

in the law of warranty,¹⁵ was a recognition of modern business practices whereby manufacturers through the media of large scale distribution and national advertising are substantially dealing directly with the ultimate consumer.¹⁶ The court was impressed by the injustice of the orthodox rule which would permit manufacturers to create a demand for their goods through advertising representations, and then deny the consumer the right to recover merely because there was no privity of contract existing between the consumer and the manufacturer.¹⁷

It appears that the return to the orthodox view is not in keeping with the more enlightened authorities who point out that there is no essential difference between a representation made to an immediate buyer and one made to the public through the media of advertising.¹⁸ Neither is it in keeping with the need for a progressive law to meet changing social conditions.

O. R. A.

BANKS AND BANKING—DEPOSITS—BANK COLLECTION CODE—[MISSOURI].
 —One Davidson, the payee, received a check drawn on the Commerce Trust Company by the defendant, in exchange for grain receipts which turned out to be spurious. Davidson endorsed the check without restriction, and deposited it to his credit in plaintiff bank, and was permitted to draw against the check. Plaintiff bank forwarded the check to the Commerce Trust Company for collection, but defendant had stopped payment because of Davidson's alleged fraud. Plaintiff bank sued defendant as drawer of the check for \$18,296. *Held*: plaintiff was the owner of the check and not an agent for collection, notwithstanding that the deposit slip was on a form stating that the bank took check as agent for collection.¹

At common law there were three general types of deposits of a check or draft. If a customer presented a check or draft, endorsed without restriction, for deposit, the bank became the owner of the check or draft and the relationship of debtor and creditor was created.² If the depositor restrictively endorsed his check or draft, such as, "for collection and remittance,"

15. Note, 81 U. Pa. L. Rev. 94-5 (1932); 46 Harv. L. Rev. 161-2 (1932); 7 Wash. L. Rev. 351-9 (1932); 18 Cornell L. Q. 445-52 (1933).

16. For a study of the modern business practice of manufacturers in making representations to ultimate consumers, see Bogert and Fink, *Business Practice Regarding Warranties in the Sale of Goods* (1930) 25 Ill. L. Rev. 400.

17. *Supra*, note 14.

18. 1 Williston, *Sales* (2d ed. 1924) sec. 244a; Vold, *Sales* (1931) sec. 152, 153; see also Uniform Sales Act, sec. 12.

1. *Liberty Nat. Bank v. Vanderslice Lynds Co.*, 95 S. W. (2d) 324 (Mo. 1936).

2. *Ayres v. Farmers' & Merchants' Bank*, 79 Mo. 421 (1883); *McKeen v. Boatmen's Bank*, 74 Mo. App. 281 (1898); in re *Purl's Estate*, 147 Mo. App. 105, 125 S. W. 849 (1910); *Padgett v. Bank of Mountain View*, 141 Mo. App. 374, 125 S. W. 219 (1910); *Ellington v. Cantley*, 300 S. W. 529a (Mo. 1929); in re *North Missouri Trust Company*, 39 S. W. (2d) 412 (Mo. 1931).

an agency status was created rather than that of debtor and creditor.³ The third variety of deposit was that in which there was a general endorsement, but the deposit of the check or draft was made for the purpose of collection. In such a deposit "provisional credit" was given to the depositor, allowing him to draw against the deposit, but the bank had the right of charging back if the draft or check was faulty.⁴ The relationship of debtor and creditor was created as the intent of the parties was to consider the title as passing.⁵

The Bank Collection Code operated as a direct change from the common law rules applicable to deposits of checks and drafts. The essential part of the Code provides, "except as otherwise provided, where an item is deposited for collection, the bank of deposit shall be the agent of the depositor for collection."⁶ The Code was interpreted in the case of *Farmers' Exchange Bank v. Farmers' Home Bank*,⁷ which was a "provisional credit" type of case, creating at common law the relationship of debtor and creditor. The court held that the Bank Collection Code made the bank the agent, whether the check was deposited for collection or was merely an ordinary deposit. The court assumes an agency relationship until it is shown that the parties provided otherwise.⁸ The court in the principal case relies on *Jefferson v. Merchants Refrigerator Company*,⁹ a "provisional credit" case, creating a debtor-creditor relationship. Thus the court places the principal case within the "excepting clause" of the Bank Collection Code, for otherwise an agential relationship would have been formed.¹⁰ But in the face of the *Farmers' Exchange* case,¹¹ and the type of deposit slip used, the court was not justified in holding a debtor-creditor relationship existed. The effect is to nullify the agential relationship fostered by the Bank Collection Code. Of what practical effect is a Bank Code if the court may use the "excepting clause" to benefit the party on whose side the "good conscience" of the case lies?

R. L. S.

3. Federal Reserve Bank v. Quigley, 284 S. W. 164 (Mo. 1921); Federal Reserve Bank of St. Louis v. Millspaugh, 314 Mo. 1, 282 S. W. 706 (1906); Bank of Poplar Bluff v. Millspaugh, 313 Mo. 412, 281 S. W. 733, 47 A. L. R. 754 (1926).

4. Mudd v. Farmers' & Merchants' Bank, 175 Mo. App. 398, 162 S. W. 314 (1913); Kavanaugh v. Farmers' Bank, 59 Mo. App. 540 (1894); Brigance v. Bank of Coater, 200 S. W. 668 (Mo. 1913); Charles Renefrow v. Northrup, 222 S. W. 487 (Mo. 1920); Jefferson Bank v. Merchants' Refrigerator, 236 Mo. 407, 139 S. W. 545 (1911); Foristel case, 320 Mo. 436, 7 S. W. (2d) 997 (1928).

5. May v. Bank of Hughsville, 291 S. W. 170 (Mo. 1927).

6. R. S. Mo. 1929, sec. 5567.

7. *Farmers' Exchange Bank v. Farmers' Home Bank*, 61 S. W. (2d) 717 (Mo. 1933).

8. Comment, 19 ST. LOUIS LAW REVIEW 147, 148 (1933).

9. *Jefferson Bank v. Merchants' Refrigerator Co.*, 236 Mo. 407, 139 S. W. 545 (1911).

10. *Supra*, note 6.

11. *Farmers' Exchange Bank v. Farmers' Home Bank*, 61 S. W. (2d) 717 (Mo. 1933).