LITTLE ROCK BRANCH OF FEDERAL RESERVE BANK OF ST. LOUIS *v.* TAYLOR.

Opinion delivered April 13, 1931.

1. BANKS AND BANKING—PAPER RECEIVED FOR COLLECTION.—A bank receiving a draft for collection is the agent of the remitter, drawer, or forwarding bank, and takes no title to the paper or proceeds when collected, but holds them in trust until remitted.
2. BANKS AND BANKING—DILIGENCE IN COLLECTION.—A bank was not lacking in diligence in sending checks for collection direct to the bank on which they were drawn.
3. BANKS AND BANKING—PAYMENT OF CHECK.—The act of a drawee bank receiving a drawer's checks in forwarding a check on a correspondent bank for the amount of such checks did not constitute a payment where both the drawee bank and the correspondent bank closed their doors before presentation of the check.
4. BANKS AND BANKING—PAYMENT OF CHECKS.—Under Acts 1927, No. 107, where an insolvent bank had not paid certain checks although the checks were improperly returned to the drawer, the Bank Commissioner should reverse the entries showing payment of such checks.

Appeal from Saline Chancery Court; *William R. Duffie*, Chancellor; affirmed.

STATEMENT BY THE COURT.

This appeal challenges the correctness of a decree of the Saline Chancery Court refusing to require the Bank Commissioner, in charge of the failed Bank of Bauxite, to pay in full as a prior claim certain amounts collected by the bank and attempted to be forwarded by its draft on its correspondent bank before the failure of the collecting bank.

It appears from the agreed statement of facts that the appellant bank on November 13 and 14, 1930, received for collection 29 checks drawn by the Bauxite Mercantile Company on the Bank of Bauxite in the ordinary course of business payable to various persons in different places, all of said checks having been promptly cleared and sent by appellant bank to the Bank of Bauxite for payment, each check bearing the indorsement "Pay to any bank, banker or trust company for collection and remittance, etc. * * *," the payee and amount of each check being listed as follows:

"American National Insurance Co.....$ 35.75
Beal-Burrow Dry Goods Co..... 403.24
etc. * * *."

All of the checks were received by the drawee Bank of Bauxite and charged against the account of the Bauxite Mercantile Company on November 14, 1930, except three checks for $12.66, $12.51 and $35.75 respectively, which were received and charged by it on November 15, 1930. The Bauxite Mercantile Company, a regular customer of the Bank of Bauxite, maintained a checking account there and had to its credit at the time a balance in excess of the amount of all said checks, and at the time the Bank of Bauxite was closed, after the checks were charged to the account of the Bauxite Mercantile Company, it had a balance to its credit of $736.99. The Bank of Bauxite remitted the proceeds of the collection to appellant bank by mailing to it on November 14, a check on the American Exchange Trust Company of Little Rock sufficient in amount to cover all the said 29 checks, except the three separately listed above on which remittance was made by the bank to the American Exchange Trust Company on November 15, each of said checks being payable on demand. The draft dated November 14, was received by the appellant bank on November 15, after it cleared for the day and the one dated November 15, was received by the appellant bank on November 17, November 16 being Sunday. At the time of the making and receiving of each of the checks for collection by the appellant bank and at

the time of the closing of the Bank of Bauxite and the closing of the American Exchange Trust Company, the Bank of Bauxite had sufficient balance to its credit in the American Exchange Trust Company to have paid both of said Bauxite bank's checks or drafts. November 15 was Saturday, and on November 17 the American Exchange Trust Company, before the opening hour, suspended payment of checks drawn against depositors payable on demand, and so did the Bank of Bauxite under the provisions of the statute, § 717, Crawford & Moses' Digest. At the end of the five-day period of suspension each of the banks failed to open and resume payment of such checks, and the Bank Commissioner took charge of each on November 23, 1930, on the ground of insolvency. The American Exchange Trust Company did not pay the drafts on it by the Bank of Bauxite nor any part thereof.

On November 19, 1930, the Bauxite Mercantile Company, the drawer of the checks, was having its books audited by an accountant who was required to ascertain what checks were outstanding and unpaid, and on November 19 he asked the cashier to have the Bank of Bauxite send over a statement of its account with the canceled checks, which was done. Among the checks returned with the statement that afternoon were the 29 checks aggregating the sum of $5,144.95, which still remain in its hands. Nothing in the whole transaction between the drawee bank, the collecting bank, the Bank of Bauxite, and the drawer of the checks involving the surrender of the checks to the mercantile company was done for the purpose or with the intent of giving the Bauxite Mercantile Company any preference in the assets of the Bank of Bauxite. The surrender of the checks at the time by the bank to the mercantile company "was made and accepted in entire good faith and without any thought of giving or obtaining a preference," as recited in the agreed statement.

The appellant claimed it was entitled to priority of payment of the items amounting to $5,144.95, since the

checks, after being charged against the drawer's account, were afterwards surrendered to the drawer and the entries in the bank's books could not be reversed and the checks returned to the appellant bank.

From a decree denying appellant the right to preferential payment of its claim, the appeal is prosecuted.

James G. McConkey and *Rose, Hemingway, Cantrell & Loughborough,* for appellant.

Robinson, House & Moses, for appellee.

KIRBY, J., (after stating the facts). It is well-established law that a bank receiving a draft for collection merely is the agent of the remitter, drawer or forwarding bank, and takes no title to the paper or the proceeds when collected, but holds same in trust until remitted. *Darragh Company* v. *Goodman,* 124 Ark. 532, 187 S. W. 673.

It is also true that no lack of diligence was shown by appellant bank in handling the items by sending the checks for collection direct to the bank on which they were drawn, nor in said drawee bank in charging the amounts of said checks against the account of the drawer thereof. *Rainwater* v. *Federal Reserve Bank,* 172 Ark. 631, 290 S. W. 69; *Lister* v. *First National Bank of Van Buren,* 181 Ark. 140, 25 S. W. (2d) 26.

The forwarding of the amount of the checks collected by the Bank of Bauxite to the appellant, the sending bank, of its check on its correspondent bank in Little Rock, the American Exchange Trust Company, did not constitute a payment of the money collected, since the correspondent bank had closed its doors before presentation of the checks in due time as did the collecting bank, both of which were insolvent and not able to re-open at the end of the five days of suspension allowed by law and were taken charge of by the Bank Commissioner. It is insisted therefore that under the statute, act 107 of 1927, p. 298, that, since the Bank of Bauxite, on which the checks were drawn, had made the collection by charging the amount of said checks against the account of its customer or depositor, the drawer, and had forwarded its

check or draft therefor against its correspondent bank at Little Rock, and had returned and surrendered the paid checks to the drawer thereof prior to the Bank Commissioner's taking charge, he could not reverse the entries upon the books of the bank as to the collections made and return the checks to the bank sending them for collection and that, therefore, the transaction was completed, and the collecting bank's claim for priority of payment must be sustained, since it cannot be extinguished by the reversal of the entries on the bank's books and the return by the collecting bank of the checks.

The statute provides: "A prior creditor shall be: * * * (7) The owner of a remittance of the said bank, the proceeds of a collection made by said bank by honoring a check or other order upon itself, or by a charge against the account of its depositor, although the said collection has not had a distinctive identity in the hands of said bank, has not actually increased its cash assets, and has resulted in merely shifting its liability upon its books from one of its creditors to another or new creditor, in instances where the said remittance has been presented with due diligence for payment to said bank or its drawee and is not paid, and where the instrument collected cannot be returned by the Commissioner to the person who had transmitted the same to said bank for collection, the said instrument having been surrendered by said bank upon its collection in such manner prior to the Commissioner taking charge, it being hereby made the duty of said Commissioner to reverse the entries upon the books of said bank as to all collections made in such manner in all instances where the said unpaid remittance has been so presented with due diligence and where the said instrument remains in said bank unsurrendered, by which said reversal of entries the said instrument shall be deemed to be from its inception unpaid, and thereupon the said Commissioner shall return the said instrument to the person who had transmitted the same to said bank, which return shall be in extinguishment to the extent thereof of the said remittance. * * *" Act 107 of 1927.

It is true that this statute provides that all creditors of a bank of which the commissioner has taken charge are classifiable, etc., and where the instrument collected cannot be returned by the commissioner to the person who transmitted the same for collection, the said instrument having been surrendered by said bank upon its collection in said manner "prior to the Commissioner taking charge," etc., but the majority is of opinion that the act of insolvency by the bank in suspension of payment of checks on demand for the alleged protection of the stockholders and creditors without reopening the bank at the end of the time of suspension and the Bank Commissioner's taking actual charge thereof is sufficient within the meaning of the act, and his authority relates back and begins from the time of the suspension of payment or act of insolvency, so far as the right to make reversal of entries upon the books as to the showing of collections made against depositors during such suspension, and certainly that, since the bank should not have surrendered these checks after charging off the amount thereof against the account of its depositor during the period of suspension of payment of checks, its having done so could not deprive the Bank Commissioner of the right to reverse the entries on the bank's books about the collections to show the checks uncollected. The checks having been wrongfully surrendered and returned to the drawer without any intent, it is true, of in any way conducing to a preference of the claim for payment or constituting it a priority, it could not have such effect. The Bank Commissioner therefore was authorized to reverse the book entries showing the payment of this claim, and, the checks having been wrongfully returned to the drawer, no payment thereof was constituted, and the drawer still remains liable therefor.

The decree is affirmed accordingly.

Mr. Justice SMITH dissents.