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Necessity for Signature on a Check To Be in Same Form as Signature on Specimen Signature Card

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The purpose of this article is to shed some light on the rights and liabilities of the drawer of a check signed by the depositor in a style or form different than used by the depositor in signing the specimen signature card held by the bank.

When one opens a checking account and deposits money with a bank the legal relationship of debtor and creditor results.¹ The bank contracts that it will pay funds from the depositor's account in strict compliance with the depositor's order and only on his order.² If the bank pays without having complied with the drawer's order, it may not debit the depositor's account for the amount paid.³

Initially it may be observed that while a bank may properly refuse to pay funds from a depositor's account on his parol order, the bank has the right if it so desires to make repayment to the depositor or to pay money to a third person in compliance with the depositor's oral order.⁴ The bank which refuses to pay on an oral order may not be held liable in damages to the depositor for having refused to comply with the oral order. There is no necessity for a written order except for the purpose of evidence in the event of a subsequent dispute between the bank and the depositor.⁵

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¹ *Rivers v. Central Bank & Trust Co.*, 395 P.2d 11 (Col. 1964); *Monroe v. Dietenhoffer*, 264 N.C. 538, 142 S.E.2d 135 (1965); BRADY, *BANK CHECKS* 474 (3d ed. 1962).

² UNIFORM COMMERCIAL CODE § 3-304(1) provides: "An unauthorized signature is wholly inoperative as that of the person whose name is signed unless he ratifies it or is wholly precluded from denying it"

³ *National Metropolitan Bank v. United States*, 323 U.S. 454 (1945); *Central Nat'l Bank v. Avenue State Bank*, 332 Ill. App. 543, 76 N.E.2d 209 (1947). UNIFORM COMMERCIAL CODE § 4-401(1) reads: "As against its customer, a bank may charge against his account any item which is otherwise properly payable from that account even though the charge creates an overdraft." See also BRADY, *supra* note 1, at 473.

⁴ *Cook's Adm'r v. Bank Josephine*, 301 Ky. 193, 191 S.W.2d 209 (1945); *In re Blöse's Estate*, 374 Pa. 100, 97 A.2d 358 (1953). *Contra*, *Glass v. Nebraska State Bank*, 175 Neb. 673, 122 N.W.2d 882 (1963).

⁵ *In re Blöse's Estate*, *supra* note 4.

As part of the terms of the contract of deposit, implied from custom of the banking business if not by an express agreement, the bank is legally entitled to demand a written order from the depositor before making any payment from the depositor's account.⁶

For a depositor's order to be negotiable and subject to the applicable laws relating to negotiable instruments, the check drawn by the drawee on the bank directing the drawee to pay money from the drawer's account must be an instrument conforming to the requirements for negotiability as specified in the Uniform Negotiable Instruments Law or the Uniform Commercial Code. Section 185 of the Negotiable Instruments Law defines a check as: ". . . a bill of exchange drawn on a bank payable on demand" A check is defined by the Uniform Commercial Code as: ". . . a draft drawn on a bank and payable on demand" While the words used to define a check by the two acts are not identical, it is submitted that an instrument which satisfies the definition of a check under one act is likewise a check under terminology of the other.

For a check to be negotiable under either the Negotiable Instruments Law⁸ or the Uniform Commercial Code,⁹ it must be signed by the drawer. Neither the Negotiable Instruments Law nor the Uniform Commercial Code attempts to define what is a signature.¹⁰ In fact what constitutes a signature has never been reduced to a judicial formula.¹¹ In assessing what is sufficient for a signature one need not limit his examination to cases involving negotiable instruments, for what is a signature on one type of instrument should be held sufficient on any other instrument.

⁶ *First Nat'l Bank v. Stapp*, 165 Ind. 162, 74 N.E. 987 (1905); *American Nat'l Bank v. Miles*, 18 Tenn. App. 440, 79 S.W.2d 47 (1934).

⁷ § 3-104(2)(b).

⁸ § 1(1).

⁹ § 3-104(1).

¹⁰ Attention is called to the following section of the West Virginia Code without determining its application to negotiable checks: "The following rules shall be observed in the construction of statutes, unless a different intent on the part of the legislature be apparent from the context . . . (c) The words 'written' or 'in writing' include any representation of words, letters, or figures, whether by printing, engraving, writing or otherwise. But when the signature of any person is required, it must be in his own proper handwriting, or his mark, attested, proved, or acknowledged . . ." W. VA. CODE ch. 2, art. 2, § 10(c) (Michie 1961).

¹¹ *Sheehan v. Kearney*, 82 Miss. 688, 691, 21 So. 41, 42 (1896).

In *Palmer v. Stephens*¹² the New York court indicated that one may bind himself as effectively by the use of his initials as by writing his name in full and that "figures or a mark may be used in lieu of the proper name; and where either is substituted by a party, intending thereby to bind himself, the signature is effective to all intents and purposes."¹³ The New York court is of the view that whatever one intends to be his signature is at law to be treated as his signature and is sufficient to obligate the signer no matter how imperfect, unfinished, fantastical or illegible the writing or symbol used.¹⁴ Courts have held the following to constitute a valid signature: A cross mark, initials,¹⁵ numerals (when used with the intention of constituting a signature),¹⁶ a typewritten name¹⁷ and on imprint by a rubber stamp.¹⁸

The rights of a depositor, who, at the request of the bank, had placed his signature on the specimen signature card furnished and retained by the bank and who signed a check in different form or style than he had signed the specimen signature card have been considered in at least three different states. In two states the court found for the bank and in one state for the depositor. In all three cases the depositors insisted the banks had improperly and without authority debited the depositors' accounts.

In the earliest of the reported cases the drawee bank was held liable to the depositor for having wrongfully debited the depositor's account where the check was signed in a style unlike the signature on the specimen signature card. The evidence in *Polizzotto v. People's Bank*¹⁹ disclosed that a man represented himself to be a salesman for a named firm which in fact was non-existent. The salesman induced Sam Polizzotto to place his name on a piece of paper about four lines below the name of the "People's Bank" (after having learned that Sam Polizzotto signed the checks for the V. Polizzotto firm). Sam Polizzotto wrote his signature on the paper "S. Polizzotto." The paper ultimately was completed, by

¹² 1 Denio 471 (N.Y. 1845).

¹³ *Id.* at 478.

¹⁴ *Zacharie v. Franklin*, 37 U.S. (12 Pet.) 151, 161-62 (1838); *Pearlberg v. Levisohn*, 182 N.Y. Supp. 615, 617 (Sup. Ct. 1920).

¹⁵ *Barry v. Coombe*, 26 U.S. (1 Pet.) 640 (1828); *Bank v. Spicer*, 6 Wend. 445 (N.Y. 1831).

¹⁶ *Brown v. Butcher's & Drover's Bank*, 6 Hill 443 (N.Y. 1844).

¹⁷ *Landeker v. Co-operative Bldg. Bank*, 130 N.Y. Supp. (Sup. Ct. 1911).

¹⁸ *Degginger v. Martin*, 48 Wash. 1, 92 Pac. 674 (1907).

¹⁹ 125 La. 770, 51 So. 843 (1910).

one other than Polizzotto, into the check and paid by the drawee bank.

For years the firm checks of V. Polizzotto had been signed "V. Polizzotto, per S. P.," and this signature was entirely in the handwriting of Sam Polizzotto who was the only person authorized to draw checks on the firm's account. The defendant bank also had been instructed by Sam Polizzotto to pay firm checks which had a business card of the V. Polizzotto firm printed on the check and the name "V. Polizzotto" printed at the place where a check is normally signed followed by the word "per" and a blank space which was to be filled by Sam Polizzotto writing "S. Polizzotto."

In this case the court recognized that a bank and depositor may agree upon what signature and what form the signature must take to authorize the bank to pay and properly debit the drawer's account. The court summarized its position by stating: "But as neither the firm of V. Polizzotto, nor any of its members, acting for the firm, ever agreed with defendant bank that the money of the firm should be disbursed on the signature attached to the check here in dispute, we are unable to see upon what theory they are to be bound by such disbursement."²⁰ The same result could have been reached by the court by simply holding that the facts disclosed the firm of V. Polizzotto had not in fact given an order to the bank to pay. That is, the instrument in question was not a check of the firm.

Subsequent to the *Polizzotto* case courts in both New York and Tennessee considered the rights of drawers against drawee banks with regard to checks given in payment of gambling debts and signed by the drawers in a style different from that used by them when they signed their respective specimen signature cards on deposit with the banks.

In *Wagner v. Chemical Bank & Trust Company*,²¹ decided by the New York court in 1934, the facts disclose that the specimen signature card bore the signature "Lewis L. Wagner." The plaintiff, Lewis L. Wagner, signed the check in question "Lewis Wagner" with the belief that the defendant bank would refuse to pay the check because of the difference in the style of the signature used by the drawer on the check and on the signature card. The fact that the entire instrument was in the handwriting of the

²⁰ *Id.* at 775, 51 So. at 845.

²¹ 276 N.Y. Supp. 717 (Mun. Ct. of N.Y. City 1934).

plaintiff seems to have been treated as immaterial to the court's decision.

The agreement between the bank and the depositor is simply that the bank will pay money on deposit with it according to the order of the depositor. In the absence of an agreement to the contrary "the bank is bound to honor the depositor's order if it feels reasonably assured of the authenticity of the depositor's signature."²² If the aforementioned quotation is to be taken as a literal statement of the law, the bank in the *Wagner* case was not only justified in paying the check but if it had refused to pay the check, it ran the risk of incurring liability to the drawer for any damages the drawer might have suffered because of the bank's improper refusal to pay the check.

In the same year as the decision by the New York court in the *Wagner* case the Tennessee court was confronted with a case involving almost identical facts. In *American National Bank v. Miles*,²³ the Tennessee case, Stanley M. Miles, the plaintiff, signed a check "S. M. Miles," knowing that his signature card held by the bank read "Stanley M. Miles." The check which the bank paid had been given for a gambling debt. There was no express agreement between the depositor and the bank that the bank was not to pay checks of the plaintiff unless they were signed in the same style as used by the depositor on the specimen signature card. The court observed that the bank is under a duty to know the depositor's signature and only to pay checks bearing the genuine signature of the drawer. The signature on the check was the genuine signature of the drawer and the court held the drawee bank had properly paid the check and debited the depositor's account.

Considering the millions of checks that are paid each day by the over fourteen thousand banks in the United States, no bank in the absence of a special contractual relation should be required or expected to verify the form of the drawer's signature on every check to determine that the form, style or spelling of the signature is exactly the same as used by the depositor when he placed his signature on the specimen signature card held by the bank. Especially is this true when the depositor is engaged in what might be considered sharp practice directed either toward the bank or a third person.

²² *Id.* at 720.

²³ 18 Tenn. App. 440, 79 S.W.2d 47 (1934).