Bills and Notes: Checks: Presentment for Payment: Reasonable Time

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parties. Price v. Jones, 105 Ind. 543, 55 Am. Rep. 230 (1885). It is not necessary that the consideration for the note be equal in pecuniary value to the obligation incurred; if no part of the consideration was wanting at the time, and no part of it subsequently failed, even though inadequate in amount, the note is a valid obligation. Earl v. Peck, 64 N.Y. 596 (1876). Failure of consideration implies something more than mere inadequacy. Failure of consideration may mean either total worthlessness to all parties or subsequent destruction, either partial or complete. See Cowell v. Cornell, 75 N.Y. 91, 31 Am. Rep. 428 (1878). Mere inadequacy of consideration would not be enough to defeat recovery. See Rust v. Fitzhugh, 132 Wis. 549, 112 N.W. 508 (1907). Some things are sufficient to support a promise on negotiable paper which are not sufficient consideration for other promises. 1 Williston, Contracts (1920) § 108. When a party gets all the consideration he has honestly contracted for, he cannot say that he gets no consideration, or that it has failed. If this doctrine be not correct, then it is not true that parties are at liberty to make their own contracts. Williamson v. Hintner, 79 Ind. 233 (1881). There are two apparent exceptions to the proposition that a court will not interfere with the parties' judgment: first, where the sole consideration is money and the amount is greatly disproportionate to the promise; second, where fraud in the procurement is shown. Wolford v. Powers, 85 Ind. 294, 44 Am. Rep. 16 (1882). Even then fraud and not inadequacy is the true and only cause for granting relief. Pomeroy, Equity (2nd Ed. 1882) § 927. It would seem therefore, that in cases of this kind where personal services are rendered, the courts will enforce the contracts regardless of seeming differences between the value of such services and the amount of the notes. It is to be expected that, where the maker is old and infirm the courts will scrutinize the facts of the transaction with care.

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BILLS AND NOTES—CHECKS—PRESENTMENT FOR PAYMENT—REASONABLE TIME.—The plaintiff sued to recover the price of goods sold on account. The defendant pleaded payment by check and failure by plaintiff to make presentation within a reasonable time. The check was drawn on a Kenosha bank and was sent to the payee at Chicago. The payee sent the check for clearance through its depository bank in Minneapolis, and that bank forwarded the check to the Federal Reserve Bank at Chicago, which in turn forwarded it to the drawee bank, where it arrived one day after the latter bank was closed. The plaintiff showed that some twenty previous checks of the defendant had been sent to its depository bank in the same manner. The lower court found that this check had been cleared within a reasonable time. On appeal, Held, judgment reversed and remanded; the route used by the payee in forwarding the check to the drawee bank resulted in an unnecessary delay of one day. The drawer was discharged from liability to the extent of the loss caused by the delay. Mars, Inc. v. Chubrilo, (Wis. 1934) 257 N.W. 157.

The general rule as provided in the Negotiable Instruments Law is that a check must be presented for payment within a reasonable time after it is issued. Wis. Stat. (1933) § 118.62. If it is not presented within a reasonable time, and the bank fails the drawer will be discharged from liability to the extent of the loss. This results from the nature of the instrument, which, though defined in the Negotiable Instruments Law as “a bill of exchange drawn on a bank payable on demand,” is intended for immediate payment and not for circulation.
Wis. Stat. (1933) § 118.61; Cf. Gifford v. Hardell, 88 Wis. 538, 60 N.W. 1064, 43 Am. St. Rep. 925 (1894). What is a reasonable or an unreasonable time depends on the nature of the instrument, the usage of trade or business, (if any) with respect to such instruments and the facts of the particular case. Wis. Stat. (1933) § 116.01.

Where the payee and the drawee bank are in the same community, in the absence of special circumstances, it is generally held that the payee has until the close of the next business day in which to present the check for payment. Nat. Plumbing and Heating Supply Co. v. Stephenson, 203 Ill. App. 49 (1918); Aebi v. Bank of Evansville, 124 Wis. 73, 102 N.W. 329, 109 Am. St. Rep. 925, 68 L.R.A. 964 (1905). The fact that the check was given on a legal holiday does not change the above rule. Missouri Pacific Ry. Co. v. H. M. Brown Coal Co., 226 Mo. App. 1038, 48 S.W. (2nd) 86 (1932). Where the check is post dated, it becomes an ordinary check on its date and payable on demand within a reasonable time after date. Philadelphia Life Ins. Co. v. Hayworth, 296 Fed. 339 (C.C.A. 4th, 1924); (1924) 24 Col. L. Rev. 919. Where the check is received after banking hours, that day is not counted since no deposit on presentment can be made after banking hours. Bistline v. Benting, 39 Idaho 534, 228 Pac. 309 (1924).

Where the payee and the drawee bank are not in the same community, and in the absence of special circumstances, the check must be forwarded for presentment on the next secular day after it has been received, and the agent to whom it is forwarded must present it for payment on the next secular day after receiving it. Gifford v. Hardell, supra. The payee is not required to forward the check by the first mail on the next day after receipt but it is sufficient if the check is forwarded by the last mail on the day after receipt. Lloyd v. Osborne, 92 Wis. 93, 65 N.W. 859 (1896). The fact that the bank on which a check is drawn is not a member of the local clearing house does not change the general rules of law as to the time within which a check must be presented in order to hold the drawer liable thereon. Lowell Cooperative Bank v. T. F. Sheridan Apt., (Mass. 1934) 188 N.E. 636. Forwarding a check by a circuitous route may, as a general rule, be said to constitute negligence, except where the check reaches its destination as soon as if sent directly to the bank. Northern Lumber Co. v. Clausen, 201 Iowa 701, 208 N.W. 72 (1926); Plower Savings Bank v. Moodie, 135 Iowa 685, 110 N.W. 29, 113 N.W. 476 (1907).

The instant case holds that the payee is not excused from presenting the check within a reasonable time where he sends a check on a circuitous route, although it has been the custom of business houses in the community where the payee does business to present checks through depository banks in different towns; nor can he be excused by showing that it has been accustomed to present the maker's checks through such a depository bank when the maker does not know of such presentation.

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BILLS AND NOTES—HOLDERS WITHOUT NOTICE.—The defendant company made and recorded a deed of trust to the trustee to secure the defendant's bonds given in return for a loan. The bonds, bearer instruments, stated on their face that they were secured by a deed of trust "to which * * * reference is hereby made with the same effect as though recited at length herein * * * for the purpose of affecting the rights of the holders of the bonds, and the terms and