LISTER v. FIRST NATIONAL BANK OF VAN BUREN.

Opinion delivered March 3, 1930.

1. BANKS AND BANKING—BURDEN OF PROVING COLLECTING BANK'S NEGLIGENCE.—Where the payee of a check deposited it with a bank for collection from a bank in another State, the burden was on the defendant to show negligence of the collecting bank and damages resulting to him therefrom, since the passage of Acts 1921, p. 514, § 14.
2. BANKS AND BANKING—NEGLIGENCE OF COLLECTING BANK.—Where undisputed evidence shows that neither the bank in which a check was deposited for collection nor any of its correspondents knew that the bank on which a check was drawn was insolvent, and the check was handled in the customary way without negligence on the part of the collecting bank or its correspondents, and was paid by the drawee bank by draft on another bank, which draft was dishonored because the former bank had failed, *held* that the collecting bank was not liable under Acts 1921, p. 514, § 14, and for the further reason that the deposit slip given for the check deposited for collection showed that the collecting bank would charge the amount thereof back to the depositor if it was dishonored.

Appeal from Sebastian Circuit Court, Fort Smith District; *J. Sam Wood*, Judge; affirmed.

STATEMENT OF FACTS.

The First National Bank of Van Buren, Arkansas, sued L. E. Lister on a promissory note for $300. The defendant denied liability. The plaintiff introduced the note in evidence and testimony to the effect that no part of it had been paid.

L. E. Lister was a witness for himself. According to his testimony, he had a check drawn by the Rogers Lumber Company upon the First State Bank of Hartshorne, Oklahoma, in favor of E. E. McAfee, for $300. The check was indorsed to him; and on January 6, 1927, he deposited the same in the First National Bank of Van Buren, Arkansas, for collection. He told the cashier of the bank to rush the check and get returns on it because he had a note which was about due. Subsequently, the cashier of the bank told him that payment had been refused because the First State Bank of Hartshorne had closed its doors. The bank told him that it could not carry an overdraft, and got him to sign the note sued on to cover the overdraft for $300.

According to the testimony of the cashier of the bank, the draft was received for collection, and the deposit slip showed that it was credited subject to payment under conditions stated on the back. The statement on the back of the deposit slip was as follows: "All items not payable in Van Buren received by this bank for credit or collection are always taken at the owner's risk. This bank, as agent for the owner, will forward same to the collecting agents of this city, but, should such collecting agents convert the proceeds or remit in checks or drafts, which are thereafter dishonored, the amount for which credit has been given will be charged back. The depositor also consents that items may be sent direct to the drawee for collection. This bank assumes no responsibility for neglect or default and drafts are credited subject to payment."

The cashier of the bank sent the check for collection to its correspondent bank in the usual course of business,

and the check was not paid because the First State Bank of Hartshorne, the payee, had closed its doors. When the check was received by the payee bank in the usual course of business, it paid the same by giving a draft on another bank; and when that draft was presented in the usual course of business, it was not paid because the First State Bank of Hartshorne had failed in the meantime. It ceased to do business as a bank, and was taken over for liquidation by the banking department of the State of Oklahoma, between the date it gave a draft in payment of the check in question and the date that draft was presented for payment. There was no delay on the part of the collecting bank or any of its correspondents in handling the check, and it was handled in the usual and customary way that checks deposited for collection were handled.

There was a judgment for the plaintiff bank, and the defendant Lister has appealed.

*L. E. Lister,* for appellant.

*E. L. Matlock,* for appellee.

HART, C. J., (after stating the facts). There was no error committed by the trial court in finding for the plaintiff. The burden in the case was upon Lister to show the negligence of the plaintiff, as the collecting bank and the damages resulting to him therefrom. *Bank of Keo* v. *Bank of Cabot,* 173 Ark. 1008, 294 S. W. 49.

The undisputed evidence shows that the check was handled by the plaintiff as a collecting bank through its correspondents in the usual and customary way that checks handled for collection were handled by it and other banks. The plaintiff as the collecting bank, without any delay or negligence whatever, sent the checks to its correspondent bank which usually handles its Oklahoma business for collection. Then the check was handled without any negligence on the part of the correspondent bank, and was paid by the payee bank by a draft on another bank. This draft was presented in due course for collection; but, in the meantime, the First State Bank of

Hartshorne, which was the payee bank, had failed; and the check given by it in payment of the draft in question was dishonored on that account.

Prior to the passage of the act of 1921, amending the act creating the establishment of a State Banking Department, it was held that a bank receiving a draft for collection merely is the agent of the drawer or forwarding bank, and could only receive money in payment unless otherwise directed. *Darragh Company* v. *Goodman*, 124 Ark. 532, 187 S. W. 673.

Since the passage of the act of 1921 (General Acts of 1921, p. 514, § 14), the collecting bank is only liable for the default or negligence of its correspondent bank. *Farmers' & Merchants' Bank* v. *Ray,* 170 Ark. 293, 280 S. W. 984; and *Hicks Company, Ltd.,* v. *Federal Reserve Bank of St. Louis,* 174 Ark. 587, 296 S. W. 46.

In the latter case, it was expressly held that a correspondent bank, in forwarding checks sent to it for collection by the depository bank, was not negligent in accepting from the bank on which the checks were drawn drafts instead of money, where in so doing it followed the banking custom and was without notice of the drawee bank's insolvency.

In the case at bar, the undisputed evidence shows that there was no notice on the part of the plaintiff or any of its correspondents that the bank on which the check was drawn was insolvent. The proof also shows that the check was handled in the usual and customary way, and, besides that, the deposit slip given for the check when it was deposited for collection showed on its face that the collecting bank would charge it back to the depositor if it was dishonored.

It follows that the judgment of the circuit court was correct, and it will be affirmed.