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When is a Check Paid?

Professor Bunn analyzes the confusing status of check payment in Minnesota, and compares present law with that of the applicable sections of the Uniform Commercial Code. To conform with the Code, he suggests legislative revision of the present legal criteria which determine at what point a check is properly termed "paid."

Charles Bunn *

I. THE PROBLEM

A GOOD many million checks are issued every business day in the United States. The very great majority, in fact well over ninety-nine per cent of all of them, are perfectly good and are presented in due course and paid. With them, except perhaps as evidence of the payments which they represent, lawyers have no more concern.

But the small fraction that do raise lawyers' problems are still a large absolute number. They are the ones with which either something was wrong in the first place (no such account, not sufficient balance in account, wrong signature, etc.) or something happened while they were in process of collection (execution, garnishment, stop order, etc.). They are the ones with which lawyers have to deal and about which bankers and their customers are entitled to ask the law for some clear answers.

† The Uniform Commercial Code is a proposed uniform act covering the whole field of commercial law (Sales, Commercial Paper, Bank Deposits and Collections, Letters of Credit, Bulk Transfers, Documents of Title, Investment Securities, Secured Transactions) and replacing older Uniform State Laws in these areas. In preparation since 1942 as a joint project of the National Conference of Commissioners on Uniform State Laws and the American Law Institute, it was promulgated in 1951 by these organizations and later approved by the House of Delegates of the American Bar Association. It was enacted in 1953 by Pennsylvania. The Code was revised in 1955 and 1956 by the sponsoring organizations following extensive consideration by the Law Revision Commission of New York. It was then enacted in 1957 in both Kentucky and Massachusetts.

All references herein are to the revised version, UNIFORM COMMERCIAL CODE (1957) (Official Text with Comments), published by the West Publishing Company, St. Paul, Minnesota. It is recommended that henceforward study should be made of this text. Earlier prints (1950, 1952, 1954) have been changed at many points, and study of these (except, of course, when the purpose of the study is to trace the changes made) will often be merely confusing.


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Quite often, when the facts are analyzed, a critical question seems to be: Was this check paid? And when? For instance:

1. The suit is on the check itself, against drawer and indorser. If it was paid both are discharged, but if it was not (unless the failure of payment was the holder's fault), both remain liable.

2. The suit is on a prior obligation. The defense is payment by the debtor's check. If the check was paid the old obligation is discharged, if not (again, unless the failure is the holder's fault), the debt remains.

3. The drawer's signature turns out to have been forged. The drawee was of course in no way bound to anyone to pay the check, but if he did pay it (to an honest holder for value), he (or his insurer) cannot get the payment back from anyone except the crook and his accomplices.

4. The check was for $500; the balance available in the account to meet it was $100. Again, the bank would have been entirely right to bounce the check, but if in fact it paid the check (to an honest holder for value), no one except its drawer is responsible to it for the resulting loss.

5. The signature is good and the account is adequate, but a garnishment or execution has just been served upon the bank in an action against the drawer. The garnishment or execution binds whatever balance the drawer has in his account, but of course if this

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3. This is not clearly stated anywhere in the Uniform Negotiable Instruments Law, but is, of course, good common law in Minnesota as elsewhere. See, e.g., Tolsen v. First State Bank, 173 Minn. 533, 217 N.W. 934 (1928); Holdingford Milling Co. v. Hillman Farmers Co-op. Creamery, 181 Minn. 212, 231 N.W. 928 (1930). The Code states a clear rule. Uniform Commercial Code § 3-802.

4. Price v. Neal, 3 Burr. 1354, 97 Eng. Rep. 871 (K.B. 1762); Germania Bank v. Bouteil, 60 Minn. 189, 62 N.W. 327 (1895). The NIL nowhere clearly enacts (or rejects) the rule of Price v. Neal. Many courts have followed it since enactment of the NIL in the jurisdiction in which the question has been considered, either as common law remaining unchanged by that statute or as enacted (by analogy) by Uniform Negotiable Instruments Law § 62. On acceptance see Minn. Stat. § 335.232 (1957). The cases are collected in Brannan, Negotiable Instruments Law § 62 (6th ed. Beutel 1938). I have found no case in Minnesota since the enactment of the NIL, but assume that Justice Mitchell's decision in Germania Bank v. Bouteil would be followed. The Code states a clear rule. Uniform Commercial Code § 3-418.

5. This is a weaker case for the payor bank than the foregoing, since clearly it is the bank's business to know the state of its depositor's account when it decides to pay (or not to pay) his check. See cases cited note 4 supra.

6. Midland Loan Finance Co. v. Kisor, 206 Minn. 134, 287 N.W. 869 (1939); Minn. Stat. §§ 550.10, 550.14, 571.42 (1957). The Code has no provision authorizing garnishment or execution, properly leaving those matters to be regulated by the procedural law of each state. But it contains an important section on the critical question, that is the priority in time between a check in process of examination in the drawee bank and legal process against the drawer served upon that bank. Uniform
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check has already been paid, it is too late to "bind" that money to another.

(6) The check is good, but the drawer sends an urgent message. "Stop payment, the payee is a crook." The bank should honor its customer's stop order if it can, but of course if the check is already paid, the notice comes too late.\(^7\)

(7) The check is for $500. The balance in the account at the close of business yesterday was $1200, but the bank holds the drawer's note for $1000, overdue, and wants to set off that claim against the account. No doubt it has the right to do so, and if it does the check will be dishonored. But if the check has been paid, the setoff comes too late.\(^8\)

These are common cases, and they are not the only ones in which a central question is the fact and time of payment of a check. Clear legal rules for dealing with the question would be a great convenience all around. But few lawyers who have read the cases would assert that the answers which they give are even reasonably clear.

One thing all can agree on. When the holder presents a check to the drawee bank and gets cash for the amount, the check is paid. But, except for petty cash, very few checks are collected in that way. If many were, the printing presses would indeed have to run overtime to create the necessary currency, and robbers would rejoice at the amounts of money being transported through the streets.

Most checks, however, are deposited in some bank by the payee or by a merchant who has acquired the check from the payee. The bank may be the drawee bank, or any other bank whatever, in the same town as the drawee or elsewhere. The bank of deposit will credit its customer's account, evidenced by a receipt, or by duplicate deposit ticket, or by entry in a pass-book, or the like. The credit given at this point has to be tentative, pending the process of examination and collection, and is subject to revision if the check is not good. This is because some checks are bad, though most are good, and the receiving teller has neither means nor time to determine which are which. So to save time at his window and avoid a long

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\(^7\) Commercial Code § 4-303. On that I find nothing very helpful in the Minnesota statutes.

\(^8\) I assume the general proposition is clear enough without citation of express authority. On the critical question — priority in time between the setoff and the check — I have found nothing very useful in the Minnesota statutes or decisions. The Code rule is the same as that for legal process and stop orders. Uniform Commercial Code § 4-303.
delay for every customer, he gives tentative credit to them all as they come in, and passes them all on for the examination and collection process.

If the bank of deposit and the drawee are the same, that process is quite simple. The check is routed to the bookkeeper for the drawer's account. He examines it for signature, amount, endorsement, and the like, and determines whether it is payable. If anything is wrong (including, of course, stop order, garnishment, execution, or any other freeze of either the account or the particular check), this is the bank's chance to catch it. If everything is clear the check is posted to (i.e., charged on the books against) the drawer's account, is stamped "paid," and becomes a voucher to be returned to the drawer with the next periodic statement of his account. No further notice is sent to the depositor: he already has a note of his tentative credit and will learn that the credit is final by not hearing the contrary within the brief time allowed the bank to return dishonored items. But if for any reason the check should not be honored, and the bookkeeper detects it, it will be returned to the depositor and his tentative credit will be cancelled. For making this examination and dispatching the return of items which it bounces, the bank has until midnight of the business day following the day on which the check was received.9

If the bank of deposit is not the drawee, the process is more complicated and will take more time. The bank of deposit now has no means of finding out, within its own organization, whether the check is good or not. Instead it must present the check to the drawee for payment, and let the drawee make that examination and determination. This presentment it may make direct, or through a local clearing house, or through a chain of collecting banks, which may include the Federal Reserve. When the check reaches the drawee it will make a tentative settlement in some form with the presenting bank (just as in the other case the paying teller gave tentative credit to the depositor), and will proceed to examine the item in the same

9. MINN. STAT. § 48.515 (1957). This is the "deferred posting" statute, recommended by the American Bankers Association in 1948 and very widely enacted soon thereafter. Its purpose is to permit banks to organize employees' workloads on an even basis through the day, without excessive late-afternoon peaks or night work. It does this by giving the drawee bank an extra day to verify the item and to dishonor it if found not properly payable. Thus, for instance, a great lot of checks received on Monday afternoon need not be completely processed that same night: those not examined by the bookkeeper before her quitting time become her first work the next morning. Note that by subdivision 3 the effect of the section may be varied by agreement — so that clearing house rules may, and of course commonly do, fix a daytime hour, instead of midnight, as the deadline for returns. See, e.g., rule 11 of the Clearing Rules and Regulations of the St. Paul Clearing House Association, quoted in note 13 infra. The Code continues the policy of deferred posting with a similar deadline, which is also subject to variation by agreement. UNIFORM COMMERCIAL CODE §§ 4–103, 4–104(h), 4–301.
way as described above, and within the same time limits. If the item is found properly payable it is marked paid and charged to the drawer’s account in the same manner as though the bank of deposit were the drawee. No further notice is sent to the presenting bank: it and the bank of deposit and the original depositor, just like the depositor in the other case, all learn that the item has been honored by not learning, within the appropriate time, that it has bounced. Only if the item is found not properly payable is anything "returned": when that happens the check itself or a notice of dishonor bounces, back through the various collecting banks, to the bank of deposit and so to the original depositor, and the credits given are reversed.

The operations of a city clearing house make clear what is occurring. Clearing house rules state the hour and place where clearings shall occur. At that hour, every banking day, each bank member of the clearing house is represented, and each representative has with him the checks, drawn on other members of the clearing house, which his bank holds for presentation on that day. They are generally bunched, each bunch for one drawee, and the totals for each bunch have been determined. At the clearings the bundles are exchanged, the totals proved, and balances determined. Settlements are promptly made, according to these balances. But the balances are

10. Minn. Stat. § 48.515 (1957); Uniform Commercial Code § 4–301. The black letter headnote of § 48.515, is misleading, though the title of Minn. Laws, 1949, c. 187 was both accurate and clear. The section clearly covers items received from other banks for payment, as well as those deposited. So does, of course, the Uniform Commercial Code section.

11. Minn. Stat. § 335.75 (1957). The Code rules are, I think, more accurate, and are certainly more fully worked out. Uniform Commercial Code §§ 4–201, 4–212. Of course the original depositor and each bank in the chain has probably endorsed the check too, if only for collection, and has obligations to later holders resulting from that fact. Minn. Stat. § 335.285 (1957); Uniform Commercial Code § 3–414; Uniform Negotiable Instruments Law § 66.

12. The process so far is very well illustrated by, for instance, rules 2, 4, 5 and 6 of the Clearing Rules and Regulations of the St. Paul Clearing House Association, as follows:

3. The hour for making exchanges at the Clearing House shall be ten-thirty o’clock A.M. each banking day. Only active Members may be represented at the Clearing House for purpose of making exchanges. Participating members must clear through a Member and any Member of the Association clearing for a participating member shall be liable therefor and in respect thereto in the same manner as it is liable for its own exchanges, settlements and payment of fines.

4. Items which may be cleared are checks on the active and participating Members and such other orders for the payment of money as may be agreed upon by the Members. Items to be cleared must be brought to the Clearing House by representatives of the Members, sorted and listed against each other Member with totals plainly indicated, in a form satisfactory to the Manager. Items on participating Members may be sorted and listed against the respective participating Members and the totals thereof listed against the active Members through which participating Members clear.

5. Members may make exchange of items being cleared by them between
still tentative only: none of the checks have yet been examined by
the drawee banks to see if they are payable. So the account between
each pair of banks, although already settled, is subject to be corrected
within the time permitted by the rules after individual examination
of the items. Correction is made by returning to the presenting bank
individual items not found payable. Each bank making a return
within the time permitted by the rules is reimbursed by the present-
ing bank for the amount of that one item. The check, in short, has
bounced, and the tentative settlement made for it on the basis of the
clearings has been cancelled.13

But the overwhelming majority of items do not bounce, and the

themselves prior to the hour of regular clearings, the total amounts of such
items to be included in the respective Members' figures for the next regular
clearings. Such items shall be subject to the same rules and regulations as apply to
items exchanged at regular clearings.

6. Settlement of balances due from and to Members as a result of the exchange
shall be made by twelve o'clock noon each day by payment or credit through
the Federal Reserve Bank of Minneapolis.

Similar though not identical arrangements may be found in Clearing Rules of the
Minneapolis Clearing House Association, sections 2, 6, 7, and in Amended Rules and
Regulations for Clearing Checks and Other Items Between the Federal Reserve Bank
of Minneapolis and Its Participating Member Banks in the Metropolitan Area of
Minneapolis and St. Paul rules 3, 4, 6 [hereinafter cited as Twin City Clearing House
Rules].

Clearing Rules have, of course, the force of agreement between the bank members
of the clearing house, and have a statutory basis in MINN. STAT. § 48.35 (1957). Under
the Code they are effective as agreements "whether or not specifically assented to by
all parties interested in items handled," and action or nonaction consistent with them
"prima facie constitutes the exercise of ordinary care." UNIFORM COMMERCIAL CODE
§§ 4-103(2)-(3).

13. The return of dishonored items, in the St. Paul Clearing House, is governed
by its Clearing Rule 11 as follows:

11. Items received in the clearings will, as between the parties, be considered
paid unless handled in accordance with such of the following provisions as are
applicable:

(a) Dishonored items of less than $1,000, or notice of dishonor thereof, shall be
delivered to the presenting bank or its agent by 3 o'clock P.M. on the banking
day following the day on which originally cleared or shall be dispatched
to the presenting bank by mail or by other expeditious means not later than
midnight of such following banking day.

(b) Dishonored items of $1,000 or more, or notice (by telephone or otherwise)
of dishonor thereof, shall be given to the presenting bank or its agent by
3 o'clock P.M. of the banking day following the day on which originally
cleared.

(c) Dishonored items as to which protest is required by law shall, unless protest
has been waived, be delivered to the presenting bank by 3 o'clock P.M. on
the banking day following the day on which the item was originally cleared
or the dishonoring bank shall protest the same at the instance of and at the
expense of the presenting bank on such following banking day. Unless
otherwise directed by the presenting bank, protest shall be deemed waived
on dishonored items of $500.00 or under, except those bearing on their
face or by attached ticket a requirement that they be protested.

(d) Missorts (items incorrectly delivered in the clearings to a bank which is not
the drawee or payor thereof) of $500.00 or less shall be returned to the
presenting bank not later than 3 o'clock P.M. on the banking day following
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rules fix a time limit for the return of those that do. (There may of course be disputes later about other items which later developments, like the discovery of a forged indorsement, show should not have been paid; but that is another story.) So each bank knows, when the day's deadline for returns has passed, that the other checks it sent to clearings the day before have been honored. (Indeed, according to the quoted Rules, they are "considered paid.") Like the depositors and the collecting banks described before, the presenting member of a clearing house learns that each item sent through clearings has been honored by not learning, within the time permitted by the rules, that it has bounced.

II. THE PRESENT LAW

At some point in these collection and clearing processes, whether through a clearing house or otherwise, the checks which are not bounced are indubitably paid. But when?

the day on which originally cleared or may be redirected through the clearings to the correct bank not later than the second banking day following the day on which originally cleared.

(e) Missorts of $500.01 or more shall be returned to the presenting bank or its agent, by 3 o'clock P.M. on the banking day following the day on which originally cleared.

(f) Unpaid non-bank items (those not drawn directly against a Member or Participating Member but payable at or through a Member or Participating Member) shall be returned to the presenting bank by 3 o'clock P.M. on the second banking day following the day on which originally cleared.

(g) Banks returning items must attach a ticket stating the reason for the return. The receiving bank shall be reimbursed for returned or missorted items on presentation, through the clearings or direct to the presenting bank, of a memorandum ticket covering the item.

(h) For the purpose of this section, a Participating Member which presents an item at the clearings through a Member, as contemplated by Section 2 hereof, is the presenting bank. The member representing such Participating Member is the agent of the Participating Member, and the representative or messenger of any Member appearing at the clearings is the agent of such Member and of the Participating Member represented at the clearings by such Member.

In all cases where notice of dishonor is not accompanied by delivery of the item involved, the item shall be dispatched to presenting bank by mail or other expeditious means not later than midnight of the banking day following the day cleared.

For similar, though not identical rules governing returns in the Minneapolis and Twin City clearing houses, see, in the Minneapolis rules, §§ 5, 6 and rule 6 of the Rules and Regulations, and, in Twin City rules, rules 7, 8. Notice the difference in the deadlines made by these rules for returns, some identical with the statutory deadline Minn. Stat. § 48.515 (1957), some shorter (St. Paul rules 11 (b) and (e)) and some apparently longer (St. Paul rule 11 (f)), though I think the truth is that the nonbank items to which 11 (f) applies are not covered by the statute, since not drawn on the clearing member bank. This variation by agreement is permitted by the statute. Minn. Stat. § 48.515(3) (1957). Under the code, clearing house rules will continue to govern the method of return. Uniform Commercial Code § 4-301(4)(a). As to variation by agreement, see Uniform Commercial Code § 4-103.
Notice that in the common case (the check not presented to the drawee for cash payment, but deposited in an account, either in the drawee bank or elsewhere) the drawee bank has never paid out cash against the check. It has charged its drawer for it, and has settled for it in some form, either by credit to its depositor or to another bank, or by authorization to another bank to charge it, or by some form of remittance, and that settlement has become binding on it because not revised within the time allowed by agreement, rule of the Clearing House, or law. It has of course received and paid out cash on various transactions during the time the check has been in process, but it has paid out none against this check as such. Unless the law is bold enough, and silly enough, to say that most checks in the United States are never paid, it will have to pick some point or points in the noncash collection process at which it is willing to say that payment has occurred. Some point or points, but where?

Perhaps it is time to describe some Minnesota cases. I note them in their order of decision.

Johnson v. First State Bank\textsuperscript{14} was a stop order case. Before the order was received, the payee of the check had presented it to the drawee bank for payment, and received $250 cash and two drafts of that bank upon another bank for the balance, $4000. When its customer's stop order was received, the drawee tried to comply by stopping payment on its own two drafts. The court held it had no right to do so: the check had been paid before the stop order was received, and it was bound upon its drafts.

Tobiason v. First State Bank\textsuperscript{15} was a suit to cancel a promissory note. The debt which was represented by the note had been paid (or not paid) by a check upon bank $D$. That check with others had been presented by the payee to bank $D$ for payment, and bank $D$ had stamped it “paid” and issued and delivered its own draft for the amount. Before this draft could be collected, bank $D$ failed. The court held the check, and so the debt, was paid, and ordered the note cancelled. This left the plaintiff with a claim against bank $D$.

Holdingford Milling Co. v. Hillman Farmers Co-op. Creamery\textsuperscript{16} was an action on a debt, which had been paid (or not paid) by the debtor's check upon bank $D$. The payee had deposited the check in a bank other than bank $D$, and it had reached bank $D$ for payment, along with other items, through a chain of collecting banks. Bank $D$ had found the check good, stamped it “paid,” posted it to the drawer's account, and mailed its own remittance draft to the presenting bank in settlement. But before this draft reached the presenting bank, bank $D$ failed. The court held the check (and so the

\textsuperscript{14} 144 Minn. 363, 175 N.W. 612 (1920).
\textsuperscript{15} 173 Minn. 533, 217 N.W. 934 (1928).
\textsuperscript{16} 181 Minn. 212, 231 N.W. 928 (1930).
old account), had not been paid. So it was the original debtor, not his creditor, who was left to a claim against bank $D$.

In *Bay State Milling Co. v. Hartford Acc. & Indemnity Co.*,\(^{17}\) the item was not a check but a commercial draft. The draft had been lodged with a Minneapolis bank, which sent it forward to a bank in Cleveland for collection. The Cleveland bank collected, gave credit in account to the Minneapolis bank for the amount, and forwarded advice of collection and of the credit to the Minneapolis bank. But on the day this advice reached Minneapolis the Cleveland bank was closed. The court held the Minneapolis bank was not accountable to its customer, since it had not itself been able to collect. This meant that the original owner of the draft (and its insurer against such losses) had the claim against the Cleveland bank. But no one doubted that the original item had been paid.

*Midland Loan Fin. Co. v. Kisor*\(^{18}\) was a garnishment case, the question being whether a certain check, drawn on the garnishee, was paid before the garnishment was served. The check and the garnishment reached the bank on the same day, the check coming, with others, in the mail from a bank in Minneapolis. Two hours before the garnishment was served the bank had processed the check, found it good, stamped it "paid," posted it to the drawer's account, and issued its remittance draft to the Minneapolis bank to cover. (It is not stated whether this remittance draft was in the mail before the garnishment was served. Certainly it could not have reached the Minneapolis bank.) The court held the check was paid before the garnishment was served, and the garnishment caught nothing. Compare this case with the previous two cases.

*White Brokerage Co. v. Cooperman*\(^{19}\) was a stop order case. The check had been deposited, with others, over the counter in the drawee bank itself, and the deposit had been noted in the payee's passbook. Less than an hour later (almost certainly therefore before any processing of the check by the drawee at all, and probably before it even left the receiving teller's cage) the drawer notified the drawee to stop payment. The bank did so, reversed the payee's credit in deposit, and returned the check to the payee. The court held it had no right to do so: the credit entered in the passbook by the teller could not be reversed, so the stop order came too late. The judgment entered was against the bank: no doubt, as the court said in dictum, it was entitled to charge the check against the drawer. So it was he who stood the loss, although the fruit that the check paid for apparently was bad.

\(^{17}\) 193 Minn. 517, 259 N.W. 4 (1935).
\(^{18}\) 206 Minn. 134, 287 N.W. 869 (1939).
\(^{19}\) 207 Minn. 239, 290 N.W. 790 (1940).
Bohlig v. First Nat’l Bank was another case of a stop order. The check had been received by the drawee, with others, from the Federal Reserve Bank of Minneapolis. It had been examined by the drawee bank, found good, stamped “paid,” posted to the drawer’s account, and a remittance draft to the Federal Reserve (covering all the items except one) prepared for mailing. Late in the afternoon, after the banking day was over and about the time the remittance draft was mailed, the drawer phoned the bank and asked it to stop payment. He was told it was too late, his check was paid. The court thought otherwise: what had happened was not payment; even if the remittance was already in the mail it could have been reclaimed (under postal regulations) by the sender, and the bank should have reclaimed it, reversed the entries on its books, and remitted only for the other items. (Note that this would have delayed the bank’s remittance for the other items until a later day. What the Federal Reserve and the owners of the other items would have said about this the opinion does not state.)

These opinions surely evidence that some confusion exists in the law. Giving deposit credit for an item in a passbook, without any examination of the item, is a final action, but to examine the item itself and find it good and stamp it paid and forward a remittance draft to the presenting bank is not. Or rather, sending a remittance draft is final if it reaches the presenting bank before the critical event, but not if it does not. Or rather, sometimes payment is final even if the remittance has not reached the presenting bank when the critical event occurs, but sometimes it is not.

And so on. And so on. But the thesis of this essay is not that the Supreme Court of Minnesota was mistaken in any of the cases. The thesis is that the law of the state is in confusion, and deserves rethinking and restatement, for the benefit of all concerned.

Some rethinking occurred in 1955, when the legislature provided that a check is “deemed to be finally paid” against a stop order...
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"when the instrument remitting for the item or advice of credit relating to it leaves the premises of that bank, or when that bank gives credit therefor over the counter or at a clearing house, or when that bank has certified the instrument." 25

This at least is a clear rule for stop orders (assuming that the bank can always prove when its outgoing mail left the premises or the hour and minute of credit given over the counter for a deposit), but one wonders whether it is consistent with the neighboring section of the statutes, section 48.515. That is the "deferred posting" statute discussed above. 26 Under it, after most of the events which section 48.518 says make the item "deemed to be finally paid," the bank still has another business day for the decision whether to pay or not. Why should there be one time limit for stop orders (section 48.518), and a wholly different one (section 48.515) for the bank's own decision to honor or dishonor? And suppose, after the passage of one deadline and before the passage of the other, an execution or garnishment is served upon the bank in an action against the drawer of the item, or the bank itself elects to exercise a right of setoff, or the bank fails and is closed. Which section will apply? I think nobody knows.

III. THE REMEDY

What is needed is a clearly stated and consistent set of rules covering at least the common cases, which make sense to bankers and their customers. There is no point in any effort to give favor or disfavor to one party; anyone can be on any side of any of these questions. What the law needs is some consistent rules and a clear statement of them.

To set up such a statement, starting from scratch or from the present Minnesota statutes and decisions, would not be an easy job. The facts are sufficiently complex, let alone the added trouble of the cases. But that job will not be needed: it is already done, and done, I think, with great clarity and skill, in article 4 (Bank Deposits and Collections) of the Uniform Commercial Code. That whole article, and the whole Code of which it is a part in its revised 1957 version, is urgently recommended to the serious study of the banking and commercial bar. Already enacted in three states, it could greatly clarify and modernize the law at many points in many other states, including, I think, in Minnesota.

On the matters dealt with in this essay the Code recognizes the realities of banking practice.

When a check reaches the drawee bank for payment (whether direct from the payee or a later holder or from a collecting bank),

26. See notes 9 and 10 supra.
the drawee has two things to do. The first, in logic, is to determine whether the check should be paid; the second is to settle for it in whatever way the rules require and the presenting party asks. When the presenting party asks for cash the bank departs from this logical order at its peril, for it knows that cash payments, by a drawee to an honest holder for value, are generally final. But when cash is not asked for (and that, remember, is the overwhelmingly common case) it saves much time and speeds up the whole business to conduct the two tasks simultaneously. So the common and lawful practice is to make a tentative settlement on the day the item is received, and at the same time to commence examination of the item to see if it is good. That examination must be prompt, for if the item is to be dishonored, it (or a notice of dishonor) must be dispatched not later than midnight the next business day, or not later than a different short deadline fixed by clearing house rules or by agreement. When that time passes without the action stated the tentative settlement is final, the presenter has got what he requested, and the Code says the check is "finally paid."

May it be paid before that? Yes, it may. Remember that the only reason for giving the drawee time at all is to enable it to make its examination of the item. When it has concluded that examination, and evidenced in a clear way its decision to pay the item, there is no reason to give it further time. The way that decision is commonly evidenced is by posting the item to the drawer's account. So the Code says that when that posting is completed, the item is "finally paid."

Payment under either of these rules of course ends the chance of an effective garnishment, stop order, bank setoff, or the like. So, of course, does a cash payment, or a certification. And since the decision to pay, and so the end of the time needed for decision, may be shown by some act short of final posting to the drawer's account,

29. See discussion at notes 9 and 10 supra.
30. Uniform Commercial Code § 4-213(1)(d). Compare the clearing house rules, note 13 supra, which say it is "considered paid." Note carefully that under the Code it is "the item," that is, the check itself, i.e., the drawer's and indorser's obligation (not the bank's) that has been "finally paid." The bank remember, being merely a drawee, was not liable at all upon the check, unless of course, it had previously certified it. Minn. Stat. §§ 335.491, 335.743 (1957); Uniform Commercial Code § 3-409; Uniform Negotiable Instruments Law §§ 127, 189. "Final Payment" of the drawer's obligation fixes (not terminates) the obligation of the drawee bank. So "upon a final payment . . . the payor bank shall be accountable for the amount of the item." Uniform Commercial Code § 4-213(1).
31. Uniform Commercial Code § 4-213(1)(c). Here even more clearly than in the last case it is evident that the bank's obligation becomes firm not ends, with the "final payment" of the "item." The Code sentence quoted supra note 30 applies.
32. Uniform Commercial Code §§ 4-303(1) (d), 4-303(3).
33. Uniform Commercial Code §§ 4-303(1) (a)–(b).
WHEN IS A CHECK PAID?

the Code provides that garnishments, etc., come too late if they come after the bank "otherwise has evidenced by examination of such indicated account and by action its decision to pay the item." Stamping the item "paid" after examination would, I take it, clearly be such action, even though the posting to the drawer's account had not been finished when the critical event occurred.

Suppose, however, the bookkeeper is in the act of examining the check when a garnishment is served on the cashier. Half a minute later, before the cashier has had time to do anything except say, "Very well, we will freeze the account," the bookkeeper's examination is completed, the check has been found good, stamped paid, and posted to the drawer's account. Who wins in such a case? The Code votes for the owner of the check. The legal process (or whatever) "comes too late . . . [if it] is received or served and a reasonable time for the bank to act thereon expires . . . after the bank has" acted on the item in any of the ways described above.

These are, I think, clear rules, and clearly stated. They favor no one in particular, and they are consistent with each other. They are based on the realities of banking practice and could, if the bar wishes, clear up this very cloudy area of Minnesota law.

IV. The Practical Effect

So far I have dealt mainly with the priorities in time of various events, including payment. But what is the effect of payment of a check, especially upon the drawee bank?

Under the Code section on final payment, it is "the item" which is "finally paid" by the events described. "The item," that is to say the check itself, that is to say the obligation of the parties who have signed it, the drawer and indorsers. The drawee has not signed the check at all, and is not obligated on it, unless of course it had previously certified it. If the drawer is its customer, and his balance is sufficient, the bank of course owes him a duty not to bounce his check, but this duty is on the general contract of deposit, not the

84. Uniform Commercial Code § 4-303(1)(d). Compare Twin City Clearing House Rule 8(e) as follows:

(e) When a bank to which an item is duly presented through the clearings unequivocally elects to pay such item, e.g., by perforating the item "paid," such payment shall be deemed final (unless induced by mistake) even though the time otherwise allowed for returning the item under these rules has not then expired. (Emphasis added.)

85. Uniform Commercial Code § 4-303(1). This is in accordance with the general position of the Code that notice to an organization is effective for a particular transaction from the time it reaches or with diligence should reach, the person conducting that transaction. Uniform Commercial Code § 1-201(27).

86. Uniform Commercial Code § 4-213(1).

check, and does not run to anyone except the drawer. The obligations embodied in the check are solely those of the drawer and indorsers, and it is their obligations and no others which are satisfied by payment of the check.

So “final payment” of “the item” under the Code section, in a non-cash transaction, satisfies no obligation of the bank. Instead it substitutes for the drawer’s obligation, which is satisfied, an obligation of the bank itself, either to its other customer who deposited the check with it, or to the collecting bank which presented it for payment. Accordingly the Code provides (except where the payment was in cash): “Upon a final payment . . . the payor bank shall be accountable for the amount of the item.”38 That sentence, gentle reader, and the comments which accompany it in the 1957 print are to my mind the most successful clarifying statement that any one has made in this whole field since Mansfield.

Very well, on “final payment” of the item the drawee bank becomes accountable. But suppose it fails before the owner of the item gets his money. Then who loses? That was, after all, the problem in several of the Minnesota cases.

Bank failures do not happen nowadays as often as they did in the bad days, and when they do Federal Deposit Insurance takes care of many of the claims. The problem is not as universal as it once was, but it has not disappeared, and the Code has to deal with it, and does.

Under the Code, a check in possession of a drawee bank for payment when that bank suspends payments either has been “finally paid” (under the rules discussed above) or not. If it has not, it is returned by the receiver to the presenting bank or to the closed bank’s customer,39 and the owner’s rights are on the item, against drawer and indorsers.

If, on the other hand, the item has been finally paid, the closed bank is accountable. If it has already made a final settlement, or if the provisional settlement which it has made (either with its other depositor or with a presenting bank) is or becomes final, then the presenting party has what he called for in the first place, and has no claim to preference. But if the item being finally paid, the closed bank has made no settlement at all, or has made a provisional settlement which does not become final, the owner of the item has a preferred claim in the insolvency.40 Again, these are clear rules in case of need. These, with good luck, we may seldom have to use.

38. Uniform Commercial Code § 4-213(1).
40. Uniform Commercial Code § 4-214(2). It is recognized that amendment of the National Banking Act will be necessary to have this provision apply to national banks. See comments to the cited section.
The Code in which these rules appear has been carefully thought through by men who know their business. It could greatly simplify and clarify and modernize the law governing the daily operations of bankers, lawyers, and commercial people. The whole Code deserves their careful study.