

BANK COLLECTIONS—THE DIRECT ROUTING PRACTICE

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The establishment of the Federal Reserve system gave promise of sweeping aside a half century of unsound bank collection practices. The most spectacular of these, the one which largely preoccupied the economists interested in banking, was that of circuitous routing.¹ Under this practice items on relatively close points were often shunted back and forth across the country for days and even weeks before finally being presented for payment, and then, in event of dishonor, were sent back through the same devious route to reach the depositor again. The method was slow, costly, and fraught with risk. The additional handling increased the chance of error, the delay increased the risk of non-payment, and, even when payment was made, the multiplication of banks increased the risk of loss through bank failure.

Coupled with this practice, and in part accounting for it, were other evils of even more serious character. With the inauguration of the National Banking System during the Civil War, ending the previous years of wildcat banking, the practice developed of giving depositors immediate credit for out of town checks, with the attendant privilege of drawing against the credit at once.² This was induced by competition for accounts and made possible in part because such items might be sent on to city correspondents who in turn would give immediate credit subject to drawing, the credit counting at once as part of the depositing banks reserves. Such banks in turn were often able to send the item on to other banks in larger centers and to count the credit received as part of their reserves. It takes no argument to demonstrate that this pyramiding process constituted only a paper reserve, and in times of financial stress, when large numbers of items had to be charged back unpaid, it was apparent that the system was altogether unsatisfactory.³

The New York and large city banks generally, which assisted in bringing about this situation, were probably motivated largely by a desire to increase deposits; and to avoid loss through pay-

¹ SPAHR, *THE CLEARING AND COLLECTION OF CHECKS* (1926) 103.

² Turner, *Deposits of Demand Paper as "Purchases"* (1928) 37 *YALE L. J.* 874.

³ SPAHR, *op. cit.* *supra* note 1, at 111.

ment of high collection costs, they found it necessary to build up a widespread network of correspondents which would handle collections without charge. Of course the country banker having need for exchange and being given immediate credit for his collections would agree in turn to handle collections sent to him by the city banker without charge. It was often arranged also that items which were sent direct to these banks would be remitted for without exchange charges. In many cases mutual accounts were established, collection items being credited by each and at once subject to drawing, or under an arrangement whereby settlement was made at periodic intervals.⁴ This effort to save charges contributed directly to the practice of circuitous routing, since, wherever possible, items were sent only to banks with which a satisfactory collection arrangement could be made.⁵

The Federal Reserve system was designed, in part, to correct this situation. In the first place it was provided that member banks must maintain reserves only with Federal Reserve banks. A collection system was inaugurated to serve all banks in the district, whether members or not, which was to function to some extent as do clearing houses for local collections. Credit was given at once, as a matter of convenience, for all eligible items,

⁴ One of the best discussions of bank collection practices is found in *Federal Reserve Bank v. Peters*, 139 Va. 45, 123 S. E. 379 (1924). The case of *Commercial Bank v. Armstrong*, 148 U. S. 50, 13 Sup. Ct. 533 (1893) illustrates the periodic settlement practice. This practice is being used today in connection with those southern banks which refuse to remit at par on daily presentations.

⁵ It is interesting to note that there existed almost no legal sanction to control this practice. It is usually stated that the depositor may recover damages from his bank for losses due to circuitous routing, but there does not appear to be any authority squarely in point. *Cf. Henefin v. Livestock National Bank*, 116 Neb. 331, 217 N. W. 91 (1927). The older cases related to whether presentment was sufficiently prompt to charge secondary parties. In *Gregg & Co. v. Beane*, 69 Vt. 22, 37 Atl. 248 (1895), the drawer was held discharged, thus implying that the forwarding bank would be liable to its depositor. This case was promptly followed by legislation providing that forwarding "in the usual course of business" should constitute "due diligence." VT. GEN. LAWS (1917) § 2853; PATON, DIGEST (1926) § 1505(a). Other states have reached much the same result under the Negotiable Instruments Law. See *Plover Savings Bank v. Moodie*, 135 Iowa 685, 110 N. W. 29 (1906). Since the adoption of direct forwarding there has been some intimation that a collecting bank should be required to send collections in that way or be liable to suit for damages. *Federal Land Bank v. Barrow*, 189 N. C. 303, 127 S. E. 3 (1925). But *cf. Dudley v. Phenix-Girard Bank*, 216 Ala. 591, 114 So. 188 (1927).

There are so many legitimate factors involved in routing collections that it is doubtful that any direct control can be applied which would not do more harm than good. The circuitous routing practice in its exaggerated form has largely disappeared.

since the great majority of them would be paid in due course and the relatively few dishonored could be charged back as special cases. Such credits, however, were not to count as reserves or be subject to drawing until the relative item had been actually collected. But here again most items were duly paid, and accordingly a schedule was prepared showing the usual time required to receive returns on an item on any given point, and thereafter credits were counted toward reserves upon the basis of this schedule. Thus the amount of an item on a two day point could be counted after two days, whether in fact collection had been made or not, but in case of dishonor, the unusual case, the amount would be charged back and of course would no longer count as reserves.⁶

This plan contemplated the forwarding of items, where possible, directly to the bank on which drawn, a shift to the opposite extreme from that of routing items circuitously.⁷ It was further provided that the drawee banks should remit with drafts on the particular Federal Reserve bank, or, failing that, in some other equally acceptable form. This was but a logical extension of the clearing house practice of settling differences by draft, but represented a marked change in that the Federal Reserve banks assumed no responsibility for the ultimate payment of such drafts.⁸ Thus in theory it was expected that a minimum of time would be required to handle collections, that the detail otherwise involved would be greatly reduced since only one collection letter would be required, that is, assuming all items on a particular bank were to be put through the Federal Reserve banks, and that the depositor would have reasonable protection in that the type of remittance drafts to be accepted was carefully prescribed. Some responsibility also was assumed by the Reserve banks to keep intimately in touch with the drawee, a further important safeguard.⁹ The plan has been

⁶ *Pascagoula National Bank v. Federal Reserve Bank of Atlanta*, 11 F. (2d) 866 (C. C. A. 5th, 1926), certiorari denied, 271 U. S. 685, 46 Sup. Ct. 637 (1926). The Court here refused the demand of a member bank to be given immediate credit in its reserve account for collection items.

⁷ A great many banks had always sent many collections directly to the bank upon which drawn, particularly where the drawee was regarded as financially strong. In the case of customers' items, however, this was done at the forwarding bank's peril.

⁸ In the case of the local clearing house the debtor banks are usually required to settle differences with certified checks and the creditor banks are at once paid so that there is very little risk. Of course this was not possible in the Federal Reserve clearing system where several days must often elapse between the time of sending out items by mail and the time when returns could be received.

⁹ In some cases where the drawee has an account with the forwarding bank, it is agreed that the forwarding bank may charge the drawee bank's

remarkably successful, though, as might be expected, not completely so.

Although the desirability of the direct forwarding plan be admitted, it is quite another matter to fit it into the existing body of statutes, decisions and practices. One of the first serious obstacles met with by the Reserve banks developed into the now historic par clearance controversy,¹⁰ which resulted in a considerable loss of prestige to the System. Banks in many places, particularly in the South, refused to remit in exchange at par when items were forwarded to them direct. Their contention was that their contract was only with the depositor and called for no more than counter payment; to be required to pay in exchange at par was to add a charge which they had not agreed to bear. At the bottom of the controversy lay the fact that the plan would result in a considerable loss of income to such banks. As a consequence there are now laws in many states providing that where a drawer has not stipulated to the contrary on the face of a check forwarded by a Federal Reserve bank to the drawee for remittance, the drawee may remit in exchange and deduct for exchange charges.¹¹ The matter has thus reached a stalemate as to such banks.

Another obstacle to direct routing, one more easily circumvented by the Reserve banks, but still one of considerable difficulty, was met with in the common law rule that it is negligence for an agent bank to forward items by mail for payment to the bank on which drawn.¹² Probably no point in banking law is better settled, it being deemed negligence even where the

account if no remittance is received after a stated time. *Federal Reserve Bank v. Early*, 30 F. (2d) 198 (C. C. A. 4th, 1929).

The Reserve banks have also been very prompt to follow up collection letters which are not remitted for according to schedule. *Cf. Carson v. Federal Reserve Bank*, 226 App. Div. 225, 235 N. Y. Supp. 197 (1929).

¹⁰ *Cf. American Bank & Trust Co. v. Federal Reserve Bank of Atlanta*, 262 U. S. 643, 43 Sup. Ct. 649 (1923); see Comment (1924) 33 YALE L. J. 752.

¹¹ The various statutes are cited in Comment (1929) 8 N. C. L. REV. 55. The comment discusses two interesting recent cases which have construed the effect of these statutes upon the holder's rights: (a) against the drawer, when the drawee's remittance draft is dishonored, and (b) against the collecting bank, for alleged negligence in receiving a draft in payment. *Morris v. Cleve*, 197 N. C. 253, 148 S. E. 253 (1929); *Braswell v. Citizens Nat. Bank*, 197 N. C. 229, 148 S. E. 236 (1929).

¹² MORSE, BANKS AND BANKING (6th ed. 1928) § 236. It has sometimes been said that the New York court sanctions direct forwarding. The case relied upon is that of *Indig v. National City Bank*, 80 N. Y. 100 (1880), where a forwarding bank was held privileged to send a note to the bank where payable. This case has since been strictly limited to its facts, if not overruled. *National Revere Bank v. Nat. Bank of the Republic*, 172 N. Y. 102, 64 N. E. 799 (1902).

drawee is the only bank in the locality.¹³ When one examines these cases from the depositor's standpoint, one at a time, as they are presented to the courts, it is without doubt true that his interests would have been much better served had the collection been handled through some agency which could have made a personal demand for cash. A drawee bank in failing condition can, and all too often does, defer remitting for mail presentments for days, in the meantime paying out much of its cash on counter or clearinghouse obligations before finally failing.¹⁴

The Federal Reserve banks avoided the common law rule, insofar as they were concerned, by the simple expedient of contracting with the banks using their service for the privilege of direct forwarding.¹⁵ This was followed in many cases by such banks in turn stipulating with their customers for a like privilege. In fact it was held by a lower Pennsylvania court in 1925 that a bank sending an item for collection to a correspondent, knowing that it customarily sent items direct to the drawee, could be held responsible for negligence.¹⁶ If this decision were to be generally followed any bank sending collections through the Federal Reserve banks would be responsible in case of loss through direct forwarding. A great number of banks since then have adopted clauses authorizing direct forwarding.¹⁷ Within the last few years, also, many states have adopted short statutes sanctioning the practice as to all banks. The change, both by statute and stipulation, has taken place as might be expected without providing for any of the safeguards obtaining in the case of direct forwarding by the Federal Reserve banks.¹⁸ This is to disregard to a considerable extent

¹³ Winchester Milling Co. v. Bank of Winchester, 120 Tenn. 225, 111 S. W. 248 (1908), 18 L. R. A. (N. S.) 441 (1909).

¹⁴ In the state of Nebraska alone there were 128 bank failures in the first eleven months of 1929. See briefs, Abie State Bank v. Weaver, Neb. Sup. Ct. No. 27070, decided Dec. 1929.

¹⁵ The direct forwarding provision was construed in Federal Reserve Bank v. Malloy, 264 U. S. 160, 44 Sup. Ct. 296 (1924).

¹⁶ Bank of Wesleyville v. Rose, 85 Pa. Sup. Ct. 52 (1925). *Accord*: People's State Bank v. Kismet Equity Exchange Ass'n, 281 Pac. 899 (Kan. 1929).

¹⁷ In 1925 the General Counsel of the American Bankers Association prepared a form for general use among banks which among other things provided for direct forwarding. PATON, DIGEST (1926) Opinions 1446, 1446a.

¹⁸ It is to be noted that the widespread use of the direct forwarding system constitutes a considerable change in practice. When it is considered that banks have now by statute or stipulation also largely obviated the rule that, upon giving a depositor credit for an item with privilege of drawing, the bank becomes a purchaser, it is apparent that the risk is definitely put upon the depositor as to most items handled for

the depositor's interest in favor of banking convenience.¹⁹

To begin with it is not altogether clear that presentment by mail complies with the requirements of the Negotiable Instruments Law in order to charge secondary parties. The statute contemplates a personal presentation. "The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it."²⁰ And if it is true that direct forwarding constitutes negligence on the part of the forwarding agent, it would seem that the same argument would apply here too, possibly with greater force, for the protection of secondary parties. Where the instrument goes unpaid through delay on the part of the drawee, the responsibility of secondary parties would seemingly be continued, if the presentment is to be sustained, in a case where they otherwise should have been discharged.

The English cases prior to the adoption of the Bills of Exchange Act uniformly held that where a custom to forward checks by post to the drawee could be shown, such method would be considered a good presentment, and presumably further that the forwarding bank could not be held responsible. The question was squarely raised in *Heywood v. Pickering*,²¹ where the drawee delayed several days after receiving the check and subsequently failed without paying it. The theory adopted seems to have been that the drawee occupies a dual relation and, in its capacity as agent of the forwarder, presents to itself as drawee; the drawer cannot object to the selection of the drawee as agent,

collection. Of course there is, at the same time, a large amount of paper in course of collection which is owned by banks. For a discussion of the capacity in which banks receive collections, see Turner, *op. cit. supra* note 2.

¹⁹ Under the usual method of routing collections, the exaggerated forms of circuitous routing to one side, it usually took at least one day longer to effect collection than if items were forwarded direct to the drawee. This was true because the local bank would generally be unable to clear such items until the day following their receipt. Had they come direct to the drawee they could have been remitted for on the same day. This increase in the element of "float," items in course of collection, represents values up into millions of dollars throughout the country, and the interest cost of continuing it for even one day additional amounts at the end of the year to an enormous charge. There appears never to have been made a thorough analysis of the costs and risks involved in the two systems based upon a study of actual experience, and obviously until this is done the extent of the saving effected by direct routing must remain conjectural. However, the elimination of this loss and of the expenses and delays incident to indirect forwarding makes a persuasive theoretical argument in favor of the direct routing practice, provided reasonable protection can be given at the same time to the depositor's interests.

²⁰ NEGOTIABLE INSTRUMENTS LAW § 74.

²¹ L. R. 9 Q. B. 428 (1874). It was held here that the drawer of a check was not discharged but continued responsible to the payee.

it is said, inasmuch as he himself made it possible by drawing on the drawee in the first place.²² Of course this is merely rationalization sanctioning the custom prevailing among English banks to forward certain items directly to the banks on which drawn.

The American courts have quite generally held that proof of custom to forward to the drawee is no defense to the forwarding bank, in effect holding that the practice is against public policy,²³ but the question whether forwarding by mail constitutes a good presentment does not appear to have been closely contested. The question was raised in *Citizens Bank v. First National Bank*,²⁴ an Iowa case, but there the drawee had promptly returned the check for insufficient funds. The court in holding such presentment good stressed the fact that no prejudice resulted from the direct forwarding.²⁵ But there are many cases where notes have been left with the bank at which they were payable, and in none of these has the court held the presentment bad, the contest usually centering on whether some formal act of presentment by the bank to itself is required.²⁶ In view of the possible uncertainty, however, it would seem desirable to expressly sanction presentments by mail, the increased risk in isolated cases being one that secondary parties can be asked to bear in the interest of more efficient collection methods.

Closely related to this problem is one constituting a more serious risk to the depositor. If we adopt the view that the drawee is an agent to present to itself, and that merely holding a demand or matured instrument constitutes a presentment, the instrument would have to be paid or treated as dishonored on the day of its receipt.²⁷ Thus it would seem to follow that the drawee should give notices of dishonor and take the usual steps to charge secondary parties.²⁸ There is no objection to

²² See *Bailey v. Bodenham*, 16 C. B. (N. S.) 288, 296 (1864). This theory would probably not be pressed to the extent of giving the drawer one day to present to itself and then one day to return the instrument to itself upon dishonor. PAGET, *THE LAW OF BANKING* (3d ed. 1922) 338.

²³ MORSE, *op. cit. supra* note 12, § 236, n. 6. The direct forwarding statutes have changed this attitude. *State v. Bismarck Bank*, 57 N. D. 52, 220 N. W. 636 (1928).

²⁴ 135 Iowa 605, 113 N. W. 481 (1907).

²⁵ The court said, "where prejudice is shown, such negligence has been considered sufficient to discharge the indorser."

²⁶ *Farmers' and Merchants' Bank of Sun Prairie v. Weffald*, 227 N. W. 234 (Wis. 1929); see BIGELOW, *LAW OF BILLS, NOTES AND CHECKS* (3d ed. 1928) § 342.

²⁷ NEGOTIABLE INSTRUMENTS LAW § 89.

²⁸ In order to comply with Negotiable Instruments Law, § 90, notices given by the drawee would have to be regarded as given "on behalf of the holder." See BIGELOW, *op. cit. supra* note 26, § 395.

putting this responsibility upon the drawee, but the experience has been that, because of subsequent failure, the claim against it in case of default would in a great many instances be of little value. If we disregard the agency idea and treat the transaction as being merely a presentment, comparable to a counter presentment, then it would be the forwarding bank which should give notices upon dishonor by the drawee, which of course would be impracticable, due to lack of information. It would be possible, however, to excuse delay on the part of the forwarding bank until it should come into receipt of information as to the fate of the collection. In the usual case it would seem preferable to require the drawee to give notice.

In the case of *Blackwelder v. Fergus Motor Co.*,²⁹ the Montana court interpreted its statute making it "due diligence" to forward items directly to the drawee as authorizing presentment in that manner, but said that should the forwarding bank know of the failing condition of the drawee it would not be a proper presentment.³⁰ Further it held that inasmuch as there had been several days delay without notice of dishonor being given to the drawer of the check, he was discharged.³¹ The least that should be done in this situation is to place responsibility on the forwarding banks to use care to ascertain the condition of the drawee and payor banks to which items are forwarded direct. Obviously though this would not afford as complete protection as if the item had been forwarded to a local bank for personal presentation. Probably it should also be provided that a delay on the part of the drawee in protesting a dishonored item or in giving notice of dishonor should be excused, at least in those cases where the drawee subsequently fails.

A still more difficult case is presented where the drawee or payor bank continues solvent, but either refuses to receive an item altogether, or having received it delays indefinitely. Presentment by mail affords no direct check on such tactics at all to be compared with presentment through a correspondent. Viewing the drawee as an agent of the owner of the item,³² it

²⁹ 80 Mont. 374, 260 Pac. 734 (1927).

³⁰ See in this connection *Stout Lumber Co. v. Hayes*, 25 F. (2d) 841 (C. C. A. 5th, 1928).

³¹ Of course under the proposed amendment to § 186 of the Negotiable Instruments Law the drawer in such case would be discharged only to the extent of the loss caused by the delay—presumably the delay in giving notice of dishonor. See Britton, *Proposed Amendments to the Uniform Negotiable Instruments Law* (1928) 22 ILL. L. REV. 815. The situation would continue serious as to indorsers, as they might be completely discharged.

³² Under the Massachusetts collection rule, which prevails generally either by decision, statute, or stipulation, each bank handling a collection item is deemed to be the agent of the owner. It would follow that

would seem that it could be made to respond in damages, not only, as above discussed, for failing to give proper notices of dishonor, but for delaying to collect payment from itself as drawee, assuming the item was duly presented and the drawer's account was sufficient. The difficulty arises in that, on familiar principles, a drawee cannot be compelled to pay an uncertified or unaccepted item, even if the drawer's account is adequate.³³ Further, banks, not being in a class with public utilities, may pick and choose their customers and so apparently need not even receive any particular collection.³⁴ But there have been certain limitations imposed by the courts upon this position which it is believed should be codified.

In the first place a distinction is to be drawn between items forwarded to the drawee by its usual correspondents and items sent in by others. For example, in a recent Minnesota case,³⁵ a bank which had a clearing arrangement with another bank in the same town whereby balances were settled by draft became unwilling longer to receive its associate's draft in settlement, but did not want openly to break the relationship. Later, upon receiving from a correspondent certain items on this bank for collection, it returned them at once by mail without presentment. Before any other means of collecting could be arranged the drawee bank failed. The court held the collecting bank responsible for the loss on the ground that, had it made prompt presentment, payment could still have been had. This of course calls for developing a special category of items forwarded by customers, which would be entitled to special consideration. Applying this argument to items forwarded to the drawee, it would mean that the drawee must at least continue to receive paper from its correspondents, where no notice to the contrary had previously been given to them.

Where the item has been received by the drawee, its duty is somewhat clearer but by no means definitely determined. In *Standard Trust Co. v. National Commercial Bank*,³⁶ the drawee

the drawee, to the extent that it occupies an agency relation, is agent of the depositor. For a brief discussion of the New York and Massachusetts collection rules, their origin and relative desirability, see Comment (1924) 33 YALE L. J. 753, n. 1.

³³ For a discussion of the possibility of the holder having a right against the drawee upon a theory of equitable assignment, see Comment (1927) 37 YALE L. J. 626.

³⁴ See dicta in *Jaselli v. Riggs National Bank*, 36 App. D. C. 159 (1911), 31 L. R. A. (N. S.) 763 (1911).

³⁵ *McEnelly v. American Nat. Bank of St. Paul*, 172 Minn. 204, 214 N. W. 922 (1927).

³⁶ 240 Fed. 303 (C. C. A. 4th, 1917). See also the second ground for the decision in *Baldwin's Bank v. Smith*, 215 N. Y. 76, 109 N. E. 138 (1915).

received the check but delayed remittance until after the drawer's account had become exhausted, a note of the drawer payable to the bank in the interim having been charged against the account. The court held the drawee liable in damages to the forwarder. The many cases where depositors have lodged notes with the bank at which payable afford further basis for this recovery.³⁷ By thus stressing the agency part of the drawee's dual position, however, the courts are apparently placing the drawee in a position which is almost equivalent to that of acceptance³⁸—that is, in the case of duly presented and properly payable items.

There is a great deal of uncharted ground in what constitutes proper presentment for this purpose. For example, may the drawee receiving a bearer item by mail insist upon the indorsement of the forwarding bank?³⁹ May it further insist upon the forwarding bank's guaranty of prior indorsements?⁴⁰ Again

³⁷ That the drawee may not give priority to its own claims against its depositor, at least as to moneys subsequently deposited, seems fairly well established. *Kilsby v. Williams*, 5 B. & Ald. 815 (1822).

³⁸ It is clear that this could not be a technical acceptance under the provisions of the Negotiable Instruments Law, §§ 132 and 137, and equally clear that mere delay on the part of the drawee would not amount to a conversion under the proposed amendment to § 137 discussed hereafter. But some courts, at a loss for a remedy in this situation, have held that the drawee by delaying payment for several days should be deemed to have accepted or certified the check. *Cf. Miller v. Farmers State Bank of Arco*, 165 Minn. 339, 206 N. W. 930 (1925), and cases cited. Recovery should no doubt often be allowed in such case, but preferably on the theory of the Standard Trust Company case.

³⁹ It is usually said that the indorsement of the holder operates merely as a receipt to the drawee. Neither § 65 nor § 66 of the Negotiable Instruments Law defining the contract of indorsement indicates that there is any obligation to the drawee. But it is usual to insist on an indorsement. See discussion of this problem by Klaus, *Identification of the Holder and Tender of Receipt on the Counter-Presentation of Checks* (1929) 13 MINN. L. REV. 281.

⁴⁰ In the opinion of the writer the drawee should be entitled to demand the indorsement of the holder as a condition of payment. Further, the writer has suggested that the effect of an indorsement as respects the drawee or payor of an instrument should be stated substantially as follows:

"Every person, whether an agent or not, who without qualification indorses a negotiable or non-negotiable instrument issued by or drawn on or payable at a bank, warrants to such bank:

- (a) that he has a good title to the instrument,
- (b) that it has not been raised or otherwise altered, and
- (c) that he has no knowledge that the drawer's signature is forged or unauthorized."

The foregoing appears as § 7 in the First Tentative Draft of a Uniform Bank Collections Act, prepared by the writer, with the assistance of his colleague Mr. Wayne L. Townsend, and appearing in the report of the Committee on a Uniform Act on Collection by Banks to the National Conference of Commissioners on Uniform State Laws in 1929.

there is uncertainty as to the priority to be given to the item presented by mail in event of the many contingencies that can arise. There seems to be fairly good authority, in accord with the *Standard Trust Company* case, that such items take precedence over claims due to the bank which may be charged against the account, at least as to claims of the bank accruing after receipt of the item.⁴¹ It is probable, however, that a stop order or an attachment notice arriving subsequent to the receipt of the item but prior to its actual payment would defeat collection. It is believed that this situation should be clarified and, to the extent practicable, items by mail should be given priority of payment.

Another matter to consider in this connection is the proposed amendment to Section 137 of the Negotiable Instruments Law.⁴² In the relatively rare case where a drawee intentionally destroys a check forwarded to it for payment or refuses on demand made 24 hours after receipt of the item to return it, the drawee will be deemed under the amended section to have "converted" the instrument and become liable in damages. Where the holder is a holder in due course, and presumably, although the point is not covered, where the holder acquired the instrument through or on behalf of a holder in due course, the more usual case, damages are fixed at the face amount of the bill. Of course there is no 24 hour custom as to items left for payment or certification and none should be proposed even by inference. A demand, made at any time, for the return of an item forwarded by mail for payment or certification, which is refused, should still constitute a conversion, as at common law. Further, to afford complete protection the section should be broadened to include notes and other instruments as well as bills.

Probably the situation most in need of clarification relates to the question of payment. When is an item forwarded to the drawee by mail to be deemed paid, and what is the significance of payment? The Negotiable Instruments Law, here too, contemplated only personal presentation, which of course would result in a surrender of the instrument on receipt of the money, and would thus present no particular legal difficulty.⁴³ No question as to the effect of cancelling the instrument, of charging the drawer's account, of giving credit to the forwarder, or of any of the other facts involved in bank payment of items received

⁴¹ In those states which have not adopted § 87 of the Negotiable Instruments Law authorizing the payor bank to pay notes of the maker upon presentation, this result would apparently not follow.

⁴² Britton, *op. cit. supra* note 31, at 827; see also Turner, *Revision of the Negotiable Instruments Law* (1928) 38 YALE L. J. 25, 51.

⁴³ NEGOTIABLE INSTRUMENTS LAW § 74.

by mail was anticipated. As the case stands today the decisions are in hopeless conflict,⁴⁴ and it is believed that the uncertainty operates principally to the disadvantage of the holder.

It is important to differentiate the situations which most frequently arise. In general, items are forwarded either for credit or for remittance. In the case of the item sent for credit there are several points in the subsequent handling which could be selected as evidencing payment. First, when credit is given, whether actually charged to the drawer or not; second, when the instrument is cancelled or cancelled and credited; and third, when charged to the drawer or collected directly from the drawer if his account is inadequate, and whether cancelled or credited to the forwarder or not. Similar difficulty is presented in the case of the item sent for remittance. Should the time of preparing the remittance draft and cancelling the item, the time of mailing the remittance draft, the time of charging the drawer's account, or some combination of these be selected?

It is doubtful, in view of the conflict in the decisions, that a close examination of cases is particularly profitable, for in any case it will be necessary to make a more or less arbitrary decision. The statute drafted by the American Bankers Association⁴⁵ selects the time when "the amount is *finally charged* to the account of the maker or drawer" as the point when an item forwarded by mail should be regarded as paid, thus by implication excluding all earlier times.⁴⁶ The first consideration would seem to be that a definite act be selected, one reasonably capable of being established as a fact.⁴⁷ It has long been settled in the

⁴⁴ PATON, DIGEST (1926) Opinions 1227a and 1228a.

⁴⁵ The American Bankers Association's proposed Bank Collection Code was drafted in 1928 and submitted to legislatures meeting in 1929. It has now been adopted in the following states: Ind. Acts 1929, c. 164; Md. Laws 1929, c. 454; Mo. Laws 1929, p. 205; Neb. Laws 1929, c. 41; N. J. Laws 1929; N. M. Laws 1929, c. 138; N. Y. Laws 1929, c. 589; Wash. Laws 1929, c. 203; Wis. Laws 1929, c. 354.

A special committee of the Commissioners on Uniform State Laws commenced a study with the object of drafting a more comprehensive statute covering the whole subject of bank collections. Inasmuch as legislation in this field directly affects the Negotiable Instruments Law prepared by the Commissioners on Uniform State Laws, it is particularly important that the many short statutes and conflicting decisions bearing on the collection of negotiable paper be covered by them in a single uniform statute.

⁴⁶ The provision sponsored by the American Bankers Association reads: "Where the item is received by mail by a solvent drawee or payor bank, it shall be deemed paid when the amount is finally charged to the account of the maker or drawer."

⁴⁷ The case of most difficulty is where the drawee has received an item and simply failed to do anything—a situation which often occurs. In perhaps the leading case, that of Baldwin's Bank v. Smith, *supra* note

case of counter deposits that the credit given to the depositor of a check will be taken to constitute a final act of payment, whether or not the drawer's account is then or subsequently charged.⁴⁸ If this analogy were to be applied to deposits by mail, as seems reasonable, the credit or credit advice would be determinative,⁴⁹ regardless of whether any charge had been made, or could be made, to the drawer's account. It is believed that this point should be adopted, but at the same time, if the drawer's account has in fact been charged, or if he has actually paid the money to the drawee, this fact also should constitute payment,⁵⁰ regardless of whether any credit is subsequently given to the forwarder of the item or whether a remittance draft is sent.

An abstract discussion of payment, apart from a consideration of the consequences, is of course more or less pointless. To wait until an item has been *finally charged* to the drawer's account⁵¹ before calling it paid is to subject the transaction

36, the maker telephoned to an officer of the bank, and the latter's implied assent to the maker's instruction to pay the note was held to constitute a sufficient act of payment to discharge the maker. *Cf. Marine Bank & Trust Co. v. Triplett*, 149 Miss. 274, 115 So. 202 (1928). It is believed that these cases, where the drawee does nothing, should not be treated as cases of payment.

⁴⁸ *Cf. Oddie v. National City Bank*, 45 N. Y. 735 (1871); *Levy v. Bank*, 1 Binn. 27 (Pa. 1802). In the first of these cases the drawer's account was subsequently found to be inadequate and in the second the drawer's signature was forged; in both the item was held to be finally paid when credit was given.

It is believed desirable, in view of the enormous number of checks in use and the practical impossibility of verifying each one upon deposit over the counter for credit, to relax this rule, by treating the payment as merely provisional—thus giving the bank a reasonable opportunity to determine whether payment is in order. See in this connection *Ocean Park Bank v. Rogers*, 6 Cal. App. 678, 92 Pac. 879 (1907). But in the case of items received by mail, where credit need not be given at once, it would seem that credit when given should be final.

⁴⁹ There have been few cases where the drawer's account has not also been charged. Where the credit has been given by mistake, it should be revocable as against one not a good faith holder. See *Aigler, The Doctrine of Price v. Neal* (1926) 24 MICH. L. REV. 809. Also see *Walnut Hill Bank v. Nat. Reserve Bank*, 141 App. Div. 475, 126 N. Y. Supp. 430 (1st Dep't 1910). Otherwise the drawee should be liable. *Oregon Iron & Steel Co. v. Kelso State Bank*, 129 Wash. 109, 224 Pac. 569 (1924).

⁵⁰ *Cf. Planters' Mercantile Co. v. Armour Packing Co.*, 109 Miss. 470, 69 So. 293 (1915). Where the drawee is hopelessly insolvent at the time of charging the drawer's account a different situation is presented. *Cf. Exchange Bank v. Sutton Bank*, 78 Md. 577, 28 Atl. 563 (1894) (involving suit on original obligation).

⁵¹ In posting checks for payment it is a matter of chance ordinarily whether the check will be credited or charged first. The bank does not consider the transaction complete until both operations are finished and proven. A merely tentative charge or credit such as this should not alone

for some additional time to all of those contingencies which can defeat collection. For example, should the drawer die, or become bankrupt, or assign for the benefit of creditors before a final charge, the item would be returned dishonored.⁵² Again, except for the possibility of giving priority by statute as suggested above, stop-orders or attachments would be given effect for that much longer, a result which is believed to be undesirable. In these situations it is apparently to the interest of both bank and depositor that the earliest practicable point be selected to indicate payment. From the standpoint of secondary parties, delay obviously tends to increase their risk correspondingly. Of course, to postpone decision until a "final charge," whatever that might come to mean, would operate to the advantage of the paying bank in the *Price v. Neal* situation,⁵³ but it is doubtful whether this should be allowed to outweigh the foregoing considerations. In event of the failure of the drawee, the question is presented in still a different light. Here, for example, should the bank fail after having credited its correspondent, but before charging the drawer's account or cancelling the item, the owner no doubt would prefer to have the item regarded as unpaid, and thereby have his rights against the drawer or maker preserved. To be sure, it is not essential that the same facts constitute payment in each of these different situations, but the greater convenience in application weighs heavily in favor of a uniform single concept, if it will satisfactorily serve all purposes.

The consideration which has always given the banker most concern in handling collections is the possibility of the correspondent or drawee becoming insolvent. During the last few years approximately one-sixth of the banks in the country have failed. This risk more than any other has practically forced the adoption of the Massachusetts collection rule, putting

operate as payment. *Cf.* *First Nat. Bank v. National Park Bank*, 181 App. Div. 103, 168 N. Y. Supp. 422 (1st Dep't 1917).

⁵² In *Nineteenth Ward Bank v. First National Bank*, 184 Mass. 49, 67 N. E. 670 (1903), the plaintiff had sent a note to the defendant, the bank at which it was payable, and the latter's cashier had cancelled the note and drawn a remittance draft when advised by telephone that the maker had assigned. It was held that the note was paid by the bank to itself and only its duty to the forwarder as collecting agent to complete remittance remained. *Cf.* *Hunt v. Security State Bank*, 91 Ore. 362, 179 Pac. 248 (1919), where the drawer stopped payment at about the same point, and the item was held not to have been paid. Here the bank failed.

⁵³ It seems quite probable that the phrase "final charge" will be unduly provocative of litigation, particularly in this situation, where, for example, the drawee learns at some indefinite time after the charge that the account was inadequate or that the drawer's signature was forged.

the loss, in large measure, on the depositor. Thus, should a correspondent receive the proceeds of a collection and fail before remittance, the risk, under the Massachusetts rule, is on the depositor; the particular correspondent who has failed is regarded as his agent. It would follow, applying that rule to the direct forwarding case, that should the drawee fail after having paid an item and before remitting to its correspondent, the loss would fall upon the depositor;⁵⁴ the drawee to be regarded in effect as the depositor's agent to remit.⁵⁵

Where the drawee has credited its correspondent or sent a remittance item to it—facts which ordinarily would constitute “payment” of the collection item—and then failed before the credit could be availed of or the remittance item collected, the depositor has heretofore been in a considerably more favorable position. It is necessary to make a sharp distinction between the matter of crediting the correspondent,⁵⁶ pursuant, of course, to an understanding, and that of sending a remittance draft, which involves no entry in the drawing account. In the first situation, it could be argued, to be sure, that the credit to the forwarding bank was “mere bookkeeping,” and that, inasmuch as it had not been drawn against, the drawee bank as agent of the depositor under the Massachusetts collection rule should be regarded as still holding the proceeds, the risk thus being placed upon the depositor. The statute proposed by the American Bankers Association, however, very commendably adopts the rule of the better reasoned cases⁵⁷ that this constitutes a trans-

⁵⁴ In case the instrument has not been paid and is held by the drawee upon becoming insolvent there would seem no doubt but that the owner could ordinarily reclaim the instrument from the receiver. The older cases are cited in SCOTT, *CASES ON TRUSTS* (1919) 77, n. 1.

⁵⁵ Where the drawee has remitted by draft some courts have invoked the idea of conditional payment and treated the original obligation as unpaid where the remittance draft has been dishonored. *Graham v. Proctorville Warehouse Co.*, 189 N. C. 533, 127 S. E. 540 (1925). If the remittance draft were to have been settled for in turn by another remittance draft; and so on, it would be possible on this theory to reverse a number of transactions. Most courts hold that the issuance of a remittance draft, although the same is never paid, constitutes a discharge of the original item. *Odle v. Barnes*, 117 Tex. 174, 2 S. W. (2d) 577 (1927).

⁵⁶ By crediting is meant crediting the drawing account. Such a credit has generally been considered to establish a debtor-creditor relation defeating claim for preference. *Equitable Trust Company v. Rochling*, 275 U. S. 248, 48 Sup. Ct. 58 (1927).

⁵⁷ *Stone v. Wachovia Bank & Trust Co.*, 145 S. C. 166, 143 S. E. 27 (1928); *Arnold v. Wachovia Bank & Trust Co.*, 195 N. C. 345, 142 S. E. 217 (1928); *cf. Commercial Bank v. Armstrong*, 148 U. S. 50, 13 Sup. Ct. 533 (1893).

mission to the forwarding bank,⁵⁸ and that the risk is therefore on it and not on the depositor. Where the remittance has been by draft, the ancient rule that an agent accepts at his peril anything other than money on account of a draft owing to his principal⁵⁹ has been kept in force by the courts to aid the depositor. This rule was reaffirmed as late as 1924 by the Supreme Court in the now famous *Malloy* case,⁶⁰ where the depositor was given a cause of action against the Federal Reserve bank which accepted a draft, subsequently dishonored, in payment of a collection item.

The *Malloy* decision was denounced by bankers as archaic and unworkable. Quite rightly they stated that it would be impossible to handle the volume of collections required to transact modern business if only money could be used in transmission. A great many banks accordingly stipulated broadly for the privilege of receiving any bank draft or check in payment of collections.⁶¹ Again, in many states statutes have been adopted sanctioning collection by draft, and relieving the collecting bank of responsibility in event the remittance item should be dishonored.⁶² Indeed, it has just been held in Wisconsin,⁶³ without

⁵⁸ The provision sponsored by the American Bankers Association reads: "Whenever such agent collecting bank shall request or accept in payment an unconditional credit which has been given to it on the books of the drawee or payor or on the books of any other bank, such agent collecting bank shall become debtor for such item and shall be responsible therefor as if the proceeds were actually received by it in money."

⁵⁹ *Ward v. Evans*, 2 Ld. Raym. 928 (1703).

⁶⁰ *Federal Reserve Bank v. Malloy*, *supra* note 15.

⁶¹ It is believed that a distinction should be drawn between mail collections by draft, where practically speaking no other course is possible, and local collections by draft, where it is possible to make collection in money or other satisfactory form. In other words, local banks are in an especially good position to ascertain the standing of each other and can reasonably be expected to take responsibility for collections. The American Bankers Association has, however, advocated authorizing local banks also to receive payments by bank draft without responsibility. It is possible that this provision will prove somewhat illusory when taken before the courts, as it should certainly be regarded as negligence for a collecting bank to take a draft from a drawee bank known to be in failing circumstances. This being so, it is believed the gain commercially to be derived from fixing a point when an item can be said to have been paid—past the possibility of charge back—outweighs the incidental protection to the local bank.

⁶² One of the most instructive cases on the point, discussing the statutes and the changes adopted by the Reserve banks following the *Malloy* decision, is *Transcontinental Oil Co. v. Federal Reserve Bank*, 172 Minn. 58, 214 N. W. 918 (1927). The court said, in disapproving the result of the *Malloy* case: "In fact, we know that the banking business could not be conducted without extraordinary and needless expense to the public, or at all, perhaps, if in the collection and clearance of commercial paper only currency was to be used."

⁶³ *United States F. & G. Co. v. Forest County State Bank*, 227 N. W. 27 (Wis. 1929).

aid of statute or stipulation, and almost without precedent, that such practice is to be sanctioned as the only feasible way of effecting collection, and, being the one contemplated by the owner, should be at his risk. Of course one may well grant that agent banks must receive and make transmissions by draft, but it does not follow at all that this must necessarily be at the depositor's risk.⁶⁴ However, it would not be possible for banks to assume the losses that have occurred in the last few years on remittance drafts and still continue to handle without charge the vast quantity of items now being collected through banks. Possibly the alternative of shifting the risk from the bank is the lesser evil.⁶⁵

There is sharp division of opinion among bankers whether the owner of the item or the drawer should bear the loss resulting when the drawee fails before its remittance draft can be collected. The argument parallels that of fifty years ago when checks were being used increasingly in place of exchange drafts to effect payments.⁶⁶ Should the buyer pay the collection charges on his check as he had formerly paid the costs of buying exchange, or should they be absorbed by the seller? As a matter of fact these costs were, by the system of immediate credit and circuitous routing, largely absorbed by the banks. In the present situation it is pointed out that it is the drawer who selects the drawee bank and it is contended that for this reason he should bear the risk of its continued solvency⁶⁷ until its remittance draft is paid.⁶⁸ Of course it can be replied, as in the argument concerning costs of collection, that the payee does

⁶⁴ The depositor knows that his bank will have to handle his collections through its employees, but it has never been held that such knowledge operates to put the risk of their negligence or misconduct on the depositor.

⁶⁵ Although the charge to cover this risk might be small, the mere fact that any charge must be made would increase bookkeeping costs and slow up collections. Just how great this would be does not appear to have been determined as a matter of fact.

⁶⁶ SPAHR, *op. cit. supra* note 1, at 117.

⁶⁷ A similar argument is presented as to whether holder or maker should bear the risk of the continued solvency of the bank at which a note has been made payable—where the maker has a sufficient deposit at maturity but the holder delays presentment until after the bank fails. *Federal Intermediate Credit Bank v. Epstein*, 151 S. C. 67, 148 S. E. 713 (1929), discussed in (1929) 39 YALE L. J. 277, and Note (1929) 18 CALIF. L. REV. 56; *cf.* NEGOTIABLE INSTRUMENTS LAW § 186 as to the drawer of a check.

⁶⁸ The usual rule is that the drawer is discharged upon payment, and ordinarily the sending of a remittance draft constitutes payment for this purpose whether the remittance draft is itself paid or not. The leading authority is *Federal Reserve Bank v. Malloy*, *supra* note 15. See also *supra* note 50.

not have to receive payment by check, but may insist on settlement in any form satisfactory to it, as, for example, by an extension of the use of the banker's credit. The argument is wholly inconclusive.

It is now the law in some eight or nine states, however, by virtue of the collection code sponsored by the American Bankers Association,⁶⁹ that where the drawee's remittance draft is dishonored, the collecting agent may at its election treat the collection item as dishonored by non-payment, and recourse may be had against all prior parties.⁷⁰ This means that if the maker of a note which has been sent to his bank for collection and remittance should pay the amount in cash to his bank and receive back the cancelled instrument, circumstances which usually have been held to amount to payment, the maker and any indorsers could nevertheless still be held liable at the election of the collecting bank, provided only the bank's remittance draft should not be paid in due course. Whatever the difficulties of the depositor's position, and of the banks effecting collection of their own paper, it would seem clear that this disregard of the position of other parties should not be generally adopted as a solution.⁷¹

It is only fair to say that up to this point the depositor has

⁶⁹ See statutes cited *supra* note 45.

⁷⁰ The provision has such an important bearing on the law of negotiable instruments that it will be quoted in full, as follows:

"Where an item is duly presented by mail to the drawee or payor, whether or not the same has been charged to the account of the maker or drawer thereof or returned to such maker or drawer, the agent collecting bank so presenting may, at its election, exercised with reasonable diligence, treat such item as dishonored by non-payment and recourse may be had upon prior parties thereto in any of the following cases:

(1) Where the check or draft of the drawee or payor bank upon another bank received in payment shall not be paid in due course;

(2) Where the drawee or payor bank shall without request or authority tender as payment its own check or draft upon itself or other instrument upon which it is primarily liable;

(3) Where the drawee or payor bank shall give an unrequested or unauthorized credit therefor on its books or the books of another bank; or

(4) Where the drawee or payor shall retain such item without remitting therefor on the day of receipt or on the day of maturity if payable otherwise than on demand and received by it prior to or on such day of maturity."

⁷¹ It is evident that the drawer or maker is not particularly interested in having items forwarded directly; his account is debited somewhat sooner than it otherwise would be if collection were made through the agency of a local bank. Furthermore, it is not apparent why the drawer or maker should also be made to bear the risk of collection of his bank's remittance draft. Had the item been collected through the agency of a local correspondent, as is the general practice, this additional risk would ordinarily be obviated.

been rather badly worsted by the adoption of the direct routing practice. With his original item paid and all parties thereon discharged, with the collecting banks relieved of responsibility and the drawee insolvent, there remains only the possibility of giving him a preferred claim upon the liquidation of the drawee. Again it is important to distinguish between the items forwarded for credit and those sent for collection and remittance. As to the former there is no question but that an ordinary depositor-bank, debtor-creditor, relation arises when the item is paid and credited. In such case it has long been settled that no preferred claim will be allowed.⁷² But in the latter situation there has been wide conflict in the authorities.

It is orthodox to say, without distinguishing between credit and remittance situations, that the agency relation of a collecting bank ends upon collection and a debtor-creditor relation takes its place.⁷³ Just why this alleged metamorphosis takes place in the remittance situation is not clear, although it probably grows out of the feeling that it is equitable to treat all creditors alike. Various evidentiary facts are seized upon to prove that the parties must have intended a debtor-creditor relation, the chief among these being the fact that it is understood that the collecting bank may mingle the proceeds and remit in exchange.⁷⁴ Obviously to insist on this circumstance to the exclusion of other considerations in a day when an increasing number of draft transmissions must be made by agents, when in fact the method is being forced on the principal as in the direct routing situation, is to insist on an outworn rationalization in disregard of changing conditions.⁷⁵

⁷² *Matter of the Franklin Bank*, 1 Paige 249 (N. Y. 1828).

⁷³ SCOTT, *op. cit.* *supra* note 54, at 67.

⁷⁴ *In Citizens Bank v. Bradley*, 136 S. C. 511, 134 S. E. 510 (1926), the drawee paid the collection items but failed before its remittance draft could be collected. The court in denying a preferred claim said,

" . . . before the collection is made the relation between the owner of the paper and the collecting bank is that of principal and agent; but . . . after the collection has been made, the relation of debtor and creditor arises. This conclusion is based upon the custom of banks to credit those for whom collections have been made and remit in the bank's usual exchange. . . ."

This argument is true in the case where the forwarder maintains a deposit account with the collecting bank but it has no validity in the remittance case where no credit is in fact given to the forwarder.

⁷⁵ The Iowa court in the case of *Leach v. Citizens State Bank*, 203 Iowa 782, 211 N. W. 522 (1926), met the forwarder's demand for a preferred claim by likening the transaction to an ordinary counter presentment and refused the idea that the drawee was in any sense an agent. To be sure, if the holder standing before the counter of the drawee elects to take its certification or its cashier's check, there is no denying the fact that he has trusted generally to the bank's credit and should be put on a par with

In the last analysis the issue is between the owner of the collection item and the general creditors of the failed drawee, including its depositors. It must not be forgotten that had the item been presented to the drawee through the local clearing house and paid, the amount would have been irrevocably separated from the assets of the failed bank. This would not be regarded as in any sense inequitable to the depositors. When, for reasons of general efficiency, this additional collection step is eliminated, and the payment is received by the drawee for direct remittance, the general creditors are in no worse position if a preferred claim is given the forwarder. In fact if a preferred claim is to be denied, the result would be to improve the position of the general depositors merely because of a change in collection practice which they had no part in bringing about. To allow the holder a preferred claim in large measure compensates him for the many increased risks forced upon him by the direct routing practice.⁷⁶

There is no question, however, but that the device of first creating a trust in order to make a distinction between types of creditors is not only clumsy and uncertain but slow and expensive of administration as well. The question of whether or not there is an "augmentation" of assets is continually being litigated in the banking cases with a wide conflict in result.⁷⁷ The tracing requirement gives still further difficulty, particularly in the banking cases where ordinarily no money, as such, was received, transfers being effected by credit entries.⁷⁸ It is be-

other creditors. It should be obvious though that the distant owner of a collection item for all practical purposes has no such election in the matter. The Virginia court, in the case of *Federal Reserve Bank v. Peters*, 139 Va. 45, 123 S. E. 379 (1924), recognized these factors and gave the depositor a preferred claim. The Iowa decision still represents the majority view, although there is quite respectable authority for the position of the Virginia court. See Comment (1927) 36 *YALE L. J.* 682.

⁷⁶ A similar remedy should be afforded to the owner where a correspondent bank fails after having received the proceeds of a collection and before its remittance draft is paid.

⁷⁷ Where payment has been made to the collecting bank by check upon itself the federal courts and some state courts hold that there has been no augmentation of the assets of the failed bank, so that no preferred claim can be allowed. *Hecker-Jones-Jewell Milling Co. v. Cosmopolitan Trust Co.*, 242 Mass. 181, 136 N. E. 333 (1922); *Ellerbe v. Studebaker Corp.*, 21 F. (2d) 993 (C. C. A. 4th, 1927). The court in the case last cited showed considerable reluctance at following the strict augmentation rule. Many state courts make no distinctions, for this purpose, between payments by check and those by cash. *Cf. Messenger v. Carroll Trust & Sav. Bank*, 193 Iowa 608, 187 N. W. 545 (1922); *Thomas v. Mothersead*, 128 Okla. 157, 261 Pac. 363 (1927).

⁷⁸ For example, there is a question whether the trust res may be traced into the failed bank's accounts with other banks. *Cf. Lane v. First Na-*

lieved this situation should be corrected, as has been done in several states, by providing simply that the forwarder is to be given a certain priority upon liquidation.⁷⁹ The saving to follow through eliminating the tracing requirement alone would be large. In fairness to general creditors it is believed the forwarder's preferred position should not extend, as proposed by the American Bankers Association, to the failed bank's real estate, bank building and fixtures. Only the relatively liquid assets, or those which might conceivably have been used in making payment of the item had it been presented by a local collecting bank, should be subject to the forwarder's claim.

In conclusion, it should be recognized that this emphasis on the risks and hazards of collection gives a distorted view of the actual situation. For the most part the collection system functions smoothly and efficiently without loss. The risks involved have gained undue prominence during the last ten years owing to the abnormally large number of bank failures. Some measures must be taken in the near future, possibly by an extension of branch banking or of chain banking, or a strengthening of banking laws, to eliminate this risk. There seems little doubt, however, but that the direct routing practice will be extended, and it is believed can be extended with reasonable fairness to all parties if carefully drawn legislation covering the points above discussed is adopted in the several states.

tional Bank of Vale, 281 Pac. 172 (Ore. 1929), (1929) 39 YALE L. J. 576, where the court disregarded the tracing requirement as to such accounts.

⁷⁹ See NORTH CAROLINA BANKING LAW, c. 113, § 1 (14), N. C. Pub. Laws 1927, p. 356.