Comment on Recent Decisions

BANKS AND BANKING; RELATIONSHIP BETWEEN DEPOSITOR AND SUBSEQUENT COLLECTING BANK.—Plaintiff indorsed a foreign check in blank, and deposited it in bank A. Amount was credited in pass-book which had notice that "all out-of-town items credited subject to final payment." Bank A indorsed to defendant who forwarded it to drawee, which debited drawer's account, and sent to defendant in payment its own check on bank B. Drawee and bank B fail. Question whether there is such relationship between plaintiff and defendant as to allow a cause of action. *Held,* that when commercial paper is indorsed without restriction by a bank depositor, and is at once passed to his credit by the bank to which he delivers it, he becomes the creditor of the bank; the bank becomes the owner of the paper, and in making the collection, does not become the agent of the depositor. The plaintiff could not maintain the action because it had surrendered all rights in the paper except those arising out of the contract with the first bank, and hence there was no relationship between the plaintiff and the defendant on which to predicate an action. The only effect of the notice in the pass-book that all out-of-town items are credited subject to final payment is that notice of dishonor to the depositor is dispensed with. *City of Douglas v. Federal Reserve Bank of Dallas,* (U. S., 1926,) 70 L. Ed., 620.

The authorities are by no means unanimous on this subject. This case was decided according to what is known as the "New York Rule," which is the antithesis of the so-called "Massachusetts Rule." The former holds the bank in the first instance a guarantor, and reasons that it is a sale to the bank. The depositor has no relationship with subsequent collecting banks. This rule has been adopted in federal practice. *Exchange National Bank v. Third National Bank,* 112 U. S., 276, 28 L. Ed., 722, which was followed in *Bolcomb v. Old National Bank,* 201 Fed., 680. See *National Reserve Bank v. National Bank of Republic,* 172 N. Y., 102, 64 N. E., 799. Some of the states which follow this rule are, Minnesota, Nebraska, Vermont, Wisconsin, Arkansas, Michigan, and Pennsylvania. See also 7 Corpus Juris, 606. While the United States Supreme Court considers the "New York Rule" the weight of authority, there are many states which follow the "Massachusetts Rule." This doctrine is that the initial bank is liable only for its failure to exercise due care and diligence in the selection of an agent to make the collection. The agent selected becomes the agent of the owner, who may maintain an action directly against it for the negligent performance of its undertaking. The depositor uses the bank's facilities for the collection in the usual course of business, the bank being the agent. *Warren v. Bank of Suffolk,* 10 Cush. (Mass.) 582. See *Federal Reserve Bank v. Malloy,* 68 L. Ed. 617, which follows the "Massachusetts Rule" because the case was decided in accordance with a Florida statute. A few of the jurisdictions following this rule are, Illinois, Missouri, and Tennessee. See also 7 Corpus Juris, 607.

This rule based on the doctrine of agency, which seems to be the more sensible, is adopted in Missouri in *Hoffman & Coppersmith v. Mechanics-American National Bank,* 211 Mo. App., 643 (see p. 653), which follows the earlier decision in *Daly v. Butchers etc. National Bank,* 56 Mo., 94. See also R. S. Mo. 1919, Sec. 979. See *Mudd v. Bank,* 175 Mo. App., 398, which holds that bank is merely agent when check is deposited for collection only, but that bank is liable when paper is credited. Also, *Landa v. Bank,* 118 Mo. App., 356, an earlier case, which holds that if bank receives a check for collection, it is not liable if it uses due care in selecting a correspondent, but that if a bank, for a consideration, agrees to collect a draft, it is liable. C. H. L. '28.