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BANKS AND BANKING - LIABILITY OF BANK UPON PAYMENT OF THE CHECK OF AN INSANE DEPOSITOR WITHOUT NOTICE OF THE INSANITY

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RECENT DECISIONS

BANKS AND BANKING — LIABILITY OF BANK UPON PAYMENT OF THE CHECK OF AN INSANE DEPOSITOR WITHOUT NOTICE OF THE INSANITY — The plaintiff, as trustee for a depositor, sought in this action to charge the defendant bank with the amount of a check drawn by the depositor while insane. On the ground that the depositor was an inmate of the state hospital for the insane, the plaintiff had been appointed his trustee. Subsequent to this appointment, the depositor drew the check in question, and the defendant paid the amount of the check to the payee. *Held*, in the absence of actual or constructive knowledge of the insanity, a payment by a bank of the check of an insane depositor is a valid discharge of its obligation to the depositor. *Poole v. Newark Trust Co.*, (Del. Super. Ct. 1939) 8 A. (2d) 10.

As a general rule, when funds are deposited in a bank, the resultant relationship between the bank and customer is that of debtor-creditor.[1] The creation of this relationship is dependent upon the voluntary acts of the participants, since a bank is not required to accept a deposit against its will,[2] and a customer cannot be made a depositor without his consent.[3] Consequently, a deposit has been characterized as a matter of contract,[4] the implied obligation of the bank being to reduce its indebtedness to the depositor only through payment in accordance with his genuine order or demand.[5] In view of the fact that a deposit is a contract between the bank and depositor, it would seem that a deposit would be subject to the rules governing the contracts of insane persons. The general rule is that a contract made by an insane person, if still executory, is voidable at the option of the insane person, regardless of whether or not the other contracting

[1] Blakey v. Brinson, 286 U. S. 254, 52 S. Ct. 516 (1932); Parks v. Knickerbocker Trust Co., 137 App. Div. 719, 122 N. Y. S. 521 (1910); Busher v. Fulton, 128 Ohio St. 485, 191 N. E. 752 (1934); 5 MICHIE, BANKS AND BANKING 14 (1932); 5 ZOLLMAN, BANKS AND BANKING 132 (1936).

[2] Thatcher v. Bank of New York, 5 Sandf. (7 N. Y. Super. Ct.) 121 (1851); Heath v. New Bedford Safe Deposit Co., 184 Mass. 481, 69 N. E. 215 (1904); Elliott v. Capital City State Bank, 128 Iowa 275, 103 N. W. 777 (1905); Jaselli v. Riggs Nat. Bank, 36 D. C. App. 159 (1911); McCormick v. Hopkins, 287 Ill. 66 at 73, 122 N. E. 151 (1919), where the court said: "A bank is not bound to receive deposits from anyone but may choose those whom it will accept as depositors and the terms and conditions on which it will accept deposits."

[3] Patek v. Patek, 166 Mich. 446, 131 N. W. 1101 (1911); Winslow v. Harriman Iron Co., (Tenn. Ch. App. 1897) 42 S. W. 698; 5 ZOLLMAN, BANKS AND BANKING 130 (1936).

[4] Steelman v. Atchley, 98 Ark. 294, 135 S. W. 902 (1911); Gruber v. Bank of America, 127 Misc. 132, 215 N. Y. S. 222 (1926); Wilson v. Farmers' First Nat. Bank, 176 Mo. App. 73, 162 S. W. 1047 (1914); McCormick v. Hopkins, 287 Ill. 66 at 72-73, 122 N. E. 151 (1919), where it was said: "The relation of banker and depositor is not one imposed by law but is voluntarily assumed. It is a matter of contract."

[5] England v. Hughes, 141 Ark. 235, 217 S. W. 13 (1919); Darien Bank v. Clifton, 156 Ga. 65, 118 S. E. 641 (1923); 5 ZOLLMAN, BANKS AND BANKING 322 (1936).

party had notice of the insanity.[6] It is also held that the contract of an insane person, made after an adjudication of insanity and the appointment of a legal representative for the lunatic, is absolutely void.[7] However, the court in the instant case did not find the depositor to be insane at the time of the deposit, so it would appear that a valid contract of deposit had been consummated. Assuming this to be so, still it has been held that the payment of a check is a contractual undertaking and constitutes a voidable, if not void, transaction, when the drawer of the check is insane.[8] On this hypothesis, it would seem unnecessary to consider whether or not the bank had notice of the insanity of the depositor. However, it seems improper to characterize such a transaction as contractual. In the first place, the N. I. L. defines a check as a bill of exchange drawn upon a bank,[9] and a bill of exchange as an order to pay.[10] While it is undoubtedly true that the drawer of a check does assume the liability of a secondary party on a negotiable instrument, it is difficult to perceive the elements of a contract in a mere order to pay. In addition, the better reasoned authorities seem to hold that a bank is not liable when it pays upon the check of an insane depositor, without knowledge of his insanity, on the grounds that the payment of a check is not a contract, but is merely the carrying into effect of the contract of deposit.[11] This seems a more logical result. Assuming that the bank in

[6] Musselman v. Cravens, 47 Ind. 1 (1874); Cundall v. Haswell, 23 R. I. 508, 51 A. 426 (1902); Industrial Trust Co. v. Miller, 5 W. W. Harr. (35 Del.) 554, 170 A. 923 (1933); Orr v. Equitable Mortgage Co., 107 Ga. 499, 33 S. E. 708 (1899); Sutcliffe v. Heatley, 232 Mass. 231, 122 N. E. 317 (1919); 46 A. L. R. 416 (1927); 95 A. L. R. 1442 (1935); 1 WILLISTON, CONTRACTS, rev. ed., 741 (1936); 32 COL. L. REV. 504 (1932).

[7] Fitzhugh v. Wilcox, 12 Barb. (N. Y.) 235 (1851); Burgedorff v. Hamer, 95 Neb. 113, 145 N. W. 250 (1914); 1 WILLISTON, CONTRACTS, rev. ed., 755 (1936). Professor Williston says: "When a guardian is appointed he thereupon becomes vested with the control of the property of his ward, and he alone is capable of transferring it. It may also be assumed that all contracts of a lunatic made during guardianship are held void."

[8] American Trust & Banking Co. v. Boone, 102 Ga. 202, 29 S. E. 182 (1897). In this case, the Georgia court spoke of the payment of a check as a contractual undertaking. It held the payment of the check of a person who had been adjudicated insane to be a void transaction.

[9] Sec. 185 of the N. I. L. reads as follows: "A check is a bill of exchange drawn on a bank payable on demand."

[10] Sec. 126 of the N. I. L. reads as follows: "A bill of exchange is an unconditional order in writing. . . ."

[11] In a case involving substantially the same facts as those in the instant case, Reed v. Mattapan Deposit & Trust Co., 198 Mass. 306 at 314, 84 N.E. 469 (1908), the Massachusetts court said: "The contract had been made previously at a time when his sanity was unquestioned, and when the check was cashed he simply received his own in full measure according to its terms. By this transaction the parties did not enter into a new contract, because the act of payment of itself did not constitute an agreement, but was only the performance of the promise whereby the defendant discharged its indebtedness." See also, Leighton v. Haverhill Savings Bank, 227 Mass. 67, 116 N. E. 414 (1917); Riley v. Albany Savings Bank, 36 Hun (N. Y.) 513 (1885); 5 MICHIE, BANKS AND BANKING 330 (1932); BRADY, BANK CHECKS, 2d ed., 335 (1926); 6

the instant case had neither actual nor constructive knowledge of the insanity of the depositor,[12] the result reached by the court seems predicated upon sound authority. Such authority finds support in the results reached by the courts in the somewhat analogous cases in which a bank pays the amount of a check without notice that death,[13] or insolvency,[14] of the depositor has intervened. Also, the result reached in this case seems a just one from a practical viewpoint. The law has imposed liability upon a bank which refused to honor items properly drawn by a depositor having funds on deposit in the bank.[15] It would seem impractical to impose upon a bank, in addition, the onerous burden of inquiring into the mental condition of each depositor before paying a check.[16]

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ZOLLMAN, BANKS AND BANKING 180 (1936); 1 MORSE, BANKS AND BANKING, 6th ed., 736 (1928); 1 WILLISTON, CONTRACTS, rev. ed., 741 (1936).

[12] In the instant case, the question whether the appointment of the plaintiff as trustee constituted constructive notice to the bank of the insanity of the depositor is intriguing but beyond the scope of this discussion.

[13] The weight of authority protects the bank when it pays a check in ignorance of the intervening death of the depositor. Glennan v. Rochester Trust & Safe Deposit Co., 209 N. Y. 12, 102 N. E. 537 (1913); Weiand's Admr. v. State Nat. Bank, 112 Ky. 310, 65 S. W. 617, 66 S. W. 26 (1901); Brennan v. Merchants' & Manufacturers Nat. Bank, 62 Mich. 343, 28 N. W. 881 (1886); BRADY, BANK CHECKS, 2d ed., 338 (1926); 5 MICHIE, BANKS AND BANKING 349 (1932).

[14] There is little authority on this point. What authority there is seems to be in favor of protecting the bank when it has paid without notice of the intervening insolvency of the depositor. In re Zotti, (D. C. N. Y. 1910) 178 F. 304, affd. (C. C. A. 2d, 1911) 186 F. 84; Chambers v. Northern Bank, 5 Ky. L. Rep. 123 (1883); Citizens' Union Nat. Bank v. Johnson, (C. C. A. 6th, 1923) 286 F. 527; 31 A. L. R. 256 (1924); 5 MICHIE, BANKS AND BANKING 348 (1932).

[15] 5 MICHIE, BANKS AND BANKING 423 (1932); Marzetti v. Williams, 1 B. & Ad. 415, 109 Eng. Rep. 842 (1830); Viets v. Union Nat. Bank of Troy, 101 N. Y. 563, 5 N. E. 457 (1886); Macrum v. Security Trust & Svgs. Co., 221 Ala. 419, 129 So. 74 (1930).

[16] In Glennan v. Rochester Trust & Safe Deposit Co., 209 N. Y. 12 at 18, 102 N. E. 537 (1913), it was said: "It would be utterly impracticable for business to be done if, before a bank could safely pay checks, it must delay to find out whether the drawer is still living." Such reasoning would seem to be equally applicable to the case of an insane depositor.