

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF WASHINGTON.

B. W. Grover,

Plaintiff,

vs

The Federal Reserve Bank,
of San Francisco, California,
a corporation.

Defendant.

Civil No.2657
MEMORANDUM DECISION.

This action is brought to recover from the defendant the amounts of certain checks drawn upon the Fruitland State Bank and delivered to defendant by original banks of deposit for collection. It is admitted that defendant received the checks "for collection" from its correspondents, The Weiser National Bank, The First National Bank of Ontario, Oregon, The Pacific National Bank of Boise, Idaho, and the Boise City National Bank of Boise, Idaho. Upon receipt of the several checks defendant promptly sent them direct to the Fruitland State Bank which stamped them "Paid" and returned the cancelled checks to the several makers thereof, and remitted to defendant by draft upon the Payette National or other Idaho Banks. Defendant without delay forwarded the several drafts issued by the Fruitland State Bank, received by it prior to November 16, 1922, to the drawees thereof for payment, but before they could be presented the drafts were dishonored by reason of the failure of the Fruitland State Bank to open its doors on November 16, 1922. The complaint contains six causes of action, the first being founded upon a check for \$533.00 drawn by Geo. P. Davis on the Fruitland State Bank in favor of plaintiff. Plaintiff received the check on November 7, 1922, at Fruitland, Idaho, and mailed it the same evening, endorsed by him in blank, to the Weiser National Bank, at Weiser, where he had an account. The latter bank gave plaintiff credit for the amount "subject to final payment" and forwarded it to the defendant bank for collection. This check was received by defendant at Salt Lake on November 11, 1922, and forwarded to the Fruitland State Bank on that date.

The second cause of action is based upon a check for \$1,000.00 drawn by the Fruitland Fruitgrowers' Exchange in favor of A. G. Street, dated November 3, 1922. The payee deposited this check about November 4, 1922, in the Western National Bank at Caldwell, Idaho, and on that day said bank endorsed the check and forwarded it to The Boise City National Bank, in due course of business for collection, and the check was thereupon forwarded in due course of business to the defendant at Salt Lake City for collection. Defendant on the day of its reception

forwarded the check to the Fruitland State Bank at Fruitland for payment with instructions to pay said check upon presentation and if not paid to protest the same for non-payment. The check arrived at the Fruitland Bank on November 10, 1922, and at that time the drawer did not have sufficient funds to its credit with said bank to pay said check. The check was held until November 13, 1922, when the Fruitland Fruitgrowers Exchange had sufficient funds on deposit to pay the check when it was marked "paid" and charged to the drawer's account. A draft for the amount thereof payable to defendant, dated November 10, 1922, drawn on The First National Bank of Payette, was mailed to defendant. Said draft was dated November 10, 1922, but was not received by defendant until November 15, 1922, when it was promptly mailed to the drawee bank for payment. Before it was received at Payette, the Fruitland State Bank had closed its doors and the draft was thereby dishonored. The Fruitland State Bank did not protest the check for non-payment after its receipt on November 10, 1922, nor notify defendant of the failure of the payor to pay it.

The third cause of action is based upon thirty six checks drawn by divers persons upon the Fruitland State Bank, payable to The Golden Rule Store, aggregating \$287.45 in amount. All of said checks were deposited by the C. C. Anderson Company doing business as the Golden Rule Store, with the First National Bank at Ontario, Oregon, and were by it sent to the Boise City National Bank at Boise, and were by that bank endorsed and duly forwarded to the defendant at Salt Lake City, Utah, for collection. They were promptly sent by defendant direct to The Fruitland State Bank for payment and were marked "paid", charged to the respective accounts of the makers thereof and returned to them. Drafts for the amounts covered by said checks, dated November 13 and 14, 1922, respectively, were forwarded to defendant and reached it on the 16 and 17 of November, 1922, respectively, after the failure of The Fruitland State Bank, and were promptly on said dates forwarded by defendant for protest. They were dishonored by reason of the Fruitland State Bank failing to open its doors on November 16, 1922, and were therefore not paid.

The fourth cause of action is based upon four several checks, three of which are payable to the Ontario Furniture Company and one payable to Mrs. H. E. Duell and endorsed by her to the Ontario Furniture Company, signed by divers persons and aggregating \$70.20 in amount. All of said checks were deposited by H. L. Peterson, doing business under the trade name of the Ontario Furniture Company, with the First National Bank of Ontario, and by it endorsed and sent to the defendant for collection. All of said checks were mailed direct to the Fruitland State Bank for payment, which charged the amounts of the several checks to the accounts of the respective drawers thereof, marked the checks "paid" and returned them to the several drawers. Drafts covering the amounts of these checks, were sent to the defendant, dated November 10, 13 and 14, 1922, respectively, and were received by the defendant bank by mail on

November 15, 16 and 17, 1922, respectively and those received on the 15th and 16th were forwarded for collection on the same day they were received; that received on the 17th was forwarded for protest on the day received. All were dishonored by reason of the failure of the Fruitland State Bank to open its doors on November 16, 1922.

The fifth cause of action is based upon two checks drawn on the Fruitland State Bank, aggregating \$498.39, one for \$100.00 drawn by E. A. Stenger in favor of the Davidson Grocery Company, and a check for \$398.39 drawn by the Mohler Mercantile Company in favor of the Davidson Grocery Company. Said checks were dated on or about the 4th and 8th of November, 1922, respectively. Each of said checks was deposited with the Pacific National Bank at Boise, Idaho, by the said payee therein named, and were in turn endorsed and forwarded by said The Pacific National Bank to the defendant for collection, who in turn mailed them to the Fruitland State Bank for payment. The payee bank marked each of said checks paid, charged the accounts of the makers thereof with the several amounts, and returned the cancelled checks to the drawers. Said bank mailed to defendant its draft dated November 10, 1922, for \$100.00, the proceeds of the first check, which said draft was received by defendant on November 15, 1922, and on the same date mailed for collection. The draft covering the item of \$398.39, was dated November 14, 1922, mailed by the Fruitland State Bank to defendant, was received by it November 17, 1922, and was mailed on the same date for protest. The Fruitland State Bank having closed its doors before either draft was presented, they were not paid.

The sixth cause of action is based upon a check for \$65.80 dated November 4, 1922, drawn by Fruitland Drug Company, on the Fruitland State Bank in favor of Haas Wholesale Company. Said check was thereafter deposited by the payee thereof in the First National Bank of Weiser, which endorsed and delivered said check to The Pacific National Bank at Boise, which endorsed and mailed it for collection. Thereafter the defendant without delay mailed said check to the Fruitland State Bank for payment. It was marked "paid" by the payee bank, charged to the drawee's account, and on November 15, 1922, defendant received at Salt Lake City, Utah, a draft drawn upon another bank for said amount, which draft was on said last named date mailed to drawee for payment. Said draft was not paid because of the failure of the Fruitland State Bank to open its doors on November 16, 1922, before it could be presented for payment. The check sued on was not admitted in evidence.

It was stipulated at the trial that all of the checks involved in the last five causes of action were deposited with the initial banks of deposit for collection, to the credit of the assignors of the plaintiff, their respective accounts credited with the amounts thereof, and that subsequently the several amounts were charged back to the several accounts.

None of the checks in the second, third, fourth, fifth and sixth causes of action are in evidence. There is no testimony as to the character or form of the endorsements thereon, if any.

There is likewise no proof of any custom by the banks in the territory in which the said deposit banks are situate, to require the endorsement of checks, before accepting them for deposit. On the other hand, there has been no offer of proof of any special contract with the banks of deposit. Nothing to show that said checks were not in fact endorsed in the usual manner. The burden of this proof being upon the plaintiff, I incline to the view that the court would be justified in finding that the checks were endorsed as well as deposited. The record being silent as to any special form of endorsement or contract for the collection of these checks, it would seem justifiable to conclude that they were deposited by the holders in their accounts in the usual manner, because it is stipulated that credit was given for the amounts thereof and on failure of payment of the drafts, they were charged back to the several accounts.

Plaintiff's counsel concede that it was not negligence on the part of the defendant to send the various checks direct to the payee for presentation and payment. They contend that because in each instance the defendant accepted drafts in payment of the several checks in lieu of cash, it was negligent and plaintiff should, on that ground alone, recover.

I shall not attempt to discuss the question as it would serve no useful purpose here.

On the question as to whether the defendant has been guilty of any negligence, the answer sets up a general custom of all banks and bankers obtaining in the states of Idaho and Utah, at the time of the transactions complained of, to accept in settlement of collection items received from banks in other cities or towns, exchange upon correspondent banks, and that plaintiff and his assignors and agents in forwarding said checks for collection, did so with full knowledge and notice of the existence of said custom. This defense is clearly sustained by the evidence.

It is true that it was not shown that the depositors had actual notice of such a custom, still, the circumstances were such that they must be charged with notice. All of the persons receiving the checks were business men, as may be inferred from the evidence. They were apparently receiving checks from time to time and knew or were charged with knowing, how checks were collected on out of town banks. The custom must be held to be reasonable under the evidence here. It may be said to be dictated by necessity since it would not be possible, owing to the great volume of business transacted in this country, for banks to function if compelled to make collections in cash or currency. On the other hand, the rule does not hold that a person cannot make a special contract for the collection of commercial paper in any way he desires. It simply goes to the extent of holding that when paper

is deposited for collection, in the ordinary and usual course of business, without any special agreement, it will not be negligence for the collecting agents to follow the prescribed custom.

Plaintiff alleges that on presentation of each of the several checks involved, there was sufficient cash on hand in the Fruitland State Bank to have paid them in cash or currency. The proof is not sufficient to sustain this allegation, and so I find.

I am constrained therefore to find for the defendant on all six causes of action.

At the trial defendant asked leave to amend its answer in certain particulars referred to on page 55 of defendant's brief. The amendment was resisted and the court reserved the ruling. It does not appear that any substantial right of the plaintiff will be jeopardized, and I therefore rule that the amendment may be made as prayed for.

Counsel for defendant may prepare findings and decree, furnishing copies thereof to counsel for plaintiff.

Dated at Weiser, Idaho, July 31, 1926.

(Signed) B. D. Varian (?)

District Judge

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