

Walter Wyatt - #2

Feb. 27, 1930.

that the Minnesota court should determine what was the Illinois law in accordance with the decisions of the federal courts sitting in Illinois and the Minnesota decisions rather than in accordance with the decisions of the state courts of Illinois.

The appeal by the plaintiff will be from a judgment to be entered in favor of the Federal Reserve Bank of Minneapolis. Under our practice cross-appeals are not allowed, and hence this question of the correctness of the ruling of the trial judge upon what is the Illinois law will probably not be before the Supreme Court on the first appeal. We say "probably" because our Court does not always adhere to its previous decisions, especially in matters of practice. Should the judgment in favor of the Federal Reserve Bank of Minneapolis be reversed on the appeal (which we very much doubt), then we think the Federal Reserve Bank could in turn appeal and assign as error the ruling of the trial court as to the Illinois law, and assert that the defendant bank is not liable under the rule in the City of Douglas case, and for other reasons.

Very cordially yours,

(S) Sigurd Ueland.

SU*MS.

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Osage National Bank,

Plaintiff,

-vs-

Federal Reserve Bank of
Minneapolis,

Defendant.

FINDINGS OF FACT.
CONCLUSIONS OF LAW.
AND
ORDER FOR JUDGMENT.

The above entitled cause was tried on the 28th day of February, the 1st day of March, and the 15th, 16th, 17th and 18th days of June, 1927, before the Court without a jury, a jury being waived. Messrs. Shearer, Byard & Trognor appeared on behalf of plaintiff and Messrs. Ueland & Ueland appeared on behalf of the defendant. Thereafter certain stipulations between the parties as to facts not covered by the testimony were filed, briefs were submitted, and the case was argued by counsel on the 22nd, 24th and 25th days of June, 1929, and the Court having heard the evidence adduced and having read the stipulations on file, and being fully advised in the premises,

FINDS AS FACTS:

1. That on March 15, 1921 plaintiff was the owner of two checks drawn payable to its order by the Treasurer of Williams County, North Dakota, said checks being in the amounts of \$6420.00 and \$2022.30, respectively, and both of said checks being drawn upon the Williston State Bank of Williston, North Dakota; that on the same date plaintiff endorsed both of said checks "pay to the order of any bank or banker", followed by

the signature of plaintiff, and sent said checks from plaintiff's place of business at Osage, Iowa to the Corn Exchange National Bank in Chicago, Illinois; that said checks were enclosed with a form letter from plaintiff addressed to said Corn Exchange National Bank reading: "We enclose for collection and credit:" and listing the amounts of said checks together with other items.

2. That said Corn Exchange National Bank received said checks on March 16, 1921, and said Corn Exchange National Bank thereupon gave plaintiff credit in its account with said Corn Exchange National Bank for the amount of said checks, and advised plaintiff that it had credited the amount of said checks "subject to final payment"; that said Corn Exchange National Bank paid interest to plaintiff based upon the daily balances in plaintiff's account, but in computing such interest a deduction was made on account of checks payable outside of the City of Chicago in the process of collection, and such deduction was made by the Corn Exchange National Bank with respect to the checks here involved.

3. That on March 16, 1921 said Corn Exchange National Bank endorsed said checks "pay to the order of any bank, banker or trust company", followed by its own signature, and forwarded said checks to defendant at Minneapolis; that said checks were enclosed with a form letter of said Corn Exchange National Bank stating that said checks were enclosed "for credit", and containing certain instructions as to protest of items, and for wiring advices in cases of non-payment.

4. That defendant received said checks on March 17, 1921, and on the same day defendant endorsed said checks "pay to any bank, banker or trust company" and forwarded said checks by mail directly to said

Williston State Bank, said checks being enclosed with a letter of instructions advising said Williston State Bank that said checks were enclosed "for collection and returns", and giving similar directions as to protest of items and wiring advices of non-payment thereof as were contained in said letter from said Corn Exchange National Bank; that said letter from defendant to said Williston State Bank also contained the direction "return this letter with your draft".

5. That on March 17, 1921 said Williston State Bank was in fact insolvent and was unable to pay the checks of its depositors as presented, and that said insolvency and inability to pay the demands of its depositors continued until said Williston State Bank suspended on April 4, 1921, and that at no time after March 17, 1921 could the checks here involved been collected in cash or otherwise from said Williston State Bank.

6. That on March 22, 1921 said Williston State Bank stamped said checks "paid" and charged the amount of said checks to the account of the Treasurer of Williams County, and said checks were returned to said Treasurer by United States mail on March 30, 1921.

7. That on March 28, 1921 said Williston State Bank drew its draft in the sum of \$8619.02 on the Merchants National Bank of St. Paul, Minnesota, which draft was payable to the order of defendant; that said draft was intended by said Williston State Bank as a remittance for the checks here involved and other items received from defendant; that said draft was not mailed by said Williston State Bank until March 31, 1921 and was received by defendant on Saturday, April 2, 1921; that at the time said draft was mailed by said Williston State Bank and until the

suspension of said Williston State Bank on April 4, 1921 said Williston State Bank was overdrawn at said Merchants National Bank of St. Paul and had no funds on deposit with which to meet the payment of said draft; that upon receipt of said draft defendant ascertained that said draft would not be paid and defendant so notified said Williston State Bank; that on April 7, 1921 defendant caused said draft to be protested, but that prior to said April 7, 1921 defendant neither authorized nor accepted said draft.

8. That in the usual course of business defendant should have received remittance for said checks from said Williston State Bank by the 22nd day of March, 1921; that when payment was not so received defendant exercised due diligence in making inquiry concerning said checks and in demanding payment thereof from said Williston State Bank, and defendant also exercised due diligence in advising said Corn Exchange National Bank that it had not received a remittance for said checks.

9. That shortly after April 4, 1921 defendant charged back the amount of said checks to the account of the Federal Reserve Bank of Chicago and immediately thereafter said Federal Reserve Bank of Chicago charged the amount of said checks to the account of said Corn Exchange National Bank; that on November 10, 1921 said Corn Exchange National Bank charged the account of plaintiff with the amount of said checks; that plaintiff did not acquiesce in said charge and did not credit the Corn Exchange National Bank on its books with the amount of said checks until December 28, 1921 when plaintiff complied with a ruling of the Comptroller of the Currency and credited said Corn Exchange National Bank for the amount of said checks, and charged said amount to undivided profits.

10. That said checks were handled by defendant as part of defendant's clearing house operations pursuant to Regulation J - Series of 1920 - promulgated by the Federal Reserve Board, and that said checks were received by defendant direct from said Corn Exchange National Bank pursuant to an arrangement entered into between defendant, the Federal Reserve Bank of Chicago, and said Corn Exchange National Bank, whereby the privilege of routing checks direct to defendant was extended to said Corn Exchange National Bank, and whereby it was understood and agreed that all checks so routed direct to defendant should be received and handled by it, in all respects, in the same manner and subject to the same terms and conditions that other checks were handled by defendant in its clearing house operations.

11. That plaintiff and said Corn Exchange National Bank were member banks of said Federal Reserve Bank of Chicago, and that said Williston State Bank was a non-member bank in the Ninth Federal Reserve District which, on March 17, 1921, was remitting for checks drawn on it at par.

12. That Regulation J - Series of 1920 - promulgated by the Federal Reserve Board as aforesaid provided in part as follows:

"In handling items for member * * * banks, a Federal Reserve Bank will act as agent only. The Board will require that each member * * * bank authorize its Federal Reserve Bank to send checks for collection to banks on which checks are drawn, and, except for negligence, such Federal Reserve Bank will assume no liability. * * * Each Federal Reserve Bank will also promulgate rules and regulations governing the details of its operations as a clearing house, such rules and regulations to be binding upon all member * * * banks which are clearing through the Federal Reserve Bank."

13. That pursuant to and in accordance with said order and regulation of the Federal Reserve Board defendant did promulgate rules and regulations

governing the details of its operations as a clearing house under said Federal Reserve Act; that said rules and regulations which were in force at all times here material provided in part as follows:

"Checks received by the Federal Reserve Bank drawn on its member banks will be forwarded direct to such member banks and are to be remitted for by the member banks on day of receipt if possible, by their draft on the Federal Reserve Bank, provided they have a balance in excess of their required reserve, or by their draft on a bank in Minneapolis or St. Paul. Member banks are required by the Federal Reserve Board to provide funds to cover at par all checks received from their Federal Reserve Bank.

* * *

"In handling items for member banks, the Federal Reserve Bank of Minneapolis acts as agent only. It is understood that each member bank authorizes it to send checks for collection direct to banks on which checks are drawn, and except for negligence the Federal Reserve Bank of Minneapolis assumes no liability until funds are actually in its hands, and is authorized to charge back any item for which it has not received final payment, including items lost in transit."

14. That said rules and regulations of defendant were contained in a check clearing circular of defendant known as defendant's circular No. 228; that said circular No. 228 was mailed to the Federal Reserve Bank of Chicago and to said Corn Exchange National Bank long prior to March 16, 1921, but that no copy of said circular was ever furnished to or received by plaintiff, and that plaintiff had no direct dealings with defendant until long after April 4, 1921.

15. That during all of March and April, 1921, and prior thereto, it was the established, general, uniform and certain usage and custom among banking institutions in Minnesota and North Dakota, where checks deposited for collection drawn on banks located at a distance had been forwarded direct to the drawee or payor bank for collection, for the drawee or payor bank to remit the proceeds of the collection in exchange drafts drawn on banks in the vicinity of the forwarding bank, and it was

the established, general, uniform and certain usage and custom among banking institutions in said states for the forwarding bank to permit such remittance by draft, and upon receipt of the exchange or remittance drafts to endeavor to collect the same.

16. That the only loss in connection with the collection of the checks here involved was incurred from the fact that said Williston State Bank, on March 22, 1921, wrongfully treated said checks as paid, as hereinbefore set forth, without having available funds to remit for said checks to defendant, whereby the drawer of said checks was discharged on March 22, 1921.

17. That the only terms and conditions upon which defendant ever agreed to handle said checks were those terms and conditions contained in said Regulation J and defendant's circular No. 228, as hereinbefore set forth.

18. That until April 2, 1921 defendant had no knowledge or notice of the unsafe condition of said Williston State Bank and that defendant in handling said checks for \$6420.00 and \$2022.30 for collection was not negligent in any particular.

19. That on or about April 20, 1921 an agreement was entered into between defendant and said Corn Exchange National Bank that if defendant would file a claim as the agent of said Corn Exchange National Bank in the receivership of said Williston State Bank on account of that bank's failure to remit for the checks here involved, without expense to said Corn Exchange National Bank, said Corn Exchange National Bank "would not look to" defendant except for such dividends as defendant might receive on account of such claim; that pursuant to this arrangement defendant

on or about June 6, 1921 did file a proof of claim and thereafter received a receiver's certificate therefor, but that no dividends have been paid to defendant on such proof of claim; that at the time this arrangement was entered into defendant had no notice of the plaintiff's interest in said checks and the claim on account thereof against said Williston State Bank except such notice as was given by the form of said checks themselves and the endorsements thereon.

AS CONCLUSIONS OF LAW the Court finds that defendant is entitled to judgment of dismissal against plaintiff and for its costs and disbursements to be taxed by the Clerk.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated July 24, 1929.

(s)

Gunnar H. Nordbye
Judge of District Court

Enter a stay of forty (40) days.