

COPY

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X-6042

FEDERAL RESERVE BANK  
OF SAN FRANCISCO

May 7, 1928.

In re: Earl Forest v.  
Federal Bank of  
San Francisco,  
et al.

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

Dear Mr. Wyatt:

For your information I am transmitting herewith copy of summons and complaint recently served upon this bank in the above entitled matter.

The complaint, as you will note, is in the usual form, charging the First National Bank of Portland with negligence in having routed the item in question for collection through the Federal Reserve Bank instead of presenting it direct, and charging the Federal Reserve Bank of San Francisco with negligence in having accepted a draft in settlement, rather than cash.

The facts in this case are a little out of the ordinary in that the Bank of Kenton, by which the draft was drawn, is located within the corporate limits of the city of Portland, but at a distance from the center of population which rendered the collection of checks by direct presentation, impossible. The Bank of Kenton was not a member of the clearing house, and it had been the universal custom not only of the Federal Reserve Bank but of all other local banks collecting checks to do so by mail.

The draft issued by the Kenton Bank in settlement of the cash letter containing the item in question, was drawn on December 2, placed by the President of the Bank in his pocket and carried around by him until December 3, when he mailed it in Portland so that it reached our Portland Branch on December 4, the day after the Bank of Kenton failed.

I am preparing to plead to the complaint and shall do so first by way of demurrer. The State of Oregon is committed to neither the New York nor the Massachusetts rule. I shall endeavor to have the New York rule adopted. I shall also claim a misjoinder of parties defendant. If I do not succeed in having the Federal Reserve Bank dismissed on the demurrer, I shall, of course, answer, pleading the usual



defenses, including custom.

I shall be very glad to receive your observations on the case and those of any of counsel to the Federal Reserve Banks who may care to discuss it with me.

Yours very truly,

(S) Albert C. Agnew

Counsel.



IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR MULTNOMAH COUNTY

Earl Forest,

Plaintiff,

-vs-

First National Bank of  
Portland, Oregon, a National  
Banking Association, and  
Federal Reserve Bank of San  
Francisco, a corporation,

Defendants.

SUMMONS

To First National Bank of Portland, Oregon, a National  
Banking Association, and Federal Reserve Bank of San Francisco, a  
corporation, above named defendants:

IN THE NAME OF THE STATE OF OREGON

You and each of you are hereby commanded to appear and  
answer the complaint filed in the above entitled  
Court and cause against you, within ten days from the date of the  
service of this summons upon you, if served within Multnomah County,  
or within twenty days from the date of the service of  
this summons upon you if service is made within any other county of  
the above named State, and if you fail to so appear and answer or  
otherwise plead, for want thereof, the plaintiff will take judgment  
against you and each of you for the sum of \$3267.85 with interest  
thereon at the rate of 6% per annum from December 1st, 1926, and  
for his costs and disbursements herein.

ELTON WATKINS  
ADDRESS Failing Building,  
Portland, Oregon.

Denton G. Burdick,  
Address Redmond, Oregon

Attorneys for Plaintiff.



IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR MULTNOMAH COUNTY.

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Earl Forest,

Plaintiff,

vs

First National Bank of  
Portland, Oregon, a National  
Banking Association, and  
Federal Reserve Bank of San  
Francisco, a Corporation,

Defendants.

COMPLAINT

Comes now the plaintiff and for cause of action states:

## I.

That at all times mentioned herein, the defendant First National Bank of Portland, Oregon, has been, and now is a National Banking Association, organized and existing under the banking laws of the United States of America, with its principal place of business in the City of Portland, Multnomah County, Oregon;

## II.

That at all times mentioned herein the defendant, Federal Reserve Bank of San Francisco has been, and now is a corporation organized and existing under the laws of the United States of America, with its principal place of business in San Francisco, San Francisco County, State of California; That said defendant maintains and operates a branch bank and office in the City of Portland, Multnomah County, Oregon;

## III.

That on or about November 27th, 1926, plaintiff, for value accepted from J. G. Kidwell Company, one certain sight draft, said draft having been drawn on Bank of Kenton, Portland, Multnomah County,



Oregon, for the sum of three thousand two hundred sixty seven dollars and eighty five cents (\$3627.85), payable to the said plaintiff, 151 for and in behalf of and to be charged from the account of said J. G. Kidwell Company; That said draft was in words and figures substantially as follows:-

Place, Redmond, Date 11/27/26. No. 136

J. G. KIDWELL CO.

AT SIGHT

PAY TO ORDER OF

Earl Forest

\$3267.85

Thirty two hundred sixty seven 85/100 dollars,

To

BANK OF KENTON

Portland, Oregon

signed James Mace

IV

That at the time said draft was so signed and delivered to plaintiff on November 27th, 1926 and at the time it was later presented for payment to said Bank Kenton by the defendant Federal Reserve Bank of San Francisco, as hereinafter set forth, J. G. Kidwell Company, the drawer thereof, had on deposit in said Bank of Kenton an amount of money more than sufficient to pay, and subject to the demand of the said draft:

V

That on Monday, November 29th, 1926, plaintiff endorsed said draft and deposited the same for credit to his account in the First National Bank of Prineville, Oregon; that on said November 29th, 1926 said First National Bank of Prineville, in the usual course of business, likewise endorsed said draft and forwarded the same for the credit of its account with its /Portland, Oregon correspondent, the defendant First National Bank of Portland, Oregon, and that said draft was received by said defendant on



## VI

That at all times mentioned herein the Bank of Kenton was a banking corporation organized and existing under the general laws of the State of Oregon, having its banking house and principal place of business in the City of Portland, Multnomah County, Oregon, and notwithstanding this fact, the defendant First National Bank of Portland, Oregon, negligently and carelessly failed to present said draft for payment promptly and in the due course of business, to said Bank of Kenton, but instead and on December 1st, 1926 transferred and delivered said draft to the Portland branch of defendant Federal Reserve Bank of San Francisco for collection:

## VII

That on December 2d, 1926, the defendant Federal Reserve Bank of San Francisco, thru its Portland, Multnomah County, Oregon Branch presented said sight draft for payment to said Bank of Kenton at its banking house in Portland, Multnomah County, Oregon and instead of demanding and receiving cash in payment therefor, negligently without right or authority and at its own risk and responsibility, surrendered said sight draft to said bank, accepting in consideration therefor, a check or draft of the said Bank of Kenton for the sum of \$3267.85;

## VIII

That at said time the deposit of the drawer of said sight draft in said Bank of Kenton was in an amount more than sufficient to pay said sight draft and the amount was thereupon charged to, and deducted therefrom by said Bank of Kenton;

## IX

That on December 3d, 1926, said Bank of Kenton, on account of insolvency, suspended its banking business and was taken in charge by



the Superintendent of Banks of the State of Oregon and the sight draft set out in paragraph III hereof and the check or draft referred to in paragraph VII hereof have never been paid, in whole or part;

X

That on account of the failure of the defendant First National Bank of Portland, Oregon to present said sight draft for payment to said Bank of Kenton in the due course of business and within twenty four hours after its receipt thereof, and on account of the failure of the defendant Federal Reserve Bank of San Francisco to demand and receive cash in payment therefor, before surrendering said sight draft to said Bank of Kenton, and said defendants carelessness and negligence in accepting the check or draft of said Bank in consideration therefor, the plaintiff has been damaged in the sum of thirty two hundred sixty seven dollars and eighty five cents, (\$3267.85), with interest thereon at the rate of six per cent per annum from December 1st, 1926, no part of which has ever been paid.

WHEREFOR -

Plaintiff demands judgment against said defendants and each of them for the sum of \$3267.85, with interest thereon at the rate of 6% per annum from December 1st, 1926, and for his costs and disbursements herein.

(Signed) Elton Watkins

(Signed) Denton G. Burdick

Attorneys for plaintiff.



State of Oregon :  
: ss  
County of Deschutes :

I, Earl Forest, being first duly sworn, depose and say:

That I am the plaintiff in the above entitled action;  
that I have carefully read the foregoing complaint, know the  
contents thereof, and the same is true as I verily believe.

(Signed) Earl Forest.

Subscribed and sworn to before me this 17th day of April, 1928.

(Notarial Seal)

Nelson A. Burdick

Notary Public for Oregon

My commission expires 6/20/31

State of Oregon :  
: ss  
County of Multnomah :

I, Denton G. Burdick being of counsel for the plaintiff  
herein, do hereby certify that I have carefully compared the fore-  
going copy of the summons and complaint herein, with the originals  
thereof, and that the same are true and correct transcripts and  
of the whole thereof.

(Signed) Denton G. Burdick

C O P Y