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Certified Checks

J. T. Hayes

> It is my firmly-held belief that the requirements of public sale, specified holding periods, a terminal selling date, and so on not only do not accomplish the end; they make it impossible to dispose of the collateral at a decent price.[42]

Similar reasoning by another authority on the Code has been expressed in these words:

> The rigid formality of old-fashioned foreclosure has often resulted in loss to all except those who purchased at foreclosure sales.[43]

Chief Justice Blume in a dicta from the *McInerney and Conway Finance Corporation v. Smith* case lends persuasive force to these observations:

> The provisions of the statute for public sale, made for the advantage of the mortgagor, on the whole doubtless subserve a good purpose. Still we know that sales of mortgaged property are frequently purely formal, at which the mortgagee usually bids in the property, and at his own price, so that a private sale might often be more advantageous to mortgagors than a public one.[44]

We conclude that the more flexible provisions of the Code allow simple remedies for the secured party for realization upon the collateral in the event of default. The secured party can take possession of the collateral without costly delays and the security can be sold privately in a market that is commercially suited to such sales. The less restricted disposition of the security would generally result in a greater realization of value of the collateral which would benefit all parties concerned.

The debtor, under the Code, would not only benefit from greater realization upon the collateral, but would be entitled to a high standard of conduct on the part of the secured party, would have specific remedies not presently available to him, and would acquire greater rights than the existing statutes provide.

DONALD P. WHITE

CERTIFIED CHECKS

Certified checks, as negotiable instruments, are substitutes for money,[1] and their utility lies in the fact that a holder, on sight, can determine their value without investigating the solvency of the maker or the validity of third party claims. The practice of certification is entirely one of convenience and is not a legal obligation of the bank to its customers.[2] As a

42. Supra note 35.
43. Supra note 36.
44. 42 Wyo. 380, 295 Pac. 273, 73 A.L.R. 851 (1931).

1. Smith v. Field, 19 Idaho 558, 114 Pac. 668 (1911). Held, under a statute authorizing a money deposit in lieu of an undertaking, that the deposit of a certified check is a sufficient compliance with the statute.
2. Uniform Commercial Code § 3-411 (2).

general rule, banks will not certify bearer checks, undated checks, checks endorsed without recourse, previously dishonored checks, and checks which the drawer has instructed should not be certified because it is against good banking practice, creates business risks and in some cases causes a loss of good will.[3] The certification constitutes an agreement or unconditional promise of the certifying bank to pay the payee or holder on demand, and, as incident to the certification, the bank is required to make an assignment of funds[4] from the drawers' deposits to its certified check account, to cover the retirement of the check.[5] Under existing Wyoming law the certification, being an acceptance,[6] may be written on paper other than the bill itself. The statutes provide for acceptance by a written promise to accept drafts to be drawn and acceptance by a separate writing.[7] The Code will require that the acceptance be written on the draft, which will preclude other methods.[8] Another statute provides that if a drawee refuses to return a bill or destroys it, that such conduct will be considered a constructive acceptance.[9] Under the Code, the failure or refusal to return the bill on demand, or its destruction, is to be considered a conversion and not an acceptance.[10] There still may be times when a virtual, collateral, or constructive acceptance would be desirable, but in the whole, such change represents good commercial and banking practice by eliminating liabilities, dangers, and uncertainties arising from acceptances by separate writings.[11]

Present Wyoming statutory law discharges the liability of the drawer and prior indorsers when the certification is made at the request of the holder,[12] who substitutes the bank's credit in lieu of the drawer's. Under the Code this will discharge the underlying obligation for which the check has been given and will represent an absolute payment which will not revive the underlying obligation in case of later non-payment by the bank.[13] In cases where the drawer has procured the certification, the Code suspends the underlying obligation until the check is presented for payment, and if dishonored gives the holder the right to maintain an action either on the instrument or the underlying obligation.[14]

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3. Note, 16 La. L. Rev. 145 (1955).
4. Wyo. Comp. Stat. § 40-1606 (1945).
5. Wyo. Comp. Stat. § 35-150 (1945).
6. Wyo. Comp. Stat. § 40-1604 (1945), Uniform Commercial Code § 3-411 (1). Certification is acceptance.
7. Wyo. Comp. Stat. §§ 40-1003, 40-1104 (1945).
8. Uniform Commercial Code § 3-410 (1).
9. Wyo. Comp. Stat. § 40-1006 (1945).
10. Uniform Commercial Code § 3-419. Conversion does not cover an accidental or negligent loss or destruction for which there may be some other tort liability.
11. Uniform Commercial Code § 3-410. Note, Comment 3.
12. Wyo. Comp. Stat. § 40-1605 (1945), and Uniform Commercial Code § 3-411 (1).
13. Uniform Commercial Code §§ 3-802 (1a) and 3-411 (1).
14. Uniform Commercial Code § 3-802 (1b).
(a) The measure of damages for failure of the bank to pay under Wyo. Comp. Stat. § 35-151 (1945), is the actual damages alleged and proved; while the Uniform Commercial Code § 4-402, provides proximate damages for wrongful dishonor, and limits the liability to actual damages proved in case of dishonor through mistake.

The Uniform Commercial Code permits the banking practice of certifying checks returned for proper endorsement or completion.[15] A bank may do this to protect the drawer against extended contingent liability, but when it does so, the drawer is discharged.[16] The present statute allows acceptance of an unsigned or incomplete check but does not expressly state that the drawer would be thereby discharged.[17] When the holder takes a qualified acceptance, the drawer and indorsers are discharged under both the Code and statute, unless the drawer or indorsers authorized the holder to take such an acceptance or subsequently assented thereto. Upon receiving notice of a qualified acceptance by a holder, they must within a reasonble time express dissent to the holder or be deemed to have assented.[18]

The liability of the drawee bank is determined at the time certification is procured,[19] and remains a valid obligation of the bank until it is retired.[20] The drawee bank is not liable to one taking it without proper indorsement, even if he is a bona fide holder for value,[21] and under present Wyoming law the payment must be made in good faith and without notice of a defect in title.[22] If the bank were put on notice by a third party of an adverse claim to the instrument, they would have no immediate means of knowing whether the assertions were true or not. To pay might subject the bank to liability as being a party to a fraud or as a constructive trustee. Under the Code the bank could pay unless the adverse claimant supplies indemnity deemed adequate to protect the bank, or procures the issuance of process restraining payment in an action in which the adverse claimant and the holder of the instrument are parties.[23]

The bank is not ordinarily responsible for alterations after it has certified the check where such alterations are made without the bank's knowledge or consent,[24] but is still liable to a holder in due course according to the tenor of the instrument at the time of certification.[25] The altered instrument, under both the Code and present statutory law, may be enforced by a holder in due course according to its original tenor.[26]

(b) If the drawer of the certified check, unpaid because of insolvency of drawee bank, pays the holder, he is entitled to maintain an action against the assets of the bank, but is not entitled to a preference over ordinary creditors. Lloyd v. Butler County State Bank, 122 Kan. 835, 253 Pac. 906 (1927).

15. Uniform Commercial Code § 3-410 (2).
16. Uniform Commercial Code § 3-411 (3).
17. Wyo. Comp. Stat. § 40-1007 (1945).
18. Wyo. Comp. Stat. § 40-1011 (1945), and Uniform Commercial Code § 3-412 (3).
19. Parker v. Walsh, 200 Iowa 1086, 205 N.W. 853 (1925). Held, any person in possession of the check can obtain certification, whether transferee, holder, or agent, but the bank is entitled to refuse payment to any other person than to the original payees or their indorsee upon presentation for payment.
20. Wyo. Comp. Stat. § 35-150 (1945). Uniform Commercial Code § 4-404. No time limit for presentation of a certified check, under theory that it is not due until presented for payment.
21. Goshen Nat. Bank v. Bingham, 118 N.Y. 349, 23 N.E. 180, 7 L.R.A. 595 (1890).
22. Wyo. Comp. Stat. § 40-619 (1945).
23. Uniform Commercial Code § 3-603.
24. Ozark Savings Bank v. Bank of Bradleyville, 204 S.W. 570, 22 A.L.R. 1162 (1918).
25. Wyo. Comp. Stat. § 40-503 (1945), Uniform Commercial Code §§ 3-409 (1), 3-413 (1).
26. Wyo. Comp. Stat. § 40-806 (1945), Uniform Commercial Code § 3-407 (3).

The Code goes further and gives the holder the right to enforce the check in its altered form against any person whose negilgence has substantially contributed to the alteration.[27] There is no comparable NIL provision, but the courts are agreed that a depositor's negligence in executing a check in such a manner that the amount may readily be raised, renders him liable for payment of the check in the increased amount if the paying bank has acted with ordinary care in making the payment. If negligence of the bank intervenes, however, the depositor has been protected notwithstanding his negligence.[28] The Code does not attempt to define negligence in this situation, so the question remains one for the courts or the jury on the facts of each case. Many cases decided under the NIL have stated that the certification of a check by a bank does not, as a matter of law, amount to an affirmation or representation that it is in all respects genuine,[29] although, by acceptance, the drawee does guarantee the genuineness of the drawer's signature.[30]

Existing Wyoming law allows the bank to charge a depositor for payment of a forged or raised check unless within 30 days after return to the depositor of the voucher of such payment, such depositor shall notify the bank that the check was forged or raised.[31] The Code extends this time limit to make claim for payment of an altered or forged instrument to one year.[32] Also, the drawee bank in certifying and subsequently paying a check on which the drawer's signature has been forged cannot recover payment made to a holder in due course although the bank could recover from the forger, a thief, or one not a holder in due course.[33]

One of the major problems concerns the effect of a stop-payment order on a certified check.[34] There is conflict as to whether the bank must respect such an order. The majority rule under the NIL seems to be that the drawer can stop payment only if he has procured the certification, if he has a defense, and if the payee or holder is not a holder in due course. This presents the problem to the bank of deciding whether the defense of the drawer is adequate. The Code resolves this problem by recognizing the right of the drawer to stop payment on checks[35] and requiring that notices, stops, and other legal processes received take priority over any item payable from an account unless the bank shall have accepted or certified the item.[36] Thus, under the Code, there is no right

27. Uniform Commercial Code § 3-406.
28. Ibid, comment 6. 42 A.L.R.2d 1074.
29. 22 A.L.R. 1158
30. Wyo. Comp. Stat. § 40-503 (1945).
31. Wyo. Comp. Stat. § 35-148 (1945).
32. Uniform Commercial Code § 4-406 (4).
33. Uniform Commercial Code § 3-418, payment or acceptance is final in favor of a holder in due course. See 22 A.L.R. 1157.
34. Note, 5 Wyo. L.J. 170, an extensive anlaysis is given on the effect of a stop-payment order on certified checks under the NIL.
35. Wyo. Comp. Stat. § 35-157 (1945), Uniform Commercial Code § 4-403.
36. Uniform Commercial Code § 4-303.

to stop payment after certification of a check—no matter who procures the certification.

Not affected by the Uniform Commercial Code is the general rule that a bank may cancel, rescind, or revoke its certification of a check, where such certification was induced by fraud;[37] made because of a mistake as to the drawer's account;[38] makes by mistake after a drawer has stopped payment on the check;[39] even though negligent;[40] by immediately notifying the holder, provided, that the rights of third persons have not intervened, and the holder, relying on the certification, has not altered his position so as to render it inequitable to permit a revocation.

CONCLUSION

The NIL, which has been a part of Wyoming statutory law since 1905, would be superseded in the Uniform Commercial Code. Concerning certified checks, there are a few significant changes in the Code, but it makes no basic changes in the relationships of the parties. Establishing that there can be no stop-payment order after certification should greatly facilitate the negotiable value of such instruments, take a burden off commercial and banking interests, and generally aid commercial intercourse.

J. T. HAYS

BANK COLLECTIONS

Article IV of the Uniform Commercial Code, entitled Bank Deposits and Collections, is the third time that drafters have attempted to state a workable uniform law governing banks during the collection process.

In 1928 the American Bankers Association proposed a bank collection code which was subsequently enacted in law in 18 states, including Wyoming in 1931.[1] This code, although unwittingly referred to as the Uniform Bank Collection Code by many writers, has never received sanction by the drafters of our uniform laws. In 1933 a Uniform Bank Collection Code was proposed but never passed farther than the drafters' hands.

The variety of situations that arise in the process of collecting a check have caused the drafters of bank collection rules much consternation. The following examples are a few of the simpler situations.

The easiest case is one in which Jack borrows money from Jill. Jack

37. Farmer's Savings Bank of West Plains v. American Trust Co. of Warrensburg, 199 Mo.App. 491, 203 S.W. 674 (1918).
38. 29 A.L.R. 140.
39. Baldinger & Kupferman Mfg. Co. v. Manufacturer's Citizens' Trust Co., 93 Misc. Rep. 94, 156 N.Y.Supp. 445 (1915).
40. Security Savings & Trust Co. v. King, 69 Ore. 228, 138 Pac. 465 (1914).

1. Wyo. Comp. Stat. §§ 35-1001 through 35-1016 (1945).