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## Some Aspects of Regulations of the Federal Reserve Board and State Statutes Authorizing Forwarding of Checks for Collection Directo to Drawee Banks and Acceptance of Drafts in Payment

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The foregoing decisions clearly indicate that it is now the rule in the state of Washington, that prior conviction of any crime may be shown to affect the credibility of the witness. The *Overland case* defines a crime as an act or omission forbidden by law, and punishable by death, imprisonment, fine, or other penal discipline.<sup>18</sup> This includes felonies, and misdemeanors, crimes *malum in se*, and *malum prohibita*, and crimes of the *crimen falsi*. In other words, crimes of any nature may be shown.

In conclusion, it may be said that there is no objection to the present rule except perhaps the fact that some crimes have no bearing whatsoever on the veracity of a witness. An individual may have been convicted of a crime, and yet may be an honest witness. For example, one may have been convicted for violation of a parking ordinance. Minnesota, whose statute on this subject was also a prototype<sup>19</sup> for our sec. 2290, has refused to permit traffic convictions under city ordinances to be shown.<sup>20</sup> It would seem that a crime of this nature should not effect the veracity of the person so convicted. Yet under the present rule in Washington, such a conviction could perhaps be shown to affect the credibility of the witness.

ELMER GOERING.

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SOME ASPECTS OF REGULATIONS OF FEDERAL RESERVE BOARD AND STATE STATUTES AUTHORIZING FORWARDING OF CHECKS FOR COLLECTION DIRECT TO DRAWEE BANKS AND ACCEPTANCE OF DRAFTS IN PAYMENT—The regulations of the Federal Reserve Board authorize federal reserve banks in handling checks and other negotiable instruments forwarded to them for collection to forward them direct to the banks on which drawn and accept the drawees' drafts in payment.<sup>1</sup>

Statutes have been enacted in California, Colorado, Montana and Oregon authorizing banks doing business in those states to forward checks and other negotiable instruments received for collection direct to the banks on which drawn and accept the drawees' drafts in payment.<sup>2</sup>

These regulations and statutes were enacted to counteract the effect of the decision of the Supreme Court of the United States in the case of *Federal Reserve Bank v. Malloy*,<sup>3</sup> in which case the Supreme Court of the United States held that a former regulation

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<sup>18</sup> Note 6, *supra*.

<sup>19</sup> See note 11, *supra*.

<sup>20</sup> *Carter v. Duluth Yellow Cab Co.*, (Minn.) 212 N. W. 413; see also *Neal v. United States* (C. C. A. 8th), 1 F. (2d) 637, where the municipal ordinance cases are discussed and the Washington cases inferentially criticised.

<sup>1</sup> Regulation J, Series of 1928, superseding Regulation J, Series of 1924.

<sup>2</sup> Laws of California, 1925, c. 312, sec. 5, Laws of Colorado, 1925, c. 64, p. 172; Laws of Montana, 1925, c. 63, p. 85, Laws of Oregon, 1925, c. 207, sec. 126, p. 360.

<sup>3</sup> 264 U. S. 160, 44 Sup. Ct. 296, 68 L. ed. 617 (1924).

of the Federal Reserve Board merely authorizing federal reserve banks to forward checks and other negotiable instruments direct to the banks on which drawn did not authorize them to accept in payment drafts drawn by the drawee banks or anything but cash or currency

It is a well settled rule that the drawer of a check is discharged the moment the check is presented to the drawee, the drawee having sufficient funds to the credit of the drawer and being ready to pay in cash, and that if the owner surrenders the check in exchange for something other than cash or currency which turns out to be worthless the loss will fall upon him.<sup>4</sup>

And it has been held by the Supreme Court of Montana that this rule is not changed by a statute merely authorizing the collecting bank to forward the check direct to the drawee and to accept the drawee's draft in payment without providing that the liability of the drawer of the check will continue until the drawee's draft has been paid.

It is therefore apparent that if a bank forwards a check to a federal reserve bank or bank authorized by statute to forward it direct to the bank on which drawn and accept the drawee's draft in payment, and that bank forwards the check direct to the drawee and accepts the drawee's draft in payment, and the draft is not paid owing to the intervening insolvency of the drawer, a loss arises which will fall not upon the drawer of the check but upon the owner or some bank that accepted the check for collection.

The owner of the check may be the original depositor, the depository bank or an intermediate bank, depending upon circumstances. It is a well settled rule that where a check is unrestrictedly indorsed by the holder and deposited with a bank and credit entered upon the account of the depositor, title to the check, in the absence of agreement to the contrary, immediately passes to the bank.<sup>5</sup> If that bank indorses the check without restriction and forwards it to another bank with instructions to credit its account with the amount, the title to the check will pass to the second bank.<sup>6</sup> Therefore, if a depository bank located in this state accepts a check for collection under circumstances passing title to it, and forwards it to a federal reserve bank or bank doing business in a state having a "direct to drawee" statute, and that bank forwards the check direct to the drawee and accepts the drawee's draft in payment, and the draft is not paid owing to intervening insolvency of the drawer, the loss will fall upon the depository bank.

It would also seem that the courts may hold that the loss will

<sup>4</sup> *Anderson v. Gill*, 79 Md. 312, 29 Atl. 527, 25 L. R. A. 200 (1894) *Noble v. Doughten*, 72 Kan. 336, 83 Pac. 1048, 3 L. R. A. (N. S.) 1167 (1905).

<sup>5</sup> *Vickers v. Machinery Warehouse Co.*, 111 Wash. 576, 191 Pac. 869 (1920) *Burton v. United States*, 196 U. S. 283, 25 Sup. Ct. 243, 49 L. ed. 482 (1905) *Douglas v. Federal Reserve Bank*, 271 U. S. 439, 46 Sup. Ct. 584, 70 L. ed. 1051 (1926) *Noble v. Doughten*, see note 4, *supra*.

<sup>6</sup> *Noble v. Doughten*, see note 4, *supra*.

fall upon the depository bank or an intermediate bank though that bank was not the owner of the instrument.

In many jurisdictions the rule prevails that each bank through which a check passes in the process of collection contracts to collect the check and is responsible for the defaults of its agents (the so-called "New York" rule). This is the rule of the federal courts,<sup>7</sup> and probably the rule in this state.

If each bank through which a check passes in the process of collection contracts to collect the check (not merely to exercise due diligence in collecting the check), it would seem that if a depository bank (especially if it is not a federal reserve bank) accepts a check for collection under circumstances not passing title to it and forwards the check to a federal reserve bank or bank doing business in a state having a "direct to drawee" statute and that bank forwards the check direct to the drawee and accepts the drawee's draft in payment, and a loss arises as the result of this method of collection, neither the regulations of the Federal Reserve Board nor the "direct to drawee" statute under the authority of which the check was forwarded direct to the drawee would protect the depository bank from liability.

Even if the courts of this state follow the so-called "Massachusetts" rule, that each bank through which a check passes in the process of collection undertakes only to exercise due diligence in selecting another suitable collecting agent, or this rule is adopted by the parties by contract, the courts may hold when the question arises that a bank is negligent in forwarding an item for collection to a federal reserve bank or bank doing business in a state having a "direct to drawee" statute without forwarding instructions not to forward the item direct to the drawee.

In a few jurisdictions the owner of a check has a preferred claim upon the assets of the drawee bank where the check was forwarded direct to the drawee bank with instructions to remit and that bank remitted by draft and became insolvent before the draft was paid.<sup>8</sup>

A large majority of the courts which have passed upon the question, however, have held that the owner does not have a preferred claim upon the assets of the drawee bank.<sup>9</sup>

The situation is one that demands the serious attention of the banks. A contract between a depository bank and its depositor authorizing the forwarding of checks direct to the banks on which

<sup>7</sup>*Exchange Bank v. Third Bank*, 112 U. S. 276; 5 Sup. Ct. 141, 28 L. ed. 722 (1884) *Federal Reserve Bank v. Malloy*, see note 3, *supra.*, *Douglas v. Federal Bank*, see note 5, *supra.*

<sup>8</sup>*Federal Reserve Bank v. Peters*, 139 Va. 45, 123 S. E. 379 (1924) *Bank of Poplar Bluff v. Millspaugh*, 313 Mo. 412, 281 S. W. 733 (1926).

<sup>9</sup>*Ryer Gram Co. v. American Security Bank*, 147 Wash. 42, 264 Pac. 1000 (1928) *Heckler Milling Co. v. Cosmopolitan Trust Co.*, 242 Mass. 181, 136 N. E. 333 (1922) *State v. McKinley County Bank* (N. M.) 252 Pac. 980 (1927) *Ramwater v. Federal Reserve Bank*, 127 Ark. 631, 290 S. W. 69 (1927) See Paton's Digest, (1926) sec. 1451a.

drawn and the acceptance of drafts in payment would afford the bank considerable protection, but of course would not protect the bank where it was the owner of the instrument forwarded for collection. The remedy seems to be the enactment in every state in the Union of a statute giving the owner of the paper a preferred claim upon the assets of the insolvent drawee bank. In the meantime banks should forward their items for collection with instructions that they must not be forwarded direct to drawee banks.

ROBERT W REID.

## RECENT CASES

**AUTOMOBILES — NEGLIGENCE — DANGEROUS INSTRUMENTALITIES.** — Hickey, owner of an automobile, met Bullock, and together they had two or three drinks of intoxicating liquor. Thereafter, Hickey notified the man in charge of his car to allow Bullock to have it at any time. Hickey went to his home, after which Bullock returned, took the car, met the plaintiffs and invited them to ride to a restaurant with him. Bullock, over the protests of the plaintiffs, began speeding. After going four or five blocks, the automobile struck an iron button in the street, careened into a pole and seriously injured the plaintiffs. Plaintiffs sued both the driver and the owner of the car. *Held*, that one given to drinking intoxicating liquor must be regarded as an unsafe and a potentially incompetent and dangerous driver, and that the owner of an automobile who knows of such habits and intrusts his automobile to such a driver may be liable for resulting injuries to third persons. *Trotter v. Bullock*, 148 Wash. 516, 269 Pac. 825 (1928)

The instant case is decided chiefly on the authority of *Crowell v. Duncan*, 145 Va. 489, 134 S. E. 576 (1926) and *Mitchell v. Churches*, 119 Wash. 547, 206 Pac. 6 (1922) both of which rest upon the doctrine that a person who loans his automobile to one who he knows uses intoxicants, is liable for injuries resulting from the negligence of the driver while under the influence of liquor.

Automobile are not be classed with such highly dangerous agencies as dynamite or ferocious animals, and are not dangerous *per se*. *Moore v. Roddie*, 106 Wash. 548, 180 Pac. 879 (1919). In *Mitchell v. Churches*, 119 Wash. 547, 206 Pac. 6 (1922), it was held that while an automobile is not a dangerous instrumentality, yet it may become such in charge of one known to be incompetent by reason of addiction to intoxicants. In *Dixon v. Haynes*, 146 Wash. 163, 262 Pac. 119 (1927) it was held that where a drunken servant is driving a truck load of coal in the business of the master, the master is liable for a wrongful death which is the proximate result of the servant driving an automobile even though the master had no knowledge of his intoxication. The foregoing case involves the direct liability of a master to a third person for the act of an intoxicated servant, and rests squarely upon the doctrine of *respondeat superior* in the application of which knowledge of the master is not an essential factor. Cases like the instant case, however, in which the permissive use of an automobile is granted to another, do not rest upon any master-and-servant or principal-and-agent relationship; they rest rather upon the theory that one must not knowingly subject third parties to persons or instrumentalities which under certain circumstances may become dangerous. In this respect an analogy may be found in the general principle of the common law sustaining the liability of a master to a servant injured by the negligence of a fellow servant, who the master knew or had reasonable grounds to believe was incompetent.

K. G. S.

**BILLS AND NOTES—CHECKS—FRAUDULENT INDORSEMENT—LIABILITY OF PAYING BANK.**—One C., while acting as bookkeeper and cashier of the plaintiff corporation, without authority, indorsed checks payable to the corpora-