

SELIGMAN AND OTHERS V. WELLS AND  
ANOTHER.

*Circuit Court, S. D. New York.*      January 20, 1880.

DRAFT— SPECIFIC SUM PAID DRAWEE —  
TRANSFER TO TRUSTEE OF BANKRUPT  
DRAWER. The holder of draft is entitled to recover a  
specific sum of money paid to the drawee for the express  
purpose of taking up such draft, and transferred, after  
payment had been duly demanded, to the trustees of the  
bankrupt drawer.

WHEELER, J. Kaufman & Co., bankers at New  
York, drew three drafts of 25,000 francs each, a few  
days apart, on the Basler Bank Verein, at Basle,  
Switzerland, where they had no funds, at sixty days  
each, payable to their own order, and negotiated them  
severally to the orators, who presented them for  
acceptance. After the first two had been so presented,  
and before the bank knew of the third, the bank,  
through its agents, Alfred Merian & Co., Bankers at  
New York, called upon Kaufman & Co. to provide  
funds to meet the two drafts, whereupon they  
delivered to Merian & Co. \$14,500 in gold, to meet  
the three drafts, which Merian & Co. received for that  
purpose and transmitted to the Basler Bank Verein.  
The bank then accepted the two drafts and paid  
them, which, with charges, amounted to \$10,139.81,  
leaving \$4,360.19 towards the other, but not sufficient  
to pay it, and refused to accept of pay the other.  
Kaufman & Co. were adjudged bankrupts, and the  
orator, Joseph Seligman, and the defendants, became  
trustees of their estate in bankruptcy, and, on the  
demand of the defendants, the bank transmitted and  
delivered to them to sum of \$4,360.19, gold, against  
the claim of the orators. This bill is brought to recover  
that sum.

That a check drawn against a fund does not, of itself, operate as an assignment of the fund, or any part of it, so as to vest any right to it in the holder of the check before acceptance, either at law or in equity, is well enough settled, both on principle and by authority, *Bank of Republic v. Millar*, 10 Wall. 152; *Rosenthal v. Mastin Bank*, per *Blatchford*, C.J., S. D. N. Y. November 25, 1879. Here the checks were not drawn against any funds in the hands of the drawees, but the 303 money was placed in the hands of the drawees expressly to provide for the checks. They were not legally bound to receive the funds for that purpose, or to accept or pay the drafts unless they chose to do so. *Williams v. Everett*, 14 East, 582. They did not, however, refuse to receive the funds for that purpose, as the defendants in *Williams v. Everett* did, but received them with full knowledge of the purpose, and without objection or protest. This sum was set apart and appropriated by the bankrupts, before bankruptcy, for the holders of the checks, and was in the hands of the Basler Bank Verein for that purpose, and was claimed by the holders of the check while it was there for that purpose, and while they had the right to it, and before bankruptcy proceedings were commenced.

This case is like *De Bernales v. Fuller*, 14 East. 590, note *c*, where it was ruled, at the trial before *Lord Ellenborough*, C. J., that money paid into the defendants to take up a particular bill could not be recovered by the holder for want of privity; but afterwards a rule for a new trial was made absolute, after much discussion by the court, because it appeared that the money was paid into the defendant's house for the specific purpose declared at the time of taking up that bill, which purpose was not directly repudiated till afterwards, and the plaintiff finally recovered. *De Bernales v. Fuller*, 2 Camp 426.

That case is not contrary to *Williams v. Everett* or *Bank of Republic v. Millard*, or cases elsewhere holding that drawing and delivering a check is no assignment of the fund. And, on principle, it would seem that when Kaufman & Co. directed the Basler Bank Varein to pay money to the orators, which would include a direction to the orators to receive it, and had been paid by the orators for the right to receive it, and then sent the money to be paid, and it was received for the purpose of making the payment, the orators would have a right to the money on calling for it while it was there.

As the orators are entitled to the money in the hands of the bank they have the right to follow it into the hands of 304 the defendants, who, in receiving it, acquired no greater right than the bank had.

It is ordered that a decree be entered for the payment by the defendants to the orators of the sum of \$4,360.19, gold, received by the defendants from the Basler Bank Varein, with costs.

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