

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF OREGON.

THE FIRST NATIONAL BANK OF ILWACO, :
: Plaintiff, :

vs. :

No. E-8994

THE ASTORIA NATIONAL BANK, :
W. C. CRAWLEY, Receiver of :
the Astoria National Bank, and :
THE FEDERAL RESERVE BANK OF :
SAN FRANCISCO, CALIFORNIA, :
: Defendants. :

November 26, 1928.

John K. Kollock for Plaintiff;
Wilbur, Beckett, Howell & Oppenheimer and
Albert C. Agnew, for defendants.

McNARY, DISTRICT JUDGE:

(Memo.)

It is contended that the Astoria National Bank paid the draft in question by marking it "Paid" and by depositing in the United States mail its written instructions directing the Federal Reserve Bank to pay the draft from its general deposit.

A payment is not complete until the obligation is discharged. In this case it remained for the Federal Reserve Bank to receive the written instructions before it was authorized to separate the amount of the draft from the deposit of the Astoria National Bank, and as this authorization was not received by the officers of the Federal Reserve Bank before the insolvency of the Astoria National Bank, the payment was not completed. The authority giving the Federal Reserve Bank the right to transfer funds from the reserve account of the Astoria National Bank to pay the plaintiff's draft was revoked by the insolvency of the Astoria Bank.

The authorities have recognized a payment as complete where a debtor has transmitted to his creditor a draft or check through the mails by the creditor's express direction, or where the course of dealings between the parties has been such that an agreement could be inferred.

In the case of McDonald, Receiver, v. Chemical National Bank, 174 U. S. 610, 620, the court says: "There was plainly a general agreement that remittances were to be made by mail, and that their proceeds were not to be returned to the Capital National Bank, but were to be credited to its constantly overdrawn account.*** It is sufficient, for present purposes, to say that the inference is warranted that it was understood between the parties that these remittances were to be made through the mails, and that they were in the nature of payments on general account."

In that case the implied understanding grew out of frequent remittances from time to time during a long course of business between the banks concerned. But no understanding of like effect can be inferred in this case.

The demurrer will be sustained.