And thereafter, on the 28th day of July, 1924, the Court filed Findings of Fact and Law, as follows:

IN THE DISTRICT COURT OF THE UNITED STATES

IN AND FOR THE WESTERN DISTRICT OF TEXAS

EL PASO DIVISION.

THE CITY OF DOUGLAS, a Municipal Corporation, Plaintiff, vs. FEDERAL RESERVE BANK OF DALLAS, Defendant,	)	No. 847 - Law.

Messrs. Boyle, Knapp & Pickett, and
Messrs. Whitaker & Peticolas,

Attorneys for Plaintiff.

Messrs. E. B. Stroud, Jr., and Turney, Burges, Culwell, Holliday & Pollard,

Attorneys for Defendant.

This is an action at law brought by the City of Douglas, Arizona, a municipal corporation, against the Federal Reserve Bank of Dallas to recover $5,000.00 alleged to be the amount of a check drawn by the County Treasurer of Cochise County, Arizona, to the order of said City, upon the Central Bank of Willcox, Arizona.

The check was drawn on December 22, 1920, and was delivered to the City of Douglas on December 24, 1920, at which times and at all times up to December 31, 1920, the Treasurer of Cochise County had on deposit in the Central Bank of Willcox sufficient funds to meet said check.

On December 24, 1920, the check was properly endorsed by the City of

Douglas and deposited with the First National Bank of Douglas, Arizona, for collection and credit. The full amount of the check was by said bank entered as a credit in a pass or deposit book and delivered to the City of Douglas, on which pass book there was a printed indorsement as follows: "All out of town items credited subject to final payment." There was no other contract or agreement made between the City of Douglas and the said First National Bank of Douglas than such as arose impliedly from the acceptance by said bank of said check for collection. And there was no statute of the State of Arizona upon the subject which entered into or changed or modified said contract in any respect.

The First National Bank of Douglas was a member of the Federal Reserve Banking System created by Congress. Said bank immediately transmitted said check by mail to the El Paso Branch of the Federal Reserve Bank of Dallas for collection. It was received by said Branch Bank on December 27, 1920, and was by it forwarded direct to the Central Bank of Willcox for payment, reaching said drawee bank on December 30, 1920. Thereupon the Central Bank of Willcox charged the County Treasurer of Cochise County with the amount of the check and in payment therefor issued and mailed to said El Paso Branch Bank, instead of cash, it's Cashier's Check, drawn on the Central Bank of Phoenix, Arizona, for the sum of $6,426.17, which included some small items other than said $5,000.00 check.

Upon receipt of said Cashier's Check the El Paso Branch Bank forwarded same to the Branch Bank at Los Angeles of the Federal Reserve Bank of San Francisco for collection. On January 5, 1921, said Los Angeles Branch Bank forwarded said Cashier's Check direct to the Central Bank of Phoenix, drawee, for payment, reaching said bank on January 8, 1921, and was on said date protested for non payment because of the want of sufficient funds of the Central

Bank of Willcox with the Central Bank of Phoenix to cover the check.

On January 10, 1921, both of these last named banks, being insolvent, closed their doors and ceased to do business. Thereupon, the El Paso Branch Bank charged the First National Bank of Douglas with the amount of said $5,000.00 original check, and in turn the First National Bank charged it to the account of the City of Douglas and credited the amount thereof to the defendant.

It is charged by the City of Douglas, the plaintiff herein, that the El Paso Branch of the Federal Reserve Bank of Dallas, defendant herein, was negligent in sending the check direct to the drawee, the Central Bank of Willcox, and in accepting its Cashier's Check in payment thereof instead of cash.

In view of the conclusion I have reached it is necessary that I consider and discuss but one question and that is: Can this action be maintained by the plaintiff, the City of Douglas, against the Federal Reserve Bank of Dallas? Stating the question in another form: Is the First National Bank of Douglas with which the check was deposited by the City of Douglas for collection alone responsible to the City or is the Federal Reserve Bank of Dallas, to which the check was forwarded for collection by the initial bank of deposit, directly liable to the City of Douglas?

Upon this question the state decisions are in conflict beyond the possibility of reconciliation. Some of the states following the "New York Rule", so called, have held that the initial bank alone is responsible to the owner and that there is no direct liability to the owner on the part of the correspondent bank. On the other hand many of the states following the "Massachusetts Rule", so called, have held exactly the contrary, viz: that the initial bank by the mere fact of deposit for collection, is authorized to employ sub-agents, who

thereupon become the agents of the owner and directly responsible to him for their defaults.

Our Supreme Court after reviewing these two lines of decisions approved the "New York Rule", Exchange National Bank vs. Third National Bank, 122 U.S. 276; and this decision has been followed bythe inferior federal courts without exception so far as I have been able to ascertain, Taylor & Bourinque Co. vs. National Bank of Ashtabula, 262 Fed. 168; First National Bank of Denver vs. Federal Reserve Bank of Kansas City, Mo., 283 Fed. 700.

It is recognized of course that this rule may be varied or changed by contract, express or implied. For instance it was held in Federal Reserve vs. Malloy, 264 U. S. 160, that a Florida statute controlled the relations of the drawee to the initial bank of deposit with reference to which it was presumed they dealt with each other. In that case the deposit for collection was made in the State of Florida and the court held that this statute "had the effect of importing the Massachusetts Rule into the contract with the result that the initial bank had implied authority to intrust the collection of the check to a sub-agent and that sub-agent in turn to another; and the risk of any default or neglect on their part rested upon the owners". I think that the inference is clear that in the absence of the Florida statute the court would have applied and enforced the New York Rule in that case; and that there can be no doubt that the New York Rule still prevails in the federal courts.

In Texas the Massachusetts Rule is now the settled rule of decision. In Arizona the court of last resort has not passed upon the question. Neither in Texas nor in Arizona is there any legislation affecting the question.

However, as I view the question under consideration in this case whatever may be the rule of decision in Texas or Arizona the federal court should apply its own rule - the New York Rule - inasmuch as the question to be decided is one

of general commercial law and not the construction or application of any state statute. Even had the Massachusetts Rule been established by the courts of Arizona where the contract was made, the New York Rule would still be the rule of decision in this court.

On a question of general or commercial law, such as the liability of a bank accepting for collection commercial paper, the federal courts are not bound by decisions of the state in which the contract was made or to be performed but they must upon their independent judgment determine the question of liability by reference to all the authorities. Swift vs. Tyson, 16 Pet. 1; B. & O. Ry. Co. vs. Baugh, 149 U.S. 368; Taylor & Bourinque Co. vs. National Bank of Ashtabula, 262 Fed. 168; Spokane & Eastern Trust Co. vs. United States Stell Products Co., 290 Fed. 834; St. Nicholas Bank vs. State National Bank, 13 L.R.A. 241; Faulkner vs. Hart, 82 N.Y. 413; Liverpool S.S. Co. vs. Phoenix Life Ins. Co., 129 U.S. 397.

This our Supreme Court has done in the determination of this question, and the rule laid down by it must be followed by this and all other inferior federal courts. And under this rule there is no liability on the part of the Federal Reserve Bank of Dallas, defendant, to the plaintiff, the City of Douglas. Counsel for plaintiff contends that the contract for collection of the check was not of the ordinary type but was varied by the special stipulation printed on the pass or deposit book in which the credit entry was made; that said special stipulation had the effect of importing the Massachusetts Rule into the contract. I do not think this contention sound. This stipulation added nothing to the contract and did not take anything from it. Checks taken for collection and credited are always in the absence of special agreement subject to final payment. From what has been said it follows that I am of

opinion judgment should be rendered for defendant, and it is so ordered.

(signed) W. R. Smith,

U. S. District Judge.

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To which Findings of Fact and Law the plaintiff filed its exceptions, on the 28th day of July, 1924, as follows:

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION.

CITY OF DOUGLAS, Plaintiff vs. FEDERAL RESERVE BANK OF DALLAS, Defendant.	)	No. 847 Law

I.

Comes now the Plaintiff and excepts to the Findings of Fact and Law (or opinion of the Court) in that the same makes no finding with reference to whether or not the Federal Reserve Bank of Dallas was negligent in accepting the cashier's check of the Central Bank of Willcox instead of cash.

II.

The said Findings of Fact and Law (opinion) are excepted to because the evidence shows that the Federal Reserve Bank was negligent in accepting the cashier's check in lieu of cash and the Court should have so found.

III.

The Plaintiff excepts to the said Conclusions of Fact and Law (opinion) because the Court found that there was no other contract between the City of Douglas and the First National Bank of Douglas than such as arose impliedly

from the acceptance of said Bank of said check for collection and the endorsement on the pass book, because Mr. Graves, a witness, testified specifically on this subject and showed clearly that this check was merely taken for collection to be forwarded for collection and that no final credit was to be given the City of Douglas until the check had been collected.

IV.

The Plaintiff excepts to the Court's Conclusions of Law and Fact (opinion) because the Court finds that the contract for collection was such that it did not have the effect to import the Massachusetts rule into the contract, it being apparent under the decisions that the distinction between the New York rule and the Massachusetts rule is determined entirely by the contract between the parties. If the check is discounted or sold to the Bank so that it becomes its property, then the New York rule might have applied, but if the check is deposited for collection so that it is within the contemplation of the parties that the initial Bank will have to send the check to some other Bank at some other place to make the collection and will not give credit until the check is finally paid, then the Massachusetts rule enters into the contract even under the Federal Court decision.

V.

Plaintiff excepts to the Conclusions of Law and Fact (opinion) because the same find for the Defendant and do not find for the plaintiff.

VI.

Plaintiff excepts to the Final Court Findings of Law (opinion) because, while he finds that the New York rule may be varied by contract - express or implied - he erroneously finds that it was not so varied in this instance, and Plaintiff shows that the facts with reference to the contract between

the City of Douglas and the First National Bank of Douglas contained in the Record show clearly that it was contemplated by the parties that the check would be taken for collection; that no definite credit would be given against it until final payment; that it was also contemplated that it should be forwarded to some difference bank in a foreign city, and thereby parties impliedly agreed that the liability of the First National Bank of Douglas should only be to select the competent collecting agent and that it should not be liable for the negligence of such agent. Wherefore, the Massachusetts rule is properly shown to have applied with the facts in this case.

Knapp, Boyle & Pickett,
and
Whitaker & Peticolas,

Attorneys for Plaintiff.