

of conditional sale, *Commercial Acceptance Trust v. Bailey*, 87 Cal. App. 117, 261 Pac. 743 (1927); *White v. General Motors Acceptance Corp.*, 2 F. Supp. 406 (D.C. Ky. 1932); of agency, *Foreign Trade Banking Corp. v. Gerseta Corp.*, 237 N.Y. 265, 142 N.E. 607 (1923); of bailment, *Commercial Credit Co. v. Peak*, 195 Cal. 27, 231 Pac. 340 (1924); *General Motors Acceptance Corp. v. Hupfer*, 113 Neb. 228, 202 N.W. 627 (1925). In all these cases it is plain that the financier is more anxious to protect himself against the creditors of the borrower than against his dishonesty. The trust receipt, itself, under which the lender (the would-be *cestui que trust*) has legal title is not consistent with the conception of a technical trust which would come within the exception of § 17(4). It is fundamentally a security and not a fiduciary relation. *Bloomingtondale v. Dreher*, 31 F. (2d) 93 (C.C.A. 3d 1929).

Banks and Banking—Preferences—[Ohio].—Plaintiff, owner of two certificates of deposit on a bank, presented them to the bank, which cancelled them and marked them paid, giving plaintiff in payment two drafts upon correspondent banks. The bank having failed before presentment of the drafts, the correspondents refused payment. Plaintiff claimed a preference under the Ohio statute (Ohio Throckmorton's Ann. Code (1929), § 714), providing that a trust shall be impressed on the assets of any closed bank which draws a draft on another bank in payment of the proceeds realized from the collection of any negotiable instrument. *Held*, plaintiff is not entitled to a preference since the closed bank could not collect from itself and had no proceeds of collection. *Fulton v. Rundell*, 190 N.E. 457 (Ohio 1934).

The Ohio bank collection statute (*Ohio Throckmorton's Ann. Code* (1929), §§ 711-714) similar to the Bank Collection Code, though worded differently, provides in general: (1) if a bank receives an item for collection after it has been closed, it shall return it; (2) if an item drawn by a depositor is presented to a bank for payment and the bank fails after having charged the maker but without having unconditionally paid the owner, the owner is entitled to a preference; (3) if a bank collects an item and fails before making unconditional payment, the owner is entitled to a preference.

Provisions like the second have raised difficult questions of interpretation. The Illinois cases have given the provision a rather broad construction. It has been held that one who had his own check certified is entitled to a preference because a deduction is immediately made in his account and he is given only conditional payment. *McQueen v. Randall*, 353 Ill. 231, 187 N.E. 286 (1933). A similar result has been reached where a depositor drew a bearer check on his account and on presentment received a check on a correspondent bank. *People ex rel. Nelson v. Demhardt*, 354 Ill. 450, 188 N.E. 464 (1933); as well as in the situation of the instant case where a draft was given in payment of certificates of deposit. *People ex rel. Nelson v. Joliet Trust and Savings Bank*, 237 Ill. App. 138 (1934). There has been, however, a tendency to construe strictly statutes giving preferences where there was none at common law. Thus, a statute providing that where a bank "receives by mail, express, or otherwise a check with request that remittance be made therefor, the charging of such items to the drawee and remitting in an unpaid check create a lien." N.C. Code 1931, § 218(c), subd. (14), has been held inapplicable to an over-the-counter transaction. *Morecock v. Hood*, 202 N.C. 321, 162 S.E. 730 (1932). Moreover, it has been held that one who presents an item for payment is not entitled to a preferred claim under a statute (Ark. Acts 1927, no. 107, § 1 subd. 7) providing for a preference to the owner of a remittance given by a bank as payment for the proceeds of collection of an item. *Taylor v. First Nat. Bank of De*

Queen, 184 Ark. 947, 43 S.W. (2d) 1078 (1931); *Taylor v. Dermott*, 185 Ark. 9, 45 S.W. (2d) 23 (1932). See *Brown v. Fors*, 206 Mich. 159, 253 N.W. 249 (1934).

In the past Ohio has been somewhat free in granting preferences under the bank collection statute in the distribution of assets of closed banks. See 31 Mich. L. Rev. 996 (1934). The court took the view that unless a broad construction was given to the statute it would merely re-enact the common law. *Fulton v. Baker*, 125 Ohio St. 518, 182 N.E. 513 (1932); 7 Univ. Cinc. L. Rev. 709 (1933). This view has since been abandoned for a more strict construction, on the ground that statutes in derogation of the common law should be strictly construed. *Fulton v. Baker-Toledo Co.*, 128 Ohio St. 226, 190 N.E. 459 (1934).

In the instant case the appellate court had granted a preference under the Ohio statute (*Ohio Throckmorton's Ann. Code* (1929), § 714), a provision of the third type, granting a preference where the item is collected but the owner not paid. The Illinois court allows a preference in this situation under Ill. Cahill's Rev. Stat. (1933), c. 16a, § 37(2), a provision of the second type, giving a preference where an item drawn by a depositor is presented for payment and though the account of the maker is charged the owner is not unconditionally paid. *People ex rel. Nelson v. Joliet Trust Co.*, 277 Ill. App. 137 (1934).

It would seem that there should be no difficulty in refusing a preference under either provision where the transaction is as in the present case: (1) the account of the drawer or maker is not charged within the requirement of the presentment for payment provision, (2) the bank has no proceeds realized from the collection of an item as provided in the collection provision. The case might however, be decided on broader grounds so as to dispose of the similar cases where drafts or cashier's checks are purchased by withdrawal slips or bearer checks. These cases, though apparently subsumable under the presentment for payment section, are not the type that the collection code was intended to cover. 22 Ill. Bar J. 335 (1934); 32 Mich. L. Rev. 996 (1934); but see 29 Ill. L. Rev. 523 (1934). The code was intended to facilitate the collection of checks. Consequently the presentment for payment provision under which preferences are given in these cases should be restricted only to the situation where the collection of checks is facilitated—the case where an item is sent to a drawee or payor bank for collection and remittance as the final stage in the process of the collection of an item. It would seem the provision should not be construed to apply where there is a purchase of a check or draft.

Business Trusts—Merger of Legal and Equitable Estates—[Miss.].—Plaintiff sued six defendants, trustees of a business trust, on a guaranty contract executed by them in the name of the trust. Although the defendants had not expressly contracted against personal liability, they claimed freedom from personal liability by virtue of a stipulation in the recorded trust instrument providing against the personal liability of the trustees and shareholders in contracts made in the administration of the trust. The trustees and the shareholders were the same six persons. *Held*, the trustees and the beneficiaries being the same persons, there was a merger of the legal and equitable estates in the defendants, so that the defendants were in the position of partners. *Enochs & Flowers, Limited v. Roell*, 154 So. 299 (Miss. 1934).

Where the sole trustee of a business trust had acquired by endorsement all of the shares in the trust estate, it has been held that the legal and equitable estates had