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## Article Four: Bank Deposits and Collections

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# ARTICLE FOUR: BANK DEPOSITS AND COLLECTIONS

HERBERT O. DAVIS\*

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Heretofore, North Carolina has had no comprehensive statutes covering bank deposits and collections. Article 4 of the Uniform Commercial Code fills this gap in the state's commercial law. This is not to say, however, that Article 4 will substantially change banking law or practice in the state, because many of the provisions of Article 4 are in conformity with the existing statutory and case law and merely codify many of the rules and practices North Carolina banks have already adopted and are now following.<sup>1</sup>

### I. GENERAL PROVISIONS AND DEFINITIONS

Most of the items handled by banks are negotiable instruments. Hence, Article 3 of the Code, dealing with negotiable instruments, and Article 4 are closely related and often overlap. Article 4, however, is not limited to the collection of negotiable instruments, but covers bank collections of all items for the payment of money. Article 8, dealing with investment securities, is also related to Article 4. To the extent items within Article 4 are also within the scope of Articles 3 and 8, they are also governed by Articles 3 and 8. But in the event of conflict between Article 4 and these articles, the provisions of Article 4 govern those of Article 3 and are governed by those of Article 8.<sup>2</sup>

In dealing with problems under Article 4, careful attention should be given to the definitions of terms in General Statutes sec-

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<sup>1</sup> For instance, the rules of the American Bankers Association Bank Collection Code are generally followed (although not adopted) in North Carolina, and Article 4 adopts many of these rules.

<sup>2</sup> G.S. § 25-4-102(1).

tions 25-4-104 and 25-4-105. It is also important to determine whether there are any applicable Federal Reserve System regulations<sup>3</sup> or operating letters<sup>4</sup> or clearing house rules<sup>5</sup> because they have the effect of "agreements" that can vary the provisions of Article 4 even though all the interested parties may not have specifically assented to them.<sup>6</sup> Moreover, action or nonaction pursuant to Federal Reserve System regulations or operating letters constitutes the exercise of ordinary care and, in the absence of special instructions, action or nonaction consistent with clearing house rules or "general banking usage" not disapproved by Article 4, "prima facie constitutes the exercise of ordinary care."<sup>7</sup>

Although subsection 25-4-103(1) authorizes agreements varying the effect of the provisions in Article 4, that section also provides that a bank cannot by agreement disclaim responsibility for its own lack of good faith or failure to exercise ordinary care and cannot limit the measure of damages for such occurrences.<sup>8</sup>

Subsection 25-4-102(2) resolves a basic conflict-of-laws problem by providing that the liability of a bank for action or nonaction in handling items for purposes of presentment, payment, or collection is governed by the law of the place where the bank is located.

Section 25-4-107 authorizes the practice heretofore adopted by a number of North Carolina banks by which an afternoon hour of two o'clock or later is the cut-off hour for handling money and items and making book entries. Items or deposits received on any day after the cut-off hour or after the close of the "banking day"<sup>9</sup> may be treated as received at the opening of the next banking day.

Certain sections<sup>10</sup> specify time limits for banks' handling of items if they are to fulfill their obligation to exercise ordinary care in the collection or payment of these items. Subsection 25-4-108(1) authorizes a one-day extension of these time limits by a collecting bank, unless otherwise instructed and only in a good faith effort to

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<sup>3</sup> Regulations issued by the Board of Governors of the Federal Reserve System pursuant to Federal Reserve Act § 11(i), 38 Stat. 261 (1913), as amended, 12 U.S.C. § 248(o) (1964).

<sup>4</sup> Letters issued by individual Federal Reserve banks pursuant to Federal Reserve regulations, *supra* note 3.

<sup>5</sup> Rules promulgated by clearing house associations for the convenience of their members.

<sup>6</sup> G.S. § 25-4-103(2).

<sup>7</sup> G.S. § 25-4-103(3).

<sup>8</sup> G.S. § 25-4-103, comment 2.

<sup>9</sup> See G.S. § 25-4-104(1)(c).

<sup>10</sup> G.S. §§ 25-4-202(2), -212, -301, -302.

secure payment, without discharging secondary parties and without incurring liability to the collecting bank's transferor or any prior party. This permissible extension of time is limited to specific items and should not unduly interfere with the object of prompt collections.

## II. COLLECTION OF ITEMS: DEPOSITARY AND COLLECTING BANKS

Whether the depositary and collecting banks are agents or owners with regard to items in the collection process has often been the subject of extensive judicial examination,<sup>11</sup> for in some situations the bank's status has great importance. In event of the bank's insolvency, for example, its relationship to such items will determine who will bear the loss. The Code, in section 25-4-201, creates a presumption that the collecting bank is merely an agent of the owner of the item until settlement for the item becomes final. This presumption cannot be rebutted by the "form of the indorsement or lack of indorsement," or by the fact that final credit was given for the item by the depositary bank. Thus, for practical purposes, the presumption is nearly conclusive. In the rare situation where a depositary bank actually does become a purchaser and owner of an item, the rules of Article 4 covering presentment, payment and collection will nevertheless govern the collection process. The fact that credit given for the item is subject to withdrawal or is in fact withdrawn does not alter the rules of this section.<sup>12</sup>

Moreover, any settlement given for the item is provisional until it becomes final. Until actual payment, the bank under subsection 25-4-212(1) has a right of charge-back against its customer's account, or to obtain refund from its customer.

Subsection 25-4-202(1) covers the responsibility of the collecting bank to use ordinary care in the collection process. Subsection (2) provides that the bank acts seasonably by taking proper action before its "midnight deadline"<sup>13</sup> following receipt of an item, notice,

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<sup>11</sup> See *First-Citizens Bank & Trust Co. v. Raynor*, 243 N.C. 417, 90 S.E.2d 899 (1956); *McDonald Service Co. v. Peoples Nat'l Bank*, 218 N.C. 533, 11 S.E.2d 566 (1940); *Latham v. Spragins*, 162 N.C. 404, 78 S.E. 282 (1913).

<sup>12</sup> *Cf. State Planters Bank v. Courtesy Motors, Inc.*, 250 N.C. 466, 109 S.E.2d 189 (1959); *Ledwell v. Shenandoah Milling Co.*, 215 N.C. 371, 1 S.E.2d 841 (1939). For a discussion of some of the ramifications of these rules, see G.S. § 25-4-201, comments 1-7.

<sup>13</sup> G.S. § 25-4-104(1)(h) defines "midnight deadline."

or payment. Proper action "within a reasonably longer time" may also be seasonable, but the bank has the burden of establishing seasonableness.

Section 25-4-207 lists in detail the warranties of the customer and the collecting bank on transfer and presentment of negotiable and nonnegotiable items. These warranties essentially have the effect of preserving the risk-of-loss and responsibility rules for forged instruments established by *Price v. Neal*<sup>14</sup> and *Canal Bank v. Bank of Albany*.<sup>15</sup> The depository bank and all collecting banks warrant to the payor bank that they have good title to the instrument or are procuring payment on behalf of someone who has good title. Thus, the risk of loss of forged indorsements falls upon the collecting banks and ultimately the customer who initiated the collection process, provided that the payor bank gives notice to the prior parties within a reasonable time after it has notice of the breach of warranty—notice of the forged indorsement. With respect to the forged drawer's signature, the customer and collecting banks warrant only that they have no knowledge that the signature is unauthorized. Thus, the payor bank will be responsible for payment made under such a signature, unless it can prove knowledge on the part of one of the prior transferors. Also, the customer and collecting bank basically warrant that the instrument has not been altered.

Furthermore, each customer and collecting bank warrants to its transferee (other than a payor bank) and to any subsequent collecting bank (1) that it has good title to the instrument, (2) that all signatures are genuine, (3) that the instrument has not been materially altered, (4) that no defense of any party is good against him, and (5) that he has no knowledge of insolvency proceedings instituted against the maker or acceptor of the instrument. The warranty that all signatures are genuine, in conjunction with the warranties of title made upon presentment and acceptance of payment, is said to make unnecessary the "prior indorsements guaranteed" indorsement now commonly used in the collection process.<sup>16</sup>

Although a collecting bank is presumed to be an agent for collection and not the owner of the items it handles for collection,<sup>17</sup> it will under subsection 25-4-208(1) have a security interest in an

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<sup>14</sup> 3 Burr. 1354, 97 Eng. Rep. 871 (K.B. 1762).

<sup>15</sup> 1 Hill 287 (N.Y. Sup. Ct. 1841).

<sup>16</sup> See G.S. § 25-4-207, comment 2.

<sup>17</sup> G.S. § 25-4-201. See discussion in text accompanying notes 11-12 *supra*.

item to the extent that it has made an advance on the item, given credit that has been withdrawn, or given credit withdrawable as a matter of right. This security interest protects the depository bank against claims of the customer. In conjunction with the freedom of collecting banks to ignore restrictive indorsements (*e.g.*, "for deposit only") of the customer, the security interest enables the collecting bank to satisfy any advances made to the prior banks from the item or its proceeds.

Furthermore, the agency status of the banks in the collection process does not prevent these banks from becoming "holders" of items that have been properly indorsed to them.

To the extent the bank has given value for the item by the acquisition of the security interest and if it otherwise meets the requirements,<sup>18</sup> it may be a holder in due course,<sup>19</sup> thereby cutting off the personal defenses of the drawer or maker of the item.

There have been several North Carolina cases<sup>20</sup> on whether a collecting bank can be a holder in due course. Although it is difficult to glean any general rules from these cases, the North Carolina Supreme Court has tended to treat collecting banks as holders in due course when they could not protect themselves by charge-backs to their customer's account. Sections 25-4-208 and 25-4-209 will continue and enlarge this rule.

There is no existing North Carolina statute that permits a bank to present an item by sending written notice that the bank holds the item for acceptance or payment. New subsection 25-4-210(1) authorizes this "presentment by notice" to nonbank payors, and subsection (2) places a duty on the payor to respond to the notice. If the payor fails to respond to the notice within the time prescribed in subsection (2), the presenting bank may treat the item as dishonored.

General Statutes section 53-71 authorizes state-chartered drawer banks to pay checks drawn upon them in exchange drawn upon their reserve deposits when the checks are presented through Federal Reserve banks and certain other institutions. This section, then,

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<sup>18</sup> G.S. § 25-3-302.

<sup>19</sup> G.S. § 25-4-209.

<sup>20</sup> See, *e.g.*, *Planters Bank v. Courtesy Motors, Inc.*, 250 N.C. 466, 109 S.E.2d 189 (1959); *First Nat'l Bank v. Rochamora*, 193 N.C. 1, 136 S.E. 259 (1927); *Manufacturers Fin. Co. v. Amazon Cotton Mills Co.*, 187 N.C. 233, 121 S.E. 439 (1924); and *Elm City Lumber Co. v. Childerhouse*, 167 N.C. 34, 83 S.E. 22 (1914).

permits noncash payments of checks, but does not specifically provide whether it is proper for collecting banks to accept other than cash payments. New subsection 25-4-211(1) sets forth the forms of noncash payments collecting banks may properly take in settlement of items: (1) a bank's check drawn on a bank other than the remitting bank, (2) a cashier's check or other primary obligation of a remitting bank if it is a member of or clears through a member of the same clearing house or through the same "group" of banks as the collecting bank, (3) authority to charge an account of a bank with the collecting bank, and (4) a cashier's check, certified check, or other bank check or obligation of a nonbank drawee.<sup>21</sup> Under subsection 25-4-211(2) the risk that such noncash payments may not be collectible in cash is shifted from the collecting bank to the owner of the item. In addition, subsection (2) relieves the collecting bank from liability to prior parties for dishonor of an unauthorized improper form of remittance when the bank seasonably attempts to collect such remittance—the rationale being that allowing the collecting bank to attempt such collection may be to the advantage of the owner of the item.<sup>22</sup> The bank's need for authority to take noncash payments arises from the fact that it is not feasible for paying banks to have to remit in cash for the great volume of items they must pay each day.

Section 25-4-212 covers those circumstances under which a collecting bank can charge-back against its customer's account those items for which it has given the customer credit but for which it has not been able to obtain a final settlement.

Subsection 25-4-213(1) states four methods by which an item will be finally paid by a payor bank: (1) payment in cash, (2) irrevocable settlement, (3) completion of the "process of posting the item" to the account of the drawer, or (4) provisional settlement becomes final because of failure of the bank to revoke during the specified time and in the specified manner. A settlement may be made irrevocable or provisional by statute, by clearing house rule, or by agreement. The "process of posting" referred to in subsection 25-4-213(1) is defined in section 25-4-109 and includes a determination by the payor bank to pay the item, plus its taking one of the steps toward recording the payment indicated in section 25-4-109.

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<sup>21</sup> Note that this list does not purport to be exclusive. Other types of payment may thus be proper. See G.S. § 25-4-211, comment 5.

<sup>22</sup> G.S. § 25-4-211, comment 6.

When an item is finally paid becomes important in determining the rights of the payee or holder against the payor bank and against the drawer, and the rights of creditors of the payor bank and of the drawer.<sup>23</sup>

The relationship between the rights of the payee or holder and the rights of the drawer or his creditors is dealt with in subsection 25-4-303(1), which has a close relation to subsection 25-4-213(1). Subsection 25-4-303(1) specifies when knowledge, notice, stop payment order, legal process such as garnishment, or setoff comes too late to be given legal effect. The act is too late if there has been a final payment of the item under one of the four methods listed in subsection 25-4-213(1) (and also listed in this subsection), or if the item has been accepted or certified, or the bank "otherwise has evidenced by examination of such indicated account and by action its decision to pay the item," or the bank has become accountable for the amount of the item under section 25-4-302, which deals with the bank's responsibility for late return of items.<sup>24</sup>

### III. COLLECTION OF ITEMS: PAYOR BANKS

Section 25-4-301 of the Code sanctions deferred posting of demand items by payor banks and provides for recovery of payment (before it becomes final) by return of the items or by written notice of dishonor. Deferred posting is the practice by which payor banks sort and prove items received on one day, but do not post the items to the customer's account until the following day. Current section 25-144<sup>25</sup> of the General Statutes provides that payment of a payor bank may remain conditional until midnight of the day following the day on which presentment was made, and hence that section has some bearing upon deferred posting. However, new section 25-4-301 is an improvement over the old section, since it specifically approves the practice of deferred posting and deals with it with more particularity.

Subsection 25-4-301(1) permits a payor bank that has settled for a demand item (other than documentary drafts) on the date of its receipt to revoke the settlement made on the day of receipt if

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<sup>23</sup> See CLARK, BAILEY & YOUNG, *BANK DEPOSITS AND COLLECTIONS* 74-75 (1963).

<sup>24</sup> See discussion of G.S. § 25-4-302 in text accompanying note 26 *infra*.

<sup>25</sup> This section, along with the rest of the present Chapter 25 of the General Statutes, is repealed at midnight June 30, 1967.

before its midnight deadline it returns the item or, under certain circumstances, sends written notice of dishonor or nonpayment before final payment is made in accordance with subsection 25-4-213-(1). Subsection (2) states the same rule for a payor bank that is also the depository bank, but does not require settlement on the date of receipt. Subsection (3) provides that dishonor of an item occurs when, for purposes of dishonor, the item is returned or notice of dishonor is sent. Subsection (4) defines when an item is returned.

Section 25-4-302 fixes payor banks' responsibility for late return of items. Thus, if a demand item other than a documentary draft is presented on and received by a payor bank, the bank is accountable for the amount of the item if the bank, where it is not also the depository bank, retains the item beyond midnight of the banking day of receipt without settling for it. Even if it is also the depository bank, the bank is accountable for the item if it does not pay or return the item or send notice of dishonor until after its midnight deadline. In the case of any item other than a demand item, the bank is accountable for the item unless within the time allowed for payment or acceptance the bank either accepts or pays the item or returns it and accompanying documents.<sup>26</sup>

Sections 25-4-301 and 25-4-302 should be considered together. Subsection 25-4-302(b) requires original settlement on the date of receipt, but section 25-4-301 permits such original settlement to be revoked by the midnight deadline.

Before an item is received by a payor bank or while the item is being processed in the payor bank, the payor bank may learn or be served with legal notice of matters affecting the item. For instance, the payor bank may receive a stop payment order from the drawer, learn that the drawer has filed a petition in bankruptcy, be served with an order attaching the account,<sup>27</sup> assert its own right of setoff, or learn of other matters affecting the item. Questions of legal priorities between these occurrences and the item may then arise. Section 25-4-303 lays down certain rules<sup>28</sup> for determining the bank's right or duty to pay the item or charge it to its cus-

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<sup>26</sup> Cf. *Branch Bank & Trust Co. v. Bank of Washington*, 255 N.C. 205, 120 S.E.2d 830 (1961), which treats the duty of a collecting bank that is not a payor bank.

<sup>27</sup> See *Miller v. Bank of Washington*, 176 N.C. 152, 96 S.E. 977 (1918), where the bank paid an item on account after being notified that attachment papers against the account were being prepared.

<sup>28</sup> See discussion of G.S. § 25-4-303 in text accompanying note 24 *supra*.

tomers' account and gives the bank a reasonable time to act on any notice it receives. Subject to these rules, the order in which various items upon the same account are accepted, paid, certified, or charged to the account is left to the convenience of the bank.<sup>29</sup>

#### IV. RELATIONSHIP BETWEEN PAYOR BANK AND ITS CUSTOMER

Subsection 25-4-401(1) authorizes, but does not require, a bank to charge an item against its customer's account even though the charge creates an overdraft.

If a bank in good faith makes payment of an altered or completed item, the bank can charge the customer's account (a) according to the original tenor of the item if it has been altered or (b) according to the tenor of the completed item even though the bank knows the item has been completed, unless the bank also knows the completion was improper.<sup>30</sup> This is in accord with those provisions of Article 3<sup>31</sup> which, with respect to negotiable instruments, permit holders in due course to collect according to the original tenor of altered items and to recover on originally incomplete instruments that had been completed in excess of authority.

Section 25-4-402 covers the bank's liability to its customer for wrongful dishonor of his items. The bank is liable to its customer for damages proximately caused by wrongful dishonor. If dishonor arises from mistake, the bank's liability is limited to actual damages, and the damages may include damages for the customer's arrest and prosecution and other consequential damages. This section of the Code is similar to section 53-57 of the General Statutes, which is repealed effective June 30, 1967, and does not seem substantially to change that law. Two cases were decided under section 53-57. In *Thomas v. American Trust Co.*,<sup>32</sup> the supreme court, by way of dictum, stated that the plaintiff was entitled to at least nominal damages for wrongful dishonor of his check by the defendant. However, section 53-57 also limits a bank's liability to actual damages. It would seem, therefore, that the court's statement that at least nominal damages are recoverable for wrongful dishonor, is questionable.<sup>33</sup>

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<sup>29</sup> G.S. § 25-4-303(2). See G.S. § 25-4-303, comment 6.

<sup>30</sup> G.S. § 25-4-401(2).

<sup>31</sup> G.S. §§ 25-3-115, -407(3).

<sup>32</sup> 208 N.C. 653, 182 S.E. 136 (1935).

<sup>33</sup> See also *Woody v. First Nat'l Bank*, 194 N.C. 549, 140 S.E. 150 (1927).

Section 25-4-403 deals with the customer's right to stop payment of an item and the burden of proving any loss arising from payment contrary to a stop order. The customer can order the bank to stop payment on an item payable for his account,<sup>84</sup> but the order must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it. An oral stop order is binding on the bank for only fourteen days unless it is confirmed in writing within that time. A written stop order is effective for only six months unless it is renewed in writing. The bank may not, by agreement, suspend its liability for payment over a valid stop order under this section.<sup>85</sup> This section differs from section 25-198, currently in effect, which implies that written and oral orders to stop payment of checks and drafts are effective for six months and that written renewals of such orders are effective for six months.<sup>86</sup>

If the bank pays an item contrary to a binding order to stop payment, the burden of establishing that fact and the amount of the customer's loss is on the customer.<sup>87</sup>

Section 25-4-404 provides that a bank, unless otherwise instructed by the customer, is not obligated to pay an uncertified check if the check is presented more than six months after its date. Current section 25-194 is similar to this section, but is broader because it applies to a check "or other instrument payable on demand."

Under section 25-4-405, a payor or collecting bank may accept, pay, or collect an item or account for proceeds of collection of an incompetent person if the bank does not know of the adjudication of incompetence. Until the bank knows of the adjudication of incompetence or of the death of the customer and has a reasonable opportunity to act on that knowledge, its authority to accept, pay, collect, or account continues unrevoked. Even if it knows of the customer's death, subsection 25-4-405(2) provides that the bank may for ten days after the date of death pay or certify checks drawn on or prior to the date of death unless some person claiming an interest in the account orders otherwise. Section 105-24 of the General Statutes prohibits banks and other institutions from dis-

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<sup>84</sup> Note that this right to stop payment extends only to the customer. Payees and indorsees cannot stop payment.

<sup>85</sup> G.S. § 25-4-103. See G.S. § 25-4-403, comment 8.

<sup>86</sup> See G.S. § 25-4-303 for those circumstances under which an order to stop payment comes too late.

<sup>87</sup> G.S. § 25-4-403(3). See also G.S. § 25-4-407, which gives the bank a right of subrogation on items paid contrary to stop payment orders.

bursing any sums from a deceased's account after they have received actual notice of the death without retaining an amount to pay inheritance taxes that may be levied on the account. The North Carolina comment on section 25-4-205 suggested that unless section 105-24 was amended, subsection 25-4-405(2) would have little practical meaning. It was not amended. However, it should be noted that the bank is required under section 105-24 to retain only an amount sufficient to pay the tax on the money it holds. Since the maximum inheritance-tax rate in North Carolina is seventeen per cent,<sup>38</sup> it is assumed banks would be free to pay or certify checks for ten days after deceased's death, even with notice of the death, out of a minimum of eighty-three per cent of the amount in the account. Perhaps the threatened liability of section 105-24 would cause them not to do so, however.

The decision in *Graham v. Hoke*<sup>39</sup> will be changed by section 25-4-405. There the supreme court held that the death of a depositor revoked the bank's authority to pay his check.

Under section 53-76 of the General Statutes a depositor must exercise "due diligence" in the examination of his bank statement and must, upon discovery of any error, immediately notify the bank of the error. Section 25-4-406(1) of the Code provides that the customer must exercise "reasonable care and promptness to examine the statement" for unauthorized signatures or alterations and must notify the bank "promptly" after their discovery. Hence, the new statute should work little or no change in the present law.

General Statutes section 53-52 will be changed by sections 25-4-406(1) and (2) of the Code. Under section 53-52, the customer can recover from the bank for forged items paid by the bank if he notifies the bank of the forgery within sixty days after he receives his statement. If such notice is not given within sixty days, the customer cannot recover from the bank. The new statute, on the other hand, requires that the customer use "reasonable care and promptness" to examine his statement and discover unauthorized signatures or alternations and notify the bank "promptly" after discovery. If the bank establishes that the customer fails to comply with these requirements and that as a result the bank suffered a loss, the customer cannot assert against the bank his unauthorized

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<sup>38</sup> N.C. GEN. STAT. §§ 105-4 to -6 (1965).

<sup>39</sup> 219 N.C. 755, 14 S.E.2d 790 (1941).

signature or the alteration of an item. If there is a series of unauthorized signatures or alterations, and if the bank establishes that the customer fails to use reasonable care and promptness to examine his statement, the customer is also precluded from asserting the unauthorized signature or alteration on any other item paid in good faith after the first item and statement were available to the customer for a reasonable period not exceeding fourteen days and before the bank is notified of the unauthorized signature or alteration. However, these rules do not apply if the customer establishes that the bank failed to use ordinary care in paying the items.<sup>40</sup>

Subsection 25-4-406(4) provides that, regardless of care or lack of care by either the bank or the customer, a customer who (1) within one year from the time the bank statement is available to him does not discover and report any unauthorized signature or alteration in the item, or (2) within three years from the time the statement is made available to him does not discover and report any unauthorized indorsement, is precluded from asserting against the bank any such unauthorized signature, indorsement, or alteration.

The decision in *Schwabenton v. Security Nat'l Bank & Trust Co.*,<sup>41</sup> which was decided under section 53-52, is changed by section 25-4-406.<sup>42</sup>

Section 25-4-407 is designed to prevent unjust enrichment arising out of improper payment of items by giving the payor bank the right to be subrogated to the rights of various parties. This section will probably have its most important effect by subrogating a payor to the rights of any prior holder in due course against the drawer-customer where the bank has failed to obey an order to stop payment under section 25-4-403.

## V. COLLECTION OF DOCUMENTARY DRAFTS

A documentary draft is any negotiable or nonnegotiable draft accompanied by documents, securities, or other papers to be delivered against honor of the draft.<sup>43</sup>

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<sup>40</sup> G.S. § 25-4-406(3).

<sup>41</sup> 251 N.C. 655, 111 S.E.2d 856 (1960).

<sup>42</sup> See also *Nationwide Homes v. First-Citizens Bank & Trust Co.*, 262 N.C. 79, 136 S.E.2d 202 (1964), where the court pointed out that a bank relying on the sixty-day cut-off period under N.C. GEN. STAT. § 53-52 has the burden of proving when the checks were returned to the customer.

<sup>43</sup> G.S. § 25-4-104(1)(f).

Code section 25-4-501 provides that a bank, upon learning that a documentary draft it has taken for collection has not been paid or accepted in due course, must seasonably notify its customer of the dishonor even though the bank actually bought the draft from the customer and the customer is not liable on the draft. The reason for this requirement is the customer's interest in the fact that the draft, probably arising from a commercial transaction, has been dishonored.

Drafts requiring presentment "on arrival" of the goods need not be presented until in the collecting bank's judgment a reasonable time for arrival of the goods has expired.<sup>44</sup>

Subsection (a) of section 25-4-503 varies the collecting bank's duty to deliver accompanying documents according to whether the draft is payable more or not more than three days after presentment. Subsection (b) gives the presenting bank two choices after dishonor of the draft. The bank can seek instructions from a "referee in case of need" or notify its transferor of the dishonor. It is not known how widely "referees in case of need" have been designated or used in North Carolina, but apparently there are no reported cases in which they have been involved. Heretofore, section 25-138 has also given the holder of the instrument the option whether to resort to the referee in case of need.

The presenting bank has no obligation with respect to the goods represented by the documents except to follow reasonable instructions and is entitled to prepayment or reimbursement of the expense of carrying out such instructions.<sup>45</sup>

Upon dishonor of a documentary draft, the presenting bank that has requested but not received instructions may store, sell, or otherwise deal with the goods in any reasonable manner.<sup>46</sup> The bank also has a lien upon the goods or their proceeds for reasonable expenses it incurs in so dealing with the goods.<sup>47</sup>

### CONCLUSION

Article 4 of the Uniform Commercial Code gives North Carolina statutes on many problems in bank deposits and collections that

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<sup>44</sup> G.S. § 25-4-502.

<sup>45</sup> G.S. § 25-4-503.

<sup>46</sup> G.S. § 25-4-504(1).

<sup>47</sup> G.S. § 25-4-504(2).

were previously not covered at all by existing statutes or case law. The certainty that these statutes and the rest of the Uniform Commercial Code ought to produce in the state's banking and commercial law should facilitate the state's industrial and commercial expansion and benefit the entire state.