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

merged in the trustee so that his personal creditor could attach the trust property. *Cunningham v. Bright,* 228 Mass. 385, 117 N.E. 909 (1917). But it has been held that, though there may have been a merger originally where the trustees held all the shares in the trust, new life was imparted to the trust by the sale of some of the shares. *Taussig v. Poindexter,* 224 Mo. App. 580, 30 S.W. (2d) 635 (1930).

A merger of the legal and equitable estates will occur when the settlor has declared *A* trustee for *A*, not because of the coincidence of the estates, but because the settlor has created no obligation which equity can enforce; one person as *cestui que trust* can have no obligation against himself as trustee. 1 Perry, Trusts and Trustees (7th ed. 1929), §§ 13, 347; 29 Yale L. J. 97 (1919). There will, however, be no merger where subsequent to the creation of the trust the sole beneficiary becomes the sole trustee if a merger would defeat the intent of the settlor or be unjust to third parties who have acquired interests in the property. *Highland Park Mfg. Co. v. Steele,* 232 Fed. 10 (C.C.A. 4th 1916); *McCreary v. Coggeshall,* 74 S.C. 42, 53 S.E. 978 (1906); 4 Bogert, Trusts and Trustees (1935), § 998; *cf. Greene v. Greene,* 125 N.Y. 506, 26 N.E. 739 (1891), and *Doscher v. Wyckoff,* 113 N.Y.S. 655 (1908); *Swisher v. Swisher,* 157 Ia. 55, 137 N.W. 1076 (1912), and *Sherlock v. Thompson,* 167 Ia. 1, 148 N.W. 1035 (1914). To hold there is a merger in the case of a business trust not only violates the intent of the settlor that the trust continue as an active business, but also prejudices the interests of transferees of the shares by subjecting them to the possible risk of liability as partners and by postponing them to liens and dower which have accrued against the property of the cestui-trustee. See 29 Yale L. J. 97 (1919).

If merger occurs only because one person cannot have an obligation against himself, there can be no merger where two or more trustees are the only beneficiaries. *A, B,* and *C,* as trustees, owe obligations to *A, B,* and *C,* individually, as beneficiaries; and a trust or equitable obligation exists which equity will enforce. *Harris v. Harris,* 205 Pa. 460, 55 Atl. 30 (1903); *Hance's Estate,* 69 Pa. Super. 432 (1918); Restatement of Trusts (tent. draft 1930), § 95; see *Julian v. Northwestern Trust Co.,* 255 N.W. 622 (Minn. 1934). Should identity of trustees and beneficiaries lead to maladministration of the trust, equity can remove one set of trustees and substitute another. See *In re Caswell's Will,* 197 Wis. 327, 222 N.W. 235 (1928); 4 Bogert, Trusts and Trustees (1935), § 998.

Where business trusts are recognized, the traditional ground for holding beneficiaries liable as partners is that "control" is vested in them. *Frost v. Thompson,* 219 Mass. 360, 106 N.E. 1009 (1914); see 1 Univ. Chi. L. Rev. 815 (1934). To hold that a partnership exists because of a merger is, perhaps, a roundabout way to give effect to the "control" of the beneficiaries over the trustees arising from identity of personnel. But even where the trustees own all or most of the shares of a business trust, if they are held liable it is because they are liable as principals on the contract, or as cestuis who are given a great amount of control by the trust instrument. See *Allegheny Tank Car Co. v. Culbertson,* 288 Fed. 406 (D.C. Tex. 1923) (trustees held 550 out of 650 shares); *Neville v. Gifford,* 242 Mass., 124, 136 N.E. 160 (1922); but see Magruder, The Position of Shareholders in Business Trusts, 23 Col. L. Rev. 423, 433 (1923). Without resorting to the merger doctrine, the court in the principal case might well have held the defendants personally liable on the contract as trustees who did not stipulate against personal liability. *Betts v. Hackathorn,* 159 Ark. 621, 252, S.W. 602 (1923); see 2 Univ. Chi. L. Rev. 328 (1935).