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FEDERAL RESERVE BANK
OF
SAN FRANCISCO

X-4319

April 6, 1925.

In re: National City Bank of Seattle
vs. Federal Reserve Bank of
San Francisco.

Walter Wyatt, Esq.,
General Counsel,
Federal Reserve Board,
Washington, D. C.

Dear Mr. Wyatt:

I think you might be interested in receiving an outline of a rather interesting case which I recently tried before Judge Cushman in the United States District Court at Seattle. The case was tried before a jury and owing to the outcome hereinafter stated, it will not be reported and I believe will not be appealed.

The National City Bank of Seattle, for some time prior to July 1921, had been transacting business with a firm of stock and bond brokers known as Irving Whitehouse Company, which company maintained its head office in Spokane with branches in Seattle and New York. It had become the daily custom of the Irving Whitehouse Company to deposit with the National City Bank of Seattle checks drawn by the Company on its account with the Fidelity National Bank of Spokane, accompanying such deposits with a request that the funds represented by the checks be immediately wired by the National City Bank for the credit of Irving Whitehouse Company in New York. This course of dealing had been continued for over a year. The National City Bank would then forward the Whitehouse checks in a direct routed cash letter, together with other miscellaneous cash items, to our Spokane Branch for collection and credit. Under the deferred availability schedule, the Seattle Branch would automatically give the National City Bank credit for the gross amount of such direct routed letters the day after their transmittal from Seattle to Spokane.

On July 30, 1921, the Irving Whitehouse Company failed and the President of the company subsequently went to the penitentiary for embezzlement. It appeared that on July 27, the Whitehouse Company had deposited with the National City Bank checks aggregating $7,200, this amount being immediately wiredto New York. These checks were sent by the National City Bank from Seattle to Spokane the day of their deposit, arriving in Spokane on July 28 too late for the morning clearings. In accordance with the usual practice prevailing in Spokane they were held over until the next day's clearings and were returned to our Spokane Branch the afternoon of the 29th, dishonored on account of insufficient funds. The Spokane Branch dispatched a wire to our Seattle Branch, notifying that branch of the dishonor of the items the afternoon of the

29th and on account of the lateness of the hour at which the wire reached Seattle, the information contained therein was not communicated to the National City Bank until the morning of July 30.

In the meantime, following its usual practice, the National City bank had accepted items from the Whitehouse Company on the same basis on the afternoons of July 28 and 29. The Whitehouse Company carried with the National City Bank a deposit sufficient to cover only the loss on the items of July 27 and the National City Bank, therefore, brought suit against us for $14,400, claiming that through our negligence in handling the items of July 27, the Bank had been lulled into a sense of security and had for that reason continued to do business with the Whitehouse Company on July 28 and 29.

The negligence charged against us was twofold: first, in that we did not present the items of July 27 direct to the drawee upon their arrival in Spokane on July 28 too late for the clearings of that day; and second, that our Spokane Branch was dilatory in dispatching the telegram advising the Seattle Branch of the non-payment of the items of the 27th and our Seattle Branch was grossly negligent in not notifying the National City Bank of the contents of the telegram on the afternoon of July 29.

The evidence showed that there was no negligence on the first point, owing to the existence of a uniform custom in both Seattle and Spokane of holding collection items over when they arrive at the place of payment too late for the clearings of the date of their arrival. The evidence did show, however, that our Seattle Branch did not follow the usual custom and practice of collecting banks in notifying the prior indorser of non-payment immediately upon receipt of advice.

Upon the conclusion of the testimony, feeling that if the case went to the jury we ran a serious risk, I moved for a directed verdict upon the theory that the alleged damage was in no way connected with the alleged negligence; that a collecting agent's liability is limited to the face of the paper which the agent undertakes to collect and that, granting for the sake of argument that the defendant had been negligent in not giving more prompt advice of the non-payment of the items of July 27, the damage alleged to have been incurred through the acceptance by the plaintiff of similar items of July 28 and 29 was too remote. Our argument was predicated upon the theory that a bank is never justified in relying upon the fact that it has not received advice of non-payment on previous items in extending additional credit; that the only safe and proper method of handling such items is to send them for collection with a request for advice of fate, and that in relying upon the fact that it had not received advice of non-payment on the items of the 27th by the afternoon of the 28th or the afternoon of the 29th, and in making additional advances on the latter dates, the plaintiff had itself been guilty of negligence which was the proximate cause of the loss.

I stated to the Court, citing authorities, that it would be just as logical for the plaintiff to say that owing to the fact that it had

not received advice of non-payment on the items of the 27th, it had gone on the bond of the Irving Whitehouse Company for One Hundred Thousand Dollars on the 28th and had loaned another One Hundred Thousand Dollars to that Company on the 29th and that, therefore, we were to be held liable for the Two Hundred Thousand Dollars loss. In spite of the vehement argument of counsel for plaintiff, the Court agreed with my contention and instructed the jury to bring in a verdict for the defendant. Judgment has been entered on the verdict, and I believe the case is closed.

If you or counsel for the other banks are interested in this question, I shall be glad to supply you with a copy of my trial brief.

Yours very truly,

(Signed) A. C. AGNEW

Counsel.