

PAYING BANKER.

The banker upon whom a cheque is drawn, or at whose office a bill is accepted, and who pays it, either to the holder or to a collecting banker, is called the paying banker.

It is the duty of a paying banker to pay the cheques of his customer so long as he has sufficient funds belonging to his customer to enable him to do so. Before paying a cheque a banker must, of course, examine it to see that it is properly signed, that the indorsements are correct and, generally, that the cheque is in order.

In the case of bills domiciled with a banker it is part of his duty either from custom or by instructions of his customer, to pay them, though he is otherwise not legally bound to do so as in the case of a cheque. The paying banker is the drawee of a cheque, and therefore a party to it, but he is not a party to a bill which is merely domiciled with him.

If a drawer's or an acceptor's signature is forged, a banker cannot debit his customer's account with the cheque or bill.

With regard to indorsements the position of the paying banker is : BILL. He cannot debit his customer's account with a bill bearing a forged indorsement. The Bills of Exchange Act does not give him any relief from a forged indorsement on a bill.

CHEQUE. If a banker pays a cheque in good faith and in the ordinary course of business, he is protected against a forged indorsement by Section 60 of the Bills of Exchange Act, 1832. (See PAYMENT OF

BILL.) Sir John R. Paget suggests in his " Law of Banking "(page 60), that a cheque which contains a restriction that it is payable only if presented within a specified period may not be included under the term cheque, as defined by the Bills of Exchange Act.

Cheque payable on condition that a form of receipt is signed by the banker is protected by Section 17 of the Revenue Act, 1833, it paid to the payee. It is not considered a transferable document. (See RECEIPT ON CHEQUE.) Cheque crossed " account payee." The words " account payee " do not concern the paying banker, so long as he pays to a banker in accordance with the crossing. He is protected as in the case of an ordinary crossed cheque.

Cheque crossed " not negotiable," The words " not negotiable " do not affect the paying banker. The cheque is treated as an ordinary crossed cheque, and the banker is protected accordingly.

Crossed Cheque. The banker is protected by Section 80 of the Bills of Exchange Act (see CROSSED CHEQUE), when he pays a cheque, crossed generally, to a banker, or crossed specially to the banker to whom it is crossed or his agent for collection being a banker.

The sections 85(1), 85(2), 128 of negotiable instrument acts provide statutory protection to paying banker for making payments of order cheque, bearer cheque or crossed cheque in that order.

Payment of order cheque

Section -85(1) of N.I.Acts 1881 provides that

“Where a cheque payable to order purports to be endorsed by or on behalf of the payee, the drawee is discharged by payment in due course”

The above section provides protection to paying banker if he has made payment of an order cheque in due course (within the meaning of sec.10 of N.I.Act.) and if the proceeds credited to the account of an endorsee if and only if the endorsement is regular.

Payment of bearer cheque

Section -85(2) of N.I.Acts provides that

“Where a cheque is originally expressed to be payable to bearer, the drawee is discharged by payment in due course to the bearer thereof, notwithstanding any endorsement whether in full or blank appearing thereon and notwithstanding that any such endorsement purports to restrict or exclude further negotiation”.

The above section specifies that a cheque which is ‘once a bearer is always bearer’ (which means if a cheque is originally drawn as a bearer cheque remains always bearer irrespective of any endorsements on the back of the instrument). Therefore banks are not required to verify the regularity of the endorsement on the back of the cheque if any and they are protected from liability if they have made payment of an uncrossed bearer cheque to a bearer in due course.

Payment of ‘Crossed cheque’

Section -128.of N.I.Acts 1881 provides that

“Where the banker on whom a crossed cheque is drawn has paid the same in due course, the banker paying the cheque and (in case such cheque has come to the hands of the payee) the drawer thereof shall respectively be entitled to the same rights, and be placed in if the amount of the cheque had been paid to and received by the true owner thereof”.

The paying banker of a crossed cheque shall satisfy the following condition to be eligible for protection under related NI acts.

The Negotiable Instruments Act, 1881 is applicable for the cases of dishonour of cheque. This Act has been amended many times since 1881.

According to Section 138 of the Act, the dishonour of cheque is a criminal offence and is punishable by imprisonment up to two years or with monetary penalty or with both.

If payee decides to proceed legally, then the drawer should be given a chance of repaying the cheque amount immediately. Such a chance has to be given only in the form of notice in writing.

The payee has to sent the notice to the drawer with 30 days from the date of receiving “Cheque Return Memo” from the bank. The notice should mention that the cheque amount has to be paid to the payee within 15 days from the date of receipt of the notice by the drawer. If the cheque issuer fails to make a fresh payment within 30 days of receiving the notice, the payee has the right to file a criminal complaint under Section 138 of the Negotiable Instruments Act.

However, the complaint should be registered in a magistrate’s court within a month of the

expiry of the notice period. It is essential in this case to consult an advocate who is well versed and experienced in this area of practice to proceed further in the matter.

Fine points: Conditions for prosecution

Legally, certain conditions have to be fulfilled in order to use the provisions of Section 138.

The cheque should have been drawn by the drawer on an account maintained by him.

The cheque should have been returned or dishonoured because of insufficient funds in the drawer's account.

The cheque is issued towards discharge of a debt or legal liability.

After receiving the notice, if the drawer doesn't make the payment within 15 days from the day of receiving the notice, then he commits an offence punishable under Section 138 of the Negotiable Instruments Act.

Punishment & penalty

On receiving the complaint, along with an affidavit and relevant paper trail, the court will issue summons and hear the matter. If found guilty, the defaulter can be punished with monetary penalty which may be twice the amount of the cheque or imprisonment for a term which may be extended to two years or both. The bank also has the right to stop the cheque book facility and close the account for repeat offences of bounced cheques.