the court held that when bankruptcy of a corporation is attended by dissolution proceedings the repudiation of the lease is complete and the claim for future rent should be allowed against the bankrupt estate. The landlord has no possibility of proceeding against the dissolved corporation at a later date as he can against an individual tenant. Such an action was allowed against a tenant after his discharge in bankruptcy in *Kessler v. Slappey*, 130 S.E. 921 (Ga. App. 1925). Such a decision, however, is the compliment of the rule excluding proof of claim for future rent against the bankrupt estate and cannot be considered as a justification for it.

The instant case in allowing proof of a claim for damages for the anticipatory breach of a contract to buy land makes it clear that the exception in the lease cases can be defended not as involving contracts relating to land but only because of the peculiar nature of the obligation to pay rent. Modern cases outside of bankruptcy which allow an action for damages for the anticipatory breach of a lease contract as in the case of ordinary executory contracts suggest that this ground is being undermined. *Grayson v. Mixon*, 176 Ark. 1123, 5 S.W. (2d) 312 (1928); *Curran v. Smith-Zollinger Co.*, 157 Atl. 432 (Del. Ch. 1931); *Weir v. Cooper*, 122 Miss. 225, 84 So. 184 (1920); *Leo v. Pearce Stores Co.*, 57 F. (2d) 340 (D.C.E.D. Mich. 1932).

JAMES SHARP

Bills and Notes—Knowledge of Fictitious Payee [New York].—The defendant city depository cashed checks payable to the order of non-existent city employees. Each check contained space for the employee's signature for identification purposes only. The endorsement by employee, presumably made in indorsee's presence, was to correspond to the identification signature. The signatures corresponded but both were made at the same time and not at the time of cashing the checks. *Held*, plaintiff recover the amount of the checks. *City of New York v. Bronx County Trust. et al.*, 261 N.Y. 64, 184 N.E. 495 (1933).

Towards the end of the eighteenth century it became established that a bill of exchange payable, within the knowledge of the maker, to a fictitious person was considered as being payable to bearer. *Minet v. Gibson*, 3 T. R. 481 (1789); *Bennett v. Farnell*, 1 Campbell 129, 180 c. (N.P. 1807); *City of St. Paul v. Merchants Nat. Bank*, 485, 187 N.W. 516 (1922); *Nat. Surety Co. v. Nat. City Bank of Brooklyn*, 184 App. Div. 771, 172 N.Y.S. 413 (1908); *contra Kohn v. Watkins*, 26 Kan. 691 (1882) (holding that the maker is estopped from asserting ignorance as to a fictitious payee); Daniels, Negotiable Instruments (6th ed. 1913) § 139. The Bills of Exchange Act, 45 & 46 Vict., c. 61, § 7 (3) (1882), dispensed with the requirement of such knowledge. *Bank of England v. Vagliano*, [1891] A.C. 107. The Negotiable Instruments Law, however, followed the common law. N. I. L., § 9(3); *Harmon v. Old Detroit National Bank*, 153 Mich. 73, 116 N.W. 617 (1908).

The knowledge possessed by an agent acting fraudulently and for his own purpose and benefit is not imputed to his principal. *Cave v. Cave*, [1880] Ch. Div. 639; Mechem, Agency (2nd ed. 1914), § 1815. It follows that knowledge of the employees drawing the checks as to the fictitious character of the payee would not be imputed to the city. But since it is only required that the "maker" have knowledge, where the agent is considered the maker, the principal is liable if apparent authority existed. *Phillips v. Mercantile Bank*, 140 N.Y. 556, 35 N.E. 982 (1894); *Snyder v. Corn Exch. Nat. Bank*, 221 Pa. 599, 70 Atl. 876 (1908). See also *Hartford v. Greenwich Bank*, 157 App. Div. 448,

142 N.Y.S. 387 (1913) where the clerk who prepared the checks, was in effect held to be the "maker."

In the absence of negligence or estoppel the paying bank may charge the maker's account only according to his orders and direction. *Phoenix Bank v. Risley*, 111 U.S. 125, 4 Sup. Ct. 322, 28 L. Ed. 374 (1884); *Shipman v. Bank of N.Y.*, 126 N.Y. 318, 27 N.E. 371, 12 L.R.A. 711 (1891). The depositor's duty to use care in dealings with the bank extends to the examination of the returned vouchers. *Jordan Marsh Co. v. Nat. Shawmut Bank*, 201 Mass. 397, 87 N.E. 740, 22 L.R.A. (N.S.) 250 (1909); contra *Walker v. Manchester Co.*, 108 L.T. (N.S.) 728 (1903); *Rex v. Bank of Montreal*, 11 Ont. L.R. 595 (1906). The duty does not extend to the examination of the indorsements. *Corn Exch. Bank v. Nassau Bank*, 91 N.Y. 74 (1883); *Nat. Surety Co. v. Manhattan Co.*, 252 N.Y. 247 (1929). Hence plaintiff was not negligent in failing to discover the forgeries sooner. Justices Lehman and Kellog dissenting were of the opinion that the "self-identifying" feature was enough to work an estoppel. The majority, on the facts of the case, came to the conclusion that no reliance in fact had been placed on the identifying device.

Even though the city had accepted the monthly statements as stated accounts such could be opened by a showing of fraud or mistake. *Nat. Surety Co. v. Manhattan Co.*, *supra*.

KARL HUBER

Bulk Sales—"Other Goods and Chattels of the Vendor's Business"—[Illinois].—The "old" bank sold real estate bonds to complainant and agreed to repurchase at par if requested. Later the old bank transferred all its assets to the "new" bank, which assumed only specified liabilities. Complainant sought to recover the purchase price of the bonds from both institutions, alleging among other things, that the transfer to the "new" bank was void under the Bulk Sales Law. *Held*, the Bulk Sales Law does not apply to the transfer of the assets of a bank since, being in derogation of the common law it should be strictly construed. *Knass v. Madison & Kedzie State Bank and Madison-Kedzie Trust & Savings Bank*, 269 Ill. App. 588 (1933).

The Illinois Bulk Sales Law of 1905, Ill. Laws of 1905, 284, was held unconstitutional because it singled out a class—vendors and purchasers of stocks of merchandise—on which it imposed exceptional burdens. *Off & Co. v. Morehead*, 235 Ill. 40, 85 N.E. 264 (1908). To avoid this objection the statute of 1913 was worded " . . . . the sale, transfer, or assignment . . . . of a stock of merchandise, or merchandise and fixtures or other goods and chattels of the vendor's business. . . . ." Ill. Cahill's Rev. Stats. (1931), c. 121a, § 1. This statute was held constitutional. *Johnson Co. v. Beloosky*, 263 Ill. 363, 105 N.E. 287, Ann. Cas. 1915C, 411 (1914).

There followed a period of uncertainty in interpretation. In *Larson v. Judd*, 200 Ill. App. 420 (1916) the court said that the act covered the sale of the cattle, horses, and equipment of a dairyman. The sale of office furniture, horses, wagons, trucks, harness, farm machinery, hogs, growing corn, etc., by a man engaged in the dray business and farming was within the statute. *Athon v. McAllister*, 205 Ill. App. 41 (1917). On the other hand was a holding that the act related only to businesses where in the ordinary course goods were not sold in bulk, and that the sale of a team of horses and a wagon was exempt from the act's requirements. *Richardson Coal Co. v. Cermak*, 190 Ill. App. 106 (1914). Similarly in *Ettelson v. Sonkopp*, 210 Ill. App. 348 (1918) it was held that