Stopping Checks

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A check under the negotiable instrument law is not an assignment of a portion of the drawer's funds except under very extraordinary circumstances but is merely the executory order of the depositor which accordingly may be countermanded or revoked or arrested or "stopped" on the ground of the fraud or on any other

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2 In order to place a check beyond the control of the drawer and preclude him from stopping payment thereon, it must be clearly shown that it was the intention of the parties to assign all or a part of the specific fund on deposit. Pease & Dwyer Co. v. State Nat. Bank, 88 S.W. 172, 173, 114 Tenn. 693.


ground or for no reason whatsoever and such action by the depositor will terminate the power of the bank to pay it thereafter. That the drawer by stopping payment may become liable to the holder is a different matter since the check as to such holder becomes a note. This however is no concern of the bank. The drawer by

same day, in banking hours, forbade the bank to pay the checks, and some time afterwards drew out the whole of such fund for the purpose of distributing it ratably among all the check holders. Held, that the owner of a check, who demanded payment of the bank after it was forbidden to pay, and before the fund was drawn out, was not entitled to claim the amount of the bank—Dykers v. Leather Manufacturers' Bank, 11 Paige, 612, 616 (N.Y.). Since a check is not an assignment of any part of the drawer's account and does not impose a liability on the drawee until accepted or certified, it can be countermanded at any time before payment or acceptance by the drawer. Raynor v. Scandinavian-American Bank, 210 P.499 (Wash.).

Weiland's Adm'r v. State Nat. Bank, 65 S.W. 617, 112 Ky. 310, 23 Ky. Law Rep. 1517, 56 L.R.A. 178; dissenting opinion, 66 S.W. 26, 23 Ky. Law Rep. 1517, 112 Ky. 310, 56 L.R.A. 178; Tramell v. Farmers' Nat. Bank, 11 Ky. Law Rep. 900; Guild v. Eastern Trust & Banking Co., 121 A. 13; Schneider v. Irving Bank 1 Daly 500 (N.Y.); Citizens' Bank of Gans v. Mabray, 215 P. 1067 (Okl.); Huffman v. Farmers' Nat. Bank of Cross Plains, 10 S.W. (2d) 753 (Tex.). Drawer of ordinary check can revoke it at any time before bank has paid it or committed itself to pay it, and bank is bound by notice of revocation, orally or in writing, and liable to drawer to the amount thereafter paid on the check. Bank of Hamilton v. Williams, 90 S.E. 718; 146 (Ga.). Checks are inland bills of exchange subject to all the rules applicable to instruments of that character, and impose no obligation upon the drawees, until accepted, and, until presented and paid, are revocable by the drawer who has the legal control of the money to his credit until actual acceptance or payment of the checks. First Nat. Bank v. School Dist. No. 4, Bryan County, 120 P. 614, 31 Okl. 139, 39 L.R.A. (N.S.) 655. Under Negotiable Instrument Law, sec. 189, providing that a check is not an assignment of any part of the drawer's funds, and the bank is not liable to the holder unless and until it accepts or certifies the check, the drawer of an ordinary check may, before it is accepted, revoke it and forbid its payment, and any subsequent payment by the bank is made at its peril. Pease & Dwyer Co. v. State Nat. Bank, 88 S.W. 172, 114 Tenn. 693.


Hiroshima v. Bank 248 P. 947, (Cal. App.). "The consideration for an express agreement or for the implied obligation not to pay a holder of a check after payment of it has been stopped, is found in and springs from the mercantile relation of the parties and the reciprocal rights and obligations which the law attaches to that relation." Tremont Trust Co. v. Burack 126 N.E. 782, 235 Mass. 398, 401. Purchaser who gave broker check for initial payment on land before a binding contract for the sale of the land was entered into with vendor, and who thereafter and before a contract was entered into decided that he did not want the land, had a right to stop payment of check. Thompson v. Killiheffer, 125 A. 11, reversing 119
drawing the check does not make the drawee an arbiter to decide any question involving the liability of the drawer toward the payee. The right which an ordinary depositor has to stop payment on his checks equally applies where the depositor is a bank and the instrument stopped is a draft.

Any act of the drawer which conveys to the drawee bank before payment or certification definite instruction to stop payment on a check is sufficient. No prescribed language is required. A statement: “I shall feel greatly obligated if you will kindly hold up pay-

A. 770, 98 N.J. Law 359. A bank is bound to respect a notice to stop the payment of a check and for a failure to observe the direction it is clearly liable. The check being a mere order on the bank is subject to revocation by the drawer at any time before it is paid and a bank which after such notice pays the check pays out of its own funds and cannot charge the drawer with the resulting loss. Elder v. Franklin Nat. Bank 55 N.Y.S. 576, 578, 25 Misc. Rep. 716.

Bluefield Nat. Bank v. Ficklesimer, 135 S.E. 257 (W. Va.).

People v. Orris 121 P. 163, 41 L.R.A. (N.S.) 170 (Colo.).

K.'s father drew a check to K.'s order, and K. delivered it unindorsed to the stock exchange as a margin. On the same day, and before it was presented to the bank, K. notified the bank not to pay it. Nevertheless, the bank officers certified the check. Held, that a decree was proper that the check was void, and that the bank must place its amount to K.'s credit. Public Grain & Stock Exch. v. Kune, 20 Ill. App. (20 Bradw.) 137.


Wall v. Franklin Trust Co. of Philadelphia, 84 Pa. Super. Ct. 392. Where a bank had received written notice not to pay checks, and subsequently refused the cancellation of the order stopping payment because not signed by certain of drawer's officers as required by corporate resolution, and such cancellation was not again presented to the bank, subsequent payment of the checks was unwarranted, and the bank could not justify such payment by showing that the recipient was justly entitled to it. American Defense Soc. v. Sherman Nat. Bank of New York, 122 N.E. 695, 225 N.Y. 506, affirming judgment 162 N.Y.S. 1081, reargument of which was denied 165 N.Y.S. 1075. In action against bank for paying check on which payment was stopped, whether there was consideration between drawer of check and payee, held immaterial. Hiroshima v. Bank of Italy, 248 P. 947, 949, (Cal. App.).

Wagle v. Farmers' State Bank, 280 S.W. 62 (Mo. App.).

ment of my check” (describing it) is all that is required. An order to “suspend” payment is sufficient. The direction may be given by telegram or in writing or by telephone or other verbal means and may even be communicated to the cashier at his residence on Sunday or in the middle of the night so as to bind the bank. Since thousands of checks pass daily through the various banks a proper description of the check which it is desired to stop obviously is important. A stop order which correctly states only the number of the check or which materially misspells the name of the payee

18 A letter written entirely in typewriting, including the signature, is sufficient as a notice to a bank to stop payment of a check. Sarantopoulos v. Mid City Trust & Savings Bank, 222 Ill. App. 24.
19 Hewitt v. First Nat. Bank 252 S.E. 161, (Tex.).
20 People's Sav. Bank & Trust Co. v. Lacey 40 So. 346, 146 Ala. 688. Notice to stop payment of check may be verbal, and hence written notice thereafter is merely additional indentification of the check. Hiroshima v. Bank of Italy, 248 P. 957, 951, (Cal. App.).
21 Where a depositor notified the cashier of the bank by telephone on Sunday not to pay a check, and the cashier promised to it, whereby the depositor took no further steps to protect his money, but the check was paid before the cashier arrived at the bank on Monday, the bank was liable for the money so paid, notwithstanding it was a custom of the bank to open before the usual banking hours, since the cashier, knowing of such custom, should have been at the bank when its doors were unlocked. Hewitt v. First Nat. Bank, 252 S.W. 161, 163, 164, (Tex. Com. App.).
23 A stop order correctly giving only the number of the check and mistating the amount ($196.76 for $196.95) the date (December 21st for December 23) and the payee (Helfand and Abel for bearer) does not describe the check sufficiently to render the bank liable for paying it. Mitchell v. Security Bank, 147 N.Y.S. 470, 85 Misc. Rep. 360.
24 A telegram to a bank ordering it not to pay a check drawn to James J. Manison in and of itself furnishes the bank no authority to decline payment of a check drawn to James J. Manson though the amount is $250 in both the check and the telegram. The bank is actually under duty to pay the check to Manson. Western Union Telegraph Co. v. Louissell, 66 So. 829, 11 Ala. App. 563, appeal denied 67 So. 1019, 191 Ala. 665. Stop payment order, stating payee's name to be “Harold Orkand,” is sufficient to describe check payable to “H. Orkand.” It describes the check with reasonable certainty. Levine v. Bank of U.S. 229 N.Y.S. 108, 109, 132 Misc. Rep. 130.
is clearly insufficient in the absence of evidence that the bank has not been misled thereby.\(^{25}\)

Though an officer of the bank has no right to accept deposits for the bank outside of its banking rooms where it has its books and vaults, he may where he receives a stop order on a Sunday over the telephone agree to attend to the matter and thereby bind the bank.\(^{26}\)

He may do the same in regard to a check obtained by the payee in a gambling transaction and placed in his hands by such payee at 1 A. M. and stopped by the drawer at dawn.\(^{27}\)

Payment of a check by the drawee after notice by the drawer not to pay is no defense to the drawee in an action by the drawer to recover the amount of the check so paid.\(^{28}\) The payment to the holder is wrongful so far as the drawer is concerned.\(^{29}\) The bank being the agent of the drawer must obey his instructions and is liable to him for its failure to perform this duty.\(^{30}\)

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\(^{25}\) In action by depositor against bank for payment of check after notice not to pay check No. 114 whereas the check was numbered 115, evidence that on presentation of check for certification the employe of the bank had refused to do so because payment had been stopped was admissible. Friesner v. Atlantic Nat. Bank of City of New York, 164 N.Y.S. 136. It seems that where a bank knows that a telegram directing it not to pay a check for $250 drawn to James J. Manson in fact refers to James J. Manson it is under the duty not to pay the check to James J. Manson. Western Union Telegraph Co. v. Louissell, 66 So. 839, 842, 11 Ala. App. 563, appeal denied 67 So. 1019.

\(^{26}\) Under such circumstances the cashier is not required to do any labor on Sunday. Hewitt v. First Nat. Bank, 252 S.W. 161, (Tex. Com. App.).

\(^{27}\) The drawer had lost $180 in a poker game and at 1 A. M. gave his check. Swifter than an arrow from a tartar's bow the payee took the check to the cashier at his home who took it in hand. Aurora had but newly chased the night and purpled over the sky with blushing light when the drawer disturbed the cashier and notified him not to honor the check. Kellogg v. Citizens' Bank of Ava, 162 S.W. 643, 644, 176 Mo. App. 288.

\(^{28}\) People's Sav. Bank & Trust Co. v. Lacey, 40 So. 346, 146 Ala. 688. Schneider v. Irving Bank, 30 How. Prac. 190, 1 Daly, 500. Hunt v. Security State Bank, 179 P. 248 (Or) Hewitt v. First Nat. Bank, 252 S.W. 161. Where a bank received written order not to pay checks, and later refused a cancellation of this order because not signed by certain officers of the drawer, payment thereafter was unwarranted. The latter cancelling the stop payment order was signed by only one officer. The bank sent it back for proper signature. The drawer was justified in believing that the original order would be obeyed. American Defense Soc. v. Sherman Nat. Bank of New York, 162 N.Y.S. 1081, 1082, 176 App. Div. 250, affirmed 225 N.Y. 506, 122 N.E. 695.

\(^{29}\) Huffman v. Farmers' Nat. Bank of Cross Plains, 10 S.W. (2d) 753.

\(^{30}\) Wall v. Franklin Trust Co. of Philadelphia, 84 Pa. Super. Ct. 392. The payment is a mere voluntary act by the drawee bank. The check by the
peril when payment has been stopped. Of course the mere fact that the stop order has been received by some officer or employee of the bank does not necessarily make it available to the paying teller to whom the check may be presented at that very instance or shortly after. A bank which has 7000 depositors, 17 bookkeepers, 275 employees and handles from 40,000 to 50,000 checks daily must be given some little time in which to bring home notice to the teller.

The act of the drawee bank in charging a check to the drawer and giving the holder credit for it amounts to payment and prevents the drawer from stopping it thereafter. A bank certainly is entitled to charge a customer's account where it has paid a check before the receipt of the stop order, except of course in the case of a post dated check which the banks pays in advance of its date and which is stopped before such date. It is no objection that the payment is made out of banking hours. The mere act of stamping stop order is converted into mere evidence of a past transaction. Huffman v. Farmers' Nat. Bank of Cross Plains, 10 S.W. (2d) 753, 755, (Tex. Civ. App.).

In the absence of an express contract limiting its implied obligation to the drawer of a check, the drawee banks pays at its peril when payment of the check has been stopped. Tremont Trust Co. v. Burack, 126 N.E. 782, 235 Mass. 398, 401.

Where a telegram countermanding the payment of a check is received by the bank at 11 minutes before 3, and the check is certified by the bank between 10 and 11 o'clock on the following morning; the telegram was received in ample time to stop payment before the check was presented for certification. Ozborn v. Corn Exchange Nat. Bank of Chicago, 208 Ill. App. 155.

Albers v. Commercial Bank, 85 Mo. 173, 55 Am. Rep. 325. Where bank agreed, that when cattle shipper deposited sight drafts drawn on consignees of cattle, it would pay checks issued by shipper to pay for cattle, payment of checks given by shipper to pay for cattle cannot be stopped by him, where bank gave him credit for such drafts and had received money on them. Moravek v. First Nat. Bank, 237 P. 921, 923, 119 Kan. 84.


The presentation of checks by the liquidating officer of an insolvent bank to the drawee bank, and their payment at 8:30 in the morning on the day after the bank closed before the usual banking hour, is not on its face sufficient to legally rob the transaction of good faith or to make the paying bank subject to countermand instructions received after it opened, since there is not, in the absence of statute, any hard and fast rule as
such a check paid and placing it upon a spindle however is not
enough to constitute payment or to prevent the drawer from stopping
payment.\footnote{Hunt v. Security State Bank, 179 P. 248.}

A drawer who stops payment by notice on the drawee bank has
done his full duty and owes no further obligation. It is his privilege
to transfer his account to another bank in order to prevent the in-
advertent payment of the check notwithstanding the stop order. Such
act of caution does not impose on him the duty to forsee that the
holder will undertake to change the name of the drawee, and the
further duty to stop payment also at the bank to which he has trans-
holder changed the name of the drawee bank from \textit{First} National Bank
to \textit{Beaumont} National Bank.}

It is the bounden duty of a bank when notified to stop the pay-
ment of a check to use all reasonable efforts to comply with the di-
rections and this duty cannot by a provision in the written stop
order be turned into an act of mere courtesy. Compliance with one's
duty while possibly it is courteously performed is just doing what
one is obligated to do.\footnote{Hiroshima v. Bank of Italy, 248 P. 947, 952, (Cal. App.). Grisinger v. Golden
State Bank of Long Beach, 268 P. 425, 426.} A release inserted into the form of a stop
order which the bank induces the depositor to sign or which is print-
ed in his pass book and which attempts to release the bank from
all forms of negligence is ineffective\footnote{Hiroshima v. Bank of Italy, 248 P. 947, 251 Cal. App.} because it is against public policy\footnote{Hiroshima v. Bank of Italy, 248 P. 947, (Cal. App.). Levine v. Bank
of U.S., 229 N.Y.S. 108, 132 Misc. Rep. 130. Stipulation or agreement between a bank and its customer who stops payment of a check releasing the bank from the results of mere inattention, carelessness, oversight, or mistake of its employees, whereby the check is nevertheless paid, is not against public policy. Tremont Trust Co. v. Burack, 126 N.E. 782, 235 Mass. 398, 402. Where the drawer, supposing a check had been lost, signs a stop order payment releasing the bank from liability "in the event of payment of the said check by error should any check drawn by me be returned insufficient," and subsequently issues payee a second and larger check, including the amount of the first, and the payee cashes both, the maker is bound by his release, and cannot recover because the bank re-
if it is one, being in derogation of the common law and for the
benefit of the bank will be strictly construed. Courts are averse
to construing an instrument so as to support a waiver of negligence,\textsuperscript{44} particularly against an illiterate depositor who is informed that he
must sign the check in order to stop payment.\textsuperscript{45} Therefore a de-
positor who has given an unqualified stop order does not by subse-
quently signing the form prepared by the bank waive his rights
under the first order.\textsuperscript{46} The fact that he reduces the verbal notice
to writing does not confine him to the writing or merge the verbal
notice into the written one.\textsuperscript{47}

In an action by the drawer against the drawee for paying a check
on which payment had been stopped allegations showing that the
money is on deposit,\textsuperscript{48} that the check was issued, that notice was
given to stop its payment, that it was nevertheless paid and that
the money was demanded from the drawee which demand was de-
clined states a cause of action without alleging damages. The amount
of damages necessarily appears from the allegations.\textsuperscript{49}

\textsuperscript{43} Hiroshima v. Bank, 248 P. 947, (Cal. App.).

\textsuperscript{44} A bank, honoring a check through oversight, after it had been ordered
by the depositor to stop payment, is liable to him for the amount, though
he had agreed in the pass book that it should not be responsible for a
failure to execute such orders, where it had agreed to endeavor to execute
them, as its agreement rendered it liable for negligence, notwithstanding
716.

\textsuperscript{45} Hiroshima v. Bank of Italy, 248 P. 947, 951. Fact that bank's customer
did not read what was printed on front and back of card he signed when
stopping payment of a check cannot affect rights and obligations of self
and bank; he being assumed, in absence of fraud, to have assented to all pro-
398, 401.

\textsuperscript{46} Sarantopoulos v. Mid-City Trust & Savings Bank, 222 Ill. App. 24.

\textsuperscript{47} People's Sav. Bank & Trust Co. v. Lacey, 40 So. 346, 347, 146 Ala. 688.
Where a verbal stop order is given a writing subsequently executed at the
request of the bank is merely by way of additional identification of the

\textsuperscript{48} A complaint which alleges that the assignor of the plaintiff drew a post-
dated check on defendant bank, on which he stopped payment before the
time for payment arrived, but which defendant paid, fails to state a cause
of action where it is not alleged that the drawer of the check was a
depositor, or that defendant held any funds of the drawer, or that the
check was paid out of any such funds. Lippner v. Century Bank of City

\textsuperscript{49} Hiroshima v. Bank of Italy, 248 P. 947, 949.