

1935

BILLS AND NOTES-CHECKS-DELAY IN PRESENTING FOR PAYMENT WHERE PAYEE HAS DEPOSITED IN OUT-OF-TOWN BANK

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Banking and Finance Law Commons](#)

Recommended Citation

BILLS AND NOTES-CHECKS-DELAY IN PRESENTING FOR PAYMENT WHERE PAYEE HAS DEPOSITED IN OUT-OF-TOWN BANK, 33 MICH. L. REV. 1247 (1935).

Available at: <https://repository.law.umich.edu/mlr/vol33/iss8/12>

This Recent Important Decisions is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

BILLS AND NOTES — CHECKS — DELAY IN PRESENTING FOR PAYMENT WHERE PAYEE HAS DEPOSITED IN OUT-OF-TOWN BANK — The defendant in *Kenosha, Wisconsin*, drew a check on a Kenosha bank and mailed it to the plaintiff in Chicago. Following the practice of many other business houses in Chicago to avoid a high collection charge, the plaintiff, instead of depositing the check in Chicago, sent it by air mail the day after its receipt, for deposit and collection to the plaintiff's bank in Minneapolis, which collected the check through the Federal Reserve Bank in Chicago. The result was presentment to the drawee bank at least one business day later than would have been the case if the check had been first deposited in Chicago, the drawee bank having failed the day before presentment. *Held*, the check was not presented for payment within a reasonable time, thereby discharging the drawer to the extent of his loss. *Mars, Inc. v. Chubriilo*, (Wis. 1934) 257 N. W. 157.

Since a check is an instrument drawn on a bank, an important question is presented whether the drawer or the holder takes the risk of the bank's insolvency until the check is presented for payment. The general rule, as laid down by section 186 of the N. I. L.,¹ is that checks must be presented within a reasonable time or the drawer will be discharged to the extent of his loss.² Reasonable time is defined in the light of special circumstances which might operate to increase the period.³ Special circumstances involve consideration of whether the

¹ Wis. Stat. (1933), sec. 118.62.

² The most common situations raising the question of presentment within a reasonable time are those which involve a delay by the holder in depositing in his own bank. *Jett Bros. Stores v. McCullough*, 188 Ark. 1108, 69 S. W. (2d) 863 (1934); *McFadden Bros'. Agency v. Keese*, 179 Ark. 510, 16 S. W. (2d) 994 (1929); *Bay City Bank v. Concordia Mut. Fire Ins. Co.*, 260 Mich. 611, 245 N. W. 532 (1932); *Continental Bank & Trust Co. v. Detroit Trust Co.*, 262 Mich. 497, 247 N. W. 728 (1933); *Seager v. Dauphinee*, 284 Mass. 96, 187 N. E. 94 (1933). The question is also raised where the holder delays in taking steps to collect directly at the place of payment. *Parker v. Grau*, 188 Ark. 1016, 68 S. W. (2d) 1023 (1934); *Wallace v. City Nat. Bank*, 202 Ala. 323, 80 So. 405 (1918). Negligence by a collecting bank in presenting for payment frequently gives rise to the question. *Martin v. Home Bank*, 160 N. Y. 190, 54 N. E. 717 (1899); *Williams v. Brown*, 53 App. Div. 486, 65 N. Y. S. 1049 (1900); *Plover Savings Bank v. Moodie*, 135 Iowa 685, 110 N. W. 29, 113 N. W. 476 (1906).

³ Wis. Stat. (1933), sec. 116.01. *Raines v. Grantham*, 205 N. C. 340, 171 S. E. 360 (1933); *Berry v. Harris*, 186 Ark. 481, 54 S. W. (2d) 289 (1932); *Coolidge v. Rueth*, 209 Wis. 458, 245 N. W. 186 (1932); *Missouri Pac. R. R. v. Brown Coal Co.*, 226 Mo. App. 1038, 48 S. W. (2d) 86 (1932); *Holmes v. Roe*, 62 Mich. 199,

presentment was made with such diligence as a reasonable man would exercise in his own affairs,⁴ or whether presentment was made in accordance with established business custom.⁵ Business custom is responsible for the general rule that if local checks are deposited by the day after they are received, and are then presented to the drawee bank through the clearing house, that is presentment in reasonable time, although it results in presentment one day later than is generally allowed for presentment directly to the drawee bank by the holder.⁶ Forwarding a check for collection by a circuitous route is generally considered negligence,⁷ except when the check reaches its destination as soon as it would if sent direct to the drawee bank.⁸ Having recognized deposit of a check in the payee's bank for collection through correspondent banks as the usual and customary process of putting a check into the course of collection,⁹ the courts then permitted

28 N. W. 864 (1886); *Joppa v. Clark Commission Co.*, 132 Or. 21, 281 Pac. 834 (1929); 64 U. S. L. REV. 510 at 514 (1930). But see *Knauss v. Aleck*, 202 Iowa 91, 209 N. W. 444 (1926).

⁴ *Jett Bros. Stores v. McCullough*, 188 Ark. 1108, 69 S. W. (2d) 863 (1934); *McFadden Bros.' Agency v. Keesee*, 179 Ark. 510, 16 S. W. (2d) 994 (1929); *Henderson Chevrolet Co. v. Ingle*, 202 N. C. 158, 162 S. E. 219 (1932); *Parker v. Grau*, 188 Ark. 1016, 68 S. W. (2d) 1023 (1934); *Federal Land Bank v. Goodman*, 173 Ark. 489, 292 S. W. 659 (1927).

⁵ *McIntyre v. Live Stock Shipping Ass'n*, 222 Mo. App. 935, 11 S. W. (2d) 77 (1928); *McFadden Bros.' Agency v. Keesee*, 179 Ark. 510, 16 S. W. (2d) 994 (1929); *Johannsen v. Evans*, 271 Ill. App. 372 (1933); *Marrett v. Brackett*, 60 Me. 524 (1872).

⁶ *Zaloom v. Ganim*, 72 Misc. 36, 129 N. Y. S. 85 (1911), aff'd 148 App. Div. 892, 132 N. Y. S. 1151 (1911); *Loux v. Fox*, 171 Pa. 68, 33 Atl. 190 (1895); *McFadden Bros.' Agency v. Keesee*, 179 Ark. 510, 16 S. W. (2d) 994 (1929). *Contra*: *Edmisten v. Herpolsheimer Co.*, 66 Neb. 94, 92 N. W. 138 (1902); *Kirkpatrick v. Puryear*, 93 Tenn. 409, 24 S. W. 1130 (1894); but not followed by *Rosenbaum & Mendel v. Thomas*, 8 Tenn. App. 89 (1928), which recognized the custom of presentment of local checks through the clearing house.

⁷ *Watt v. Gans & Co.*, 114 Ala. 264, 21 So. 1011 (1896); *Herider & Herider & Herider v. Phoenix Loan Ass'n*, 82 Mo. App. 427 (1900); *First Nat. Bank of Chadwick v. Mackey*, 157 Ill. App. 408 (1910); *Gifford v. Hardell*, 88 Wis. 538, 60 N. W. 1064 (1894); *Northern Lumber Co. v. Clausen*, 201 Iowa 701, 208 N. W. 72 (1926); *Plover Savings Bank v. Moodie*, 135 Iowa 685, 110 N. W. 29, 113 N. W. 476 (1906); *Travers v. Sinclair & Co.*, 122 Ill. App. 203 (1905); *Williams v. Brown*, 53 App. Div. 486, 65 N. Y. S. 1049 (1900); *National Plumbing & Heating Supply Co. v. Stevenson*, 213 Ill. App. 49 (1918).

⁸ *Richardson Grain Separator Co. v. East Hennepin State Bank*, 143 Minn. 420, 174 N. W. 415 (1919); *First Nat. Bank v. Buckhannon Bank*, 80 Md. 475, 31 Atl. 302 (1895).

⁹ *Holdingsford Milling Co. v. Hillman Farmers Co-operative Creamery*, 181 Minn. 212, 231 N. W. 928 (1930); *McIntyre v. Live Stock Shipping Ass'n*, 222 Mo. App. 935, 11 S. W. (2d) 77 (1928); *Maronde v. Vollenweider*, 220 Mo. App. 67, 279 S. W. 774 (1926); *Bistline v. Benting*, 39 Idaho 534, 228 Pac. 309 (1924). "Presentment through banks according to the custom of the Clearing House Association shows due diligence in the presentment of the check." BRANNAN, *NEGOTIABLE INSTRUMENTS LAW*, 5th ed., 1049 (1932). *Contra*: *Edmisten v. Herpolsheimer Co.*, 66 Neb. 94, 92 N. W. 138 (1902). But see the well reasoned dissenting opinion of Sedgwick, J.

collecting banks to get away from the impractical method of direct routing of checks and did not object to the practice of circuitous routing when done in accordance with established business custom.¹⁰ Although the principal case involved a custom among large business houses in Chicago to clear checks through out-of-town banks to avoid a high collection charge, the court did not give effect to this practice of individual payees as a business custom.¹¹ The refusal to extend the principle that deposit by the payee in his own bank is reasonable diligence in collecting a check¹² to cases where the payee deposits in an out-of-town bank, where the result of such deposit is presentment later than would result from local deposit, looks toward the rule of *Northern Lumber Co. v. Clausen*,¹³ although that was a stronger case for the defendant drawer. The rule of the present case may be treated as an extension of the principle that circuitous routing of checks by a collecting bank, when not done in the course of an established practice, is negligence when it results in delay in presentment.¹⁴ The result reached here seems desirable in refusing to put on the drawer of a check the additional burden of assuming the risk of insolvency of the drawee bank where the holder deposits the check in an out-of-town bank under circumstances which do not warrant such a deposit.¹⁵ Although the drawer takes the risk that the collecting bank will forward the check by a circuitous, though well-established, route,¹⁶ he ought not to be subjected to the risk of capricious practices by payees generally.

M. K. G.

¹⁰ *Sublette Exchange Bank v. Fitzgerald*, 168 Ill. App. 240 (1912); *Plover Savings Bank v. Moodie*, 135 Iowa 685, 110 N. W. 29, 113 N. W. 476 (1906). In *Maronde v. Vollenweider*, 220 Mo. App. 67 at 74, 279 S. W. 774 (1926), the court said, "The mere fact that the check was sent on a rather long and circuitous route is no evidence of bad faith or negligence if such was the common route of all checks under similar circumstances."

¹¹ The court here specifically disapproves the custom, saying, "in so far as that practice resulted inevitably in a failure to comply with the statutory requirements that 'a check must be presented for payment within a reasonable time after its issue,' in order to avoid the discharge of the drawer from liability, it affords no protection to the plaintiff in its disregard of the rights of the defendant, whom it had not informed of that practice and who had not consented thereto." 257 N. W. 157 at 159.

¹² *McIntyre v. Live Stock Shipping Ass'n*, 222 Mo. App. 935, 11 S. W. (2d) 77 (1928); *Federal Land Bank v. Goodman*, 173 Ark. 489, 292 S. W. 659 (1927); *Keenan v. McClure*, 125 Neb. 753, 252 N. W. 204 (1933); *Haggerty v. Baldwin*, 131 Mich. 187, 91 N. W. 150 (1902); *Marrett v. Brackett*, 60 Me. 524 (1872).

¹³ 201 Iowa 701, 208 N. W. 72 (1926). Here the payee resided in the same town as the drawee bank, but sent the check for deposit to his bank 200 miles away, causing it to be presented to the drawee bank after the latter had failed four days later.

¹⁴ Note 6, *supra*.

¹⁵ *Republic Metalware Co. v. Smith*, 218 Ill. App. 130 (1920). Also, see *Raines v. Grantham*, 205 N. C. 340, 171 S. E. 360 (1933), where there were no local banking facilities. But see *Holdingsford Milling Co. v. Hillman Farmers Co-operative Creamery*, 181 Minn. 112, 231 N. W. 928 (1930), where, although the plaintiff had a local banking account in which he could have deposited out of town checks, the court held that it was due diligence to deposit a check in his account in a bank in a larger town a few miles away. However, it was deposited there no later than if it had been deposited locally.

¹⁶ Note 9, *supra*.