.*: N.Y. PENAL LAW § 1292a; *N.C.*: N.C. GEN. STAT. § 14-107 (1951); *N.D.*: N.D. REV. CODE § 6-0816 (Supp. 1957); *Ohio*: OHIO REV. CODE § 1115.23 (1959); *Ore.*: ORE. REV. STAT. § 165.225 (1957); *Pa.*: PA. STAT. ANN. tit. 18, § 4854 (1945); *R.I.*: R.I. GEN. LAWS § 19-19-2,3 (1956); *Tex.*: TEX. PEN. CODE ANN. § 567b (1952); *Utah*: UTAH CODE ANN. § 76-20-77 (Supp. 1959); *Vt.*: VT. STAT. ANN. § 13:2002 (1959); *Va.*: VA. CODE § 6-129 (1950); *Wash.*: WASH. REV. CODE § 9.54.050 (1951); *Wis.*: WIS. STAT. ANN. § 943.24 (1958); *Wyo.*: WYO. STAT. § 6-39,40 (1957).

3. The purpose of these statutes is to preserve integrity of commercial paper," *Anderson v. Bryson*, 94 Fla. 1165, 1170, 115 So. 505, 507 (1927), and to ". . . discourage overdrafts and resulting bad banking . . . stop the practice of 'check kiting,' and generally to avert the mischief to trade, commerce and banking which the circulation of worthless checks inflicts," *State v. Avery*, 111 Kan. 588, 590, 207 Pac. 838, 839 (1922).

4. See, e.g., *State v. Lowenstein*, 100 Ohio 393, 142 N. E. 897 (1924). See also 22 AM. JUR. *False Pretenses* § 71 (1938).

5. To illustrate, the maximum penalty in Arizona for writing a \$75 bad check without obtaining value in return is six months in the county jail, ARIZ. REV. STAT. § 13-316 (Supp. 1959) while the maximum term for the same offense in California is 14 years in the state penitentiary, CAL. PEN. CODE § 476a (1959).

6. In the following 22 states the offense is characterized as a misdemeanor (for citations consult note 2 *supra*): Alabama, Alaska, Arkansas, Colorado, Connecticut, Florida (by judicial construction), Georgia, Hawaii, Idaho, Illinois, Maine, Massachusetts, Minnesota, Missouri, Nevada, North Carolina, North Dakota, New Jersey, New York, Pennsylvania, Washington (by judicial construction) and Wisconsin; the grade of the offense is variable in 18 other jurisdictions (for citations consult note 2 *supra*): Arizona, California, Delaware, Indiana, Kansas, Kentucky, Michigan, Montana, Nebraska, New Hampshire, New Mexico, Ohio, Oregon, Rhode Island, Texas, Utah, Virginia (the penalty provision of the Virginia statute is like those of Florida and Washington in effect, and should properly yield only a misdemeanor, but has not yet been interpreted by the courts in this context) and Wyoming. These jurisdictions variously characterize the crime as felony or misdemeanor on the basis of *place of imprisonment* (Representative is the Utah statute which makes the passing of a check against insufficient funds ". . . punishable by imprisonment in the county jail for not more than one year, or in the state prison for not more than five years." UTAH CODE ANN. § 76-1-13

problem of characterization are novel. In New Hampshire and Massachusetts the offense is larceny if value is obtained by the check, *attempted* larceny if *nothing of value is obtained*.⁷ In Delaware the court has complete discretion if the sum of the check is over \$100.⁸ In Vermont the offense carries no criminal penalty as such but invests the payee with a tort action, not to collect the amount due, but to redress his injury, using civil arrest as a method, if necessary.⁹ Finally, Washington, Virginia and Florida have the "larceny" type of worthless check statute.¹⁰ In Washington and Virginia the passer is simply declared guilty of larceny,¹¹ while in Florida the crime is issuance of a worthless check, *but the punishment is by reference to the larceny statute*.¹²

The Florida statute incorporates two separate¹³ check-passing offenses in the same section: § 832.05(2) concerns worthless checks *per se*¹⁴ while

(1953). Utah's typical crime classification statute makes an offense punishable by death or imprisonment in the state prison a felony and all others misdemeanors. UTAH CODE ANN. § 76-1-13 (1953)), the amount of the check (Typical is the Kansas provision: "... any person . . . wilfully violating any of the provisions of [the worthless check statute, KAN. GEN. STAT. § 21-554 (1947)] . . . shall be deemed guilty of a misdemeanor if such check or draft is drawn for less than fifty dollars . . . If said check or draft shall be drawn for an amount of fifty dollars . . . or more, such person shall be deemed guilty of a felony . . ." KAN. GEN. STAT. § 21-555 (1949), as amended, Kan. Laws 1959, ch. 161 § 1.), and whether the drawer had *no account at all* or merely *insufficient funds* (For example, see the Montana penalty provision: "If there are no funds in or credit with such bank . . . for the payment of any part of such check . . . then in that case the person convicted shall be punished by imprisonment in the state prison not exceeding five (5) years, or by a fine not exceeding five thousand dollars . . . or both . . . ; if such check . . . be for a sum of twenty-five dollars . . . or less, and there are some but not sufficient funds in . . . such bank . . . for the payment of such check . . . then in that case the person so convicted shall be punished by imprisonment in the county jail not exceeding six (6) months, or by a fine not exceeding three hundred dollars . . . or by both such fine and imprisonment; if such check . . . be for a sum greater than twenty-five dollars . . . and there are some but not sufficient funds in or credit with such bank . . . for the payment of such check . . . then in that case the person so convicted shall be punished by imprisonment in the state prison not exceeding five (5) years, or by a fine not exceeding five thousand dollars . . . or by both such fine and imprisonment." MONT. REV. CODES ANN. § 94-2702 (Supp. 1959).).

7. N.H. REV. STAT. ANN. ch. 582, § 12 (1955); MASS. ANN. LAWS ch. 266, § 37 (1956).

8. DEL. REV. CODE tit. 11, § 555 (1953).

9. VT. STAT. ANN. tit. 9, § 2311 (1959).

10. WASH. REV. CODE § 9.54.050 (1951); VA. CODE § 6-129 (1950); FLA. STAT. § 832.05(6)(a) (1957).

11. The Washington statute, WASH. REV. CODE § 9.54.050 (1951), states that the bad check passer "shall be guilty of larceny." The Virginia statute, VA. CODE § 6-129 (1950), employs identical language.

12. Unlike the Washington and Virginia statutes, the Florida law does not declare the bogus check passer a larcener; but the penalty provision is tantamount in effect: "Any person violating the provisions of [the worthless check statute] shall be punished in the same manner as provided by law for punishment for the crime of larceny." FLA. STAT. § 832.05(6)(a) (1957).

13. 14 FLA. JUR. *False Pretenses and Cheats* § 15 (1957). See also [1953-1954] FLA. ATT'Y GEN. BIENNIAL REP. 653.

14. FLA. STAT. § 832.05(2) (1957): "It shall be unlawful for any person . . . to draw, make, utter, issue or deliver to another any check . . . , knowing at the time of the drawing . . . that the maker or drawer thereof has not sufficient funds on deposit . . . with which to pay the same on presentation."

§ 832.05(3) concerns the *obtaining of property* by worthless checks.¹⁵ But § 832.05(6)(a) provides the same mode of penalty for *both* these *dissimilar* subsections: ". . . any person violating the provisions of this section shall be punished in the same manner as provided by law for punishment for the crime of larceny."¹⁶ That this mode of penalty is appropriate for offenses falling under subsection three, but totally illogical as applied to offenses condemned by subsection two will become clear from the ensuing. Prior to the enactment of § 832.05 in 1953, the only Florida bogus check law, aside from the general false pretenses statute, was § 832.01 which, although it requires the obtaining of property by the check, fixes the crime as a felony or misdemeanor *according to the sum of the check*;¹⁷ moreover, § 832.05 *was expressly declared cumulative to § 832.01*.¹⁸ This intricate network of statutes perhaps explains why both the supreme court and the Attorney-General's office were unaware of the pitfall now apparent in the bogus check law (§ 832.05). The supreme court admitted that when the petitioner was previously convicted *it was assumed that the offense was a felony because the amount of the check was \$100*.¹⁹ From the Attorney-General's office came the ambiguous opinion that "the amount involved" (whether of the check or the value of the property obtained thereby was not specified) would determine the grade of the offense.²⁰ So it was that the court in the instant case found itself compelled to hold that petitioner had only committed a misdemeanor, and not the felony for which he was convicted. By recourse to a general statute providing punishment for misdemeanors not otherwise specified,²¹ the court determined that petitioner had already overserved the maximum allowable sentence. The significance of this interpretation is underscored by the fact that three felony convictions have already been reversed on the authority of the instant case.²²

15. FLA. STAT. § 832.05(3) (1957): "It shall be unlawful for any person . . . to obtain any services, goods, wares or other things of value by means of a check . . . knowing at the time of making . . . that the maker thereof has not sufficient funds on deposit . . . with which to pay the same upon presentation."

16. FLA. STAT. § 832.05(6)(a) (1957). For text, see note 12 *supra*.

17. FLA. STAT. § 832.01 (1957): "Any person who, with intent to defraud, shall make, utter, draw, deliver or give any check . . . and who secures money, property or other thing of value therefor, and who knowingly shall not have an arrangement . . . sufficient to meet or pay the same, shall be guilty of a felony if such check . . . shall be for the sum of fifty dollars or more . . . ; and if such check . . . be for less than fifty dollars, shall be guilty of a misdemeanor . . ." (Emphasis added.)

18. FLA. STAT. § 832.05(7) (1957).

19. State *ex rel.* Shargaa v. Culver, 113 So. at 385 (Fla. 1959).

20. [1957-1958] FLA. ATT'Y. GEN. BIENNIAL REP. 426: "In other words I think that if a defendant is convicted for giving a worthless check after June 6, 1957, in violation of § 832.05, he should be given the same punishment as is provided by ch. 57-344 for grand larceny if the *amount involved* was \$100 or more and that he should be given the same punishment as is provided by said chapter for petit larceny if the *amount involved* was less than \$100." (Emphasis added.)

21. FLA. STAT. § 775.07 (1957).

22. Williams v. Cochran, 117 So.2d 486 (Fla. 1960); State *ex rel.* Broad v. Cochran, 115 So.2d 169 (Fla. 1959); Greer v. Culver, 113 So.2d 386 (Fla. 1959). Of the two states having penalty provisions similar to those of Florida, namely, Virginia

The worthless check statute does not stand alone as fixing the penalty by reference to the larceny statute. The laws against fraudulent obtaining of property by gaming,²³ embezzlements of all kinds,²⁴ obtaining property by false personation,²⁵ and forgery²⁶ similarly refer to the larceny statute for punishment. It should be noted, however, that all the foregoing crimes, with the exception of forgery (see discussion, *infra*), require that *property be obtained* by illicit means. Consequently, these statutes can be readily analogized to a larceny statute that fixes the grade of the offense according to the value of the property stolen.²⁷ But obviously no logical basis for analogy to property stolen exists under a bogus check law which does not require that something of value be obtained for the check.

The necessity of drawing arbitrary lines between statutory felonies and misdemeanors has long been a thankless legislative task. Florida's legislature, among others, has been accused of grossly mishandling the problem through a too casual approach.²⁸ Unquestionably, the explosive results of mere verbal characterization as "felony" or "misdemeanor," such as the loss or retention of certain civil rights,²⁹ calls for a diligence not always displayed, as suggested by the instant case. Ironically, just 48 days

(VA. CODE § 6-129 (1950)) and Washington (WASH. REV. CODE § 9.54.050 (1951)), the former has thus far escaped trouble, its courts not yet having interpreted this sore point, while the latter has suffered a misfortune remarkably parallel to Florida's. Since 1949 seven felony convictions have been reversed in Washington (Persinger v. Rlay, 52 Wash.2d 762, 329 P.2d 191 (1958); Mooney v. Cranor, 38 Wash.2d 881, 233 P.2d 850 (1951); Campbell v. Cranor, 35 Wash.2d 938, 212 P.2d 1019 (1949); Lutes v. Cranor, 35 Wash.2d 937, 211 P.2d 1005 (1949); Barry v. Cranor, 34 Wash.2d 929, 210 P.2d 822 (1949); Sorenson v. Smith, 34 Wash.2d 659, 209 P.2d 479 (1949); Jeane v. Smith, 34 Wash.2d 826, 210 P.2d 127 (1949)) because the informations failed to recite the value of the property obtained under a statute which, although it requires no receipt of value, makes the passer "guilty of larceny". (WASH. REV. CODE § 9.54.050 (1951): "Any person who shall with intent to defraud make, or draw, or utter, or deliver to another person any check, or draft, on a bank . . . knowing at the time . . . that he has not sufficient funds . . . to meet said check . . . shall be guilty of larceny." (Emphasis added.)) As in Florida, the recitation was needed *not because obtaining value by the check was an element of the offense* but because the Washington statute referred by implication to the larceny statute for a penalty and, once again, in a transaction whereby nothing was secured by the check no basis could be found for an analogy to the value of property stolen as determinative of grand or petit larceny, felony or misdemeanor. Jeane v. Smith, 34 Wash.2d 826, 210 P.2d 127 (1949). Having no alternative, the Washington court concluded that the offense was a misdemeanor since ". . . every other larceny shall be a petit larceny and shall be a gross misdemeanor"; WASH. REV. CODE § 9.54.050 (1951). Finally, like the Florida court, the Washington court had recourse to a catch-all statute which provided punishments for misdemeanors not otherwise fixed by statute. WASH. REV. CODE § 9.92.020 (1951).

23. FLA. STAT. § 812.01-05 (1957).

24. FLA. STAT. § 812.01-05 (1957).

25. FLA. STAT. § 817.02 (1957).

26. FLA. STAT. § 831.01 (1957), as amended, Fla. Laws 1959, ch. 59-31.

27. FLA. STAT. § 811.021(2)(3) (1957).

28. Clark, *Penalty Provisions in Florida Criminal Statutes*, 9 U. FLA. L. REV. 289 (1956). Note especially Professor Clark's comment at p. 307: "A cynic might offer the observation that if the Legislature of Florida had refrained from repudiating the common law modes and degrees of punishment the law concerning criminal penalties would be less complicated . . ."

29. See Professor Clark's catalogue of these civil rights. Clark, *supra* note 28, at 290 n. 13.

before the principal decision was handed down, the Florida Legislature changed the penalty for forgery by making the forger *punishable as for the crime of larceny*.³⁰ Since no property need be obtained by the forger for a conviction to stand,³¹ it seems likely that this new penalty provision will fare little better at the hands of the judiciary than that of the worthless check statute. In creating such penalties by reference to the larceny statute, the legislature may have in mind the species-to-genus relationship which such crimes as obtaining property by gaming, false personation, worthless check passing, forgery and embezzlement do in fact bear to larceny, the common law father of them all. Such a rationale, however, when applied to make the species hark back to the genus for the purpose of a uniform punishment provision, may overlook certain characteristics of the tree not present in the branches. It is submitted that in the face of these snares³² the technique of penalty by reference should be used with vigilance, if at all. Unclear legislative intent is a needless burden on the already complex determination of where misdemeanor ends and felony begins.

ROBERT J. STAAL

EVIDENCE — JURY COMPARISON OF HANDWRITING WITHOUT AID OF EXPERTS

The court in a check forgery case allowed the jury to compare the maker's signature with the endorsement, unaided by skilled or expert testimony in making the comparison. Florida Statute § 90.20¹ states: "Comparison of a disputed writing with any writing proved to the satisfaction of the judge to be genuine shall be permitted to be made by witnesses; and such writings, and the evidence of witnesses respecting the same, may be submitted to the jury . . . as evidence of the genuineness, or otherwise, of the writing in dispute." (Emphasis added.) *Held*, reversed: The statute

30. FLA. STAT. § 831.01 (1957), condemning forgery, was amended by Fla. Laws 1959, ch. 59-31, to read (in part): ". . . if the instrument altered or forged be an order for money or other property the person convicted of altering or forging the same shall be punished in the same manner provided by law for *punishment for the crime of larceny*." (Emphasis added.) FLA. STAT. § 831.02 (1957), condemning the uttering of forged instruments, was amended by Fla. Laws 1959, ch. 59-31, to read (in part): ". . . any person convicted for uttering and publishing as true an altered or forged order for money or other property shall be punished in the same manner as provided by law for *punishment for the crime of larceny*." (Emphasis added.)

31. *Hawkins v. State*, 28 Fla. 363, 9 So. 652 (1891).

32. "The Florida Legislature has seen fit to provide in some criminal statutes that the penalties for their violation shall be ascertained by reference to other statutes. This procedure can lead to complications. . . . Penalties by reference should be the exception rather than the rule in devising criminal statutes, and when utilized they should be expressed in an unambiguous language. . . ." Clark, *supra* note 28, at 305.

1. FLA. STAT. § 90.20 (1957).