RECENT CASES

Banks and Banking—Preferences—[Federal].—The plaintiff's note was received by a national bank at which it was payable and then surrendered to the maker in return for his check upon his account. Upon failure of the bank before it had paid the plaintiff, an action was brought under a state statute which, in such a situation, purported to impress a trust upon the assets of the bank in favor of the owner of the note. N.Y. Cahill's Consol. Laws (1933), c. 39 § 350–1, subd. 2 (Bank Collection Code, section 13 (2)). *Held,* that the state statute was "unavailing" because contrary to the federal statute, 13 Stat. 115 (1864), U.S.C.A. title 12, § 194 (1926), construed to forbid certain preferences among claims to the assets of failed national banks. *Old Company's Lehigh, Inc. v. Meeker,* 71 F. (2d) 280 (C.C.A. 2d 1934).

State legislation may govern national banks only so long as it does not conflict with federal law. *McClellan v. Chipman,* 164 U.S. 347 (1896); *First National Bank v. Missouri,* 263 U.S. 640 (1924); *Lewis v. Fidelity & Deposit Co.,* 54 Sup. Ct. 848 (1934); *Webster v. Sweat,* 65 F. (2d) 109 (C.C.A. 5th 1933); *Royal Mfg. Co. v. Spradlin,* 6 F. Supp. 98 (D.C.N.C. 1934). In the distribution of assets of failed banks, the National Banking Act, 13 Stat. 15 (1864), U.S.C.A. Title 12, § 194 (1926) has been construed to forbid preferences dependent for their existence upon the fact of insolvency or failure. *Davis v. Elmira Savings Bank,* 161 U.S. 275 (1896); *Steele v. Randall,* 19 F. (2d) 40 (C.C.A. 8th 1927); *Palo Alto County v. Ulrich,* 199 Iowa 1, 201 N.W. 132 (1924); 7 Michie, Banks and Banking (perm. ed. 1932), § 251. The New York statute, N.Y. Cahill's Consol. Laws (1933), c. 39, § 350–1, subd. 2 (Bank Collection Code, § 13(2)), by the court's construction in the present case, made the preference dependent upon the failure or insolvency of the bank; hence, the statute conflicted with the federal law. See Bogert, Failed Banks, Collection Items, and Trust Preferences, 29 Mich. L. Rev. 545, 566 n. 43, where this decision is, in effect, anticipated; see also the proposed Uniform Bank Collection Act (Tentative Draft #5, 1934), § 24, which is objectionable for the same reason. In place of the invalid state statute the applicable federal law is of a simple debtor-creditor relationship. *Larabee Flour Mills v. First National Bank,* 13 F. (2d) 330 (C.C.A. 8th 1926); *Allied Mills v. Horton,* 65 F. (2d) 708 (C.C.A. 7th 1933); *Lifsey v. Goodyear Tire and Rubber Co.,* 67 F.(2d) 82 (C.C.A. 4th 1933); *First National Bank v. Miami,* 69 F. (2d) 346 (C.C.A. 5th 1934).

Though the result reached by allowing the preference sought to be created by the Bank Collection Code is to place the losses of the bank collection system due to bank failures upon the depositors of closed banks, instead of upon those who use the bank collection system, (Bogert, Failed Banks, Collection Items, and Trust Preferences, 29 Mich. L. Rev. 545, 561 (1931)), the present decision creates an arbitrary distinction between state and national banks. This may be avoided by creating the preference at the time of the charge or collection of the item. *Royal Mfg. Co. v. Spradlin,* 6 F. Supp. 98 (D.C.N.C. 1934); North Carolina Code (1931), c. 5, § 218(c).

Evidence—Cross-Examination of Witness on Collateral Matters to Discredit—[Federal].—A federal prohibition officer was prosecuted for accepting a bribe. The