RECENT CASES

Bills and Notes—Checks—Circuitous Collection Route—[Wisconsin].—Defendant, maker, sent a check drawn on a Kenosha, Wis., bank to plaintiff, payee, in Chicago, Ill. Instead of depositing the check directly in a Chicago bank to be sent to the drawee, plaintiff sent the check by air mail to a bank in Minneapolis, Minn. The depository bank forwarded the check to the federal reserve bank at Chicago for presentation to the drawee. The check was not paid, since it was not presented until after the Comptroller of Currency had closed the drawee bank. If the deposit had been made directly in a Chicago bank, the check would have been paid. Defendant claimed the check was not presented within a reasonable time, and hence it was discharged. The plaintiff contended it was customary for Chicago business houses to clear checks through other cities to avoid the charges of the Chicago clearing house. The defendant did not know of this practice. *Held*, the check was not presented within a reasonable time. *Mars, Inc. v. Chubrilo*, 257 N.W. 157 (Wis. 1934).

If a check would have been paid by the drawee if presented within a reasonable time, failure to present within such time operates to discharge the maker to the extent of any loss resulting from the delay. Negotiable Instruments Law § 186; *Watt v. Gans*, 114 Ala. 264, 21 So. 1011 (1897); *National Plumbing and Heating Supply Co. v. Stevenson*, 213 Ill. App. 49 (1918); *Northern Lumber Co. v. Clausen*, 201 Iowa 701, 208 N.W. 72 (1926). The earlier cases attempted to establish fixed rules as to what constituted a reasonable time for presentment. *Holmes v. Roe*, 62 Mich. 199, 28 N.W. 864 (1886); *Gregg v. Beane*, 69 Vt. 22, 37 Atl. 248 (1896); Brady, Bank Checks (2d ed. 1926), § 87; 14 B.U.L. Rev. 388 (1934). But the inexpediency of a rigid rule to be applied inflexibly to many types of situations led to a realization that reasonable time should be dependent on the circumstances of each case, giving regard to business custom and usage. Negotiable Instruments Law, § 193; *A. J. Oosterbeek Motor Co. v. Joy*, 268 Ill. App. 278 (1932); *Peterson v. School District No. 14*, 162 Minn. 357, 203 N.W. 46 (1925); *Coolidge v. Rueth*, 209 Wis. 458, 245 N.W. 186 (1932); 1 Univ. Chi. L. Rev. 491 (1934). See *Seaver v. Lincoln*, 21 Pick. (Mass.) 267 (1838). Consequently, the rigid rule that a maker whose check is sent over a circuitous route will be discharged, has been relaxed when transmission of the check by a roundabout route is consistent with established business custom and proper banking methods. *Citizens' State Bank v. First National Bank*, 135 Iowa 605, 113 N.W. 481 (1907); *Maronde v. Vollenweider*, 220 Mo. App. 67, 279 S.W. 774 (1920).

The effect of custom in commercial law is to be distinguished from the effect of custom in other fields of law. Generally, custom is subordinate to established law and its use limited by the test of reasonableness. *Maynard v. Buck*, 100 Mass. 40 (1868). Parallel to the development of the law merchant as a system independent of the common law, the generally accepted customs of business are not to be judged by the ordinary standards of the common law; instead, the law follows business custom. *Howard v. Walker*, 92 Tenn. 452, 21 S.W. 897 (1893); *Goodwin v. Robarts*, L.R. 10 Exch. 337 (1875), 1 A.C. 476 (1876); Bigelow, Bills, Notes, and Checks (Lile's ed. 1928), § 32.

A distinction has been drawn between general custom, custom so widespread as to be judicially noted, and usage, custom limited to a class or locality. *Hicks Co. v. Federal Reserve Bank*, 174 Ark. 587, 296 S.W. 46 (1927); *Anglo-Hellenic S.S. Co. v. Dreyfous & Co.*, 108 L.T. 36 (1913); Salt, the Local Ambit of Custom, Cambridge Legal Essays (1926), 279. A general custom binds even those who are unaware of it. *Howard v. Walker*, 92 Tenn. 452, 21 S.W. 897 (1893); *Spokane Valley State Bank v. Lutes*, 133 Wash. 66, 233 Pac. 308 (1925). But unless the existence of a usage is brought to the attention of the parties they are not bound by it. *Federal Reserve Bank v. Malloy*, 264 U.S. 160 (1924); *American Savings Bank and Trust Co. v. Dennis*, 90 Wash. 547, 156 Pac. 550 (1916). What is custom and what merely usage is often a difficult question leading to a difference of opinion. *Lowell Co-Op Bank v. Sheridan*, 284 Mass. 594, 188 N.E. 636 (1934); *cf. Johannsen v. Evans*, 271 Ill. App. 372 (1933). In the instant case a fair interpretation indicates that the practice was limited to a particular locality. Insofar as it was a local custom and the maker had no knowledge of it, the court properly held that the statutory requirement of presentation within a reasonable time was not affected by the presence of custom. Since the payee secured the advantage of lower clearing charges, it does not seem unfair to place on him the risks incident to roundabout collection methods. See 31 Yale L. J. 189 (1921).

Constitutional Law—Billboard Regulation—Exercise of Police Power for Aesthetic Purposes.—[Massachusetts].—The Department of Public Works of Massachusetts was empowered by constitutional amendment and statute to "regulate and restrict" the use of billboards. Mass. Const. Amend. art. 50; Mass. Gen. Laws (1921), c. 93, § 29–33. The regulations prohibited billboards within certain distances of streets or highways, within three hundred feet of any park and wherever the commissioners believed they would mar scenic beauty. Plaintiffs, billboard owners, contended that these regulations deprived them of the use of their property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States. *Held*, that the regulation was a valid exercise of the state police power. The highway regulations were justified on the traditional ground that billboards create a driving hazard by attracting the attention of passing motorists, and are a nuisance since they force unwelcome advertising messages before the eyes of travellers. The "park" and "scenic beauty" regulations, however, were sustained on the ground that aesthetic considerations alone will justify an exercise of the police power. *General Outdoor Advertising Co. v. Department of Public Works*, 193 N.E. 799 (Mass. 1935).

The case marks the climax of a trend toward police power regulation for aesthetic ends, the court suggesting a new theory to justify such legislation. It should be noted, however, that, because of the amendment to the Massachusetts Constitution, the due process clause of the federal Constitution only was involved. This fact may have influenced the court to be more liberal than if the billboard legislation in question had been attacked as violating both state and federal due process clauses. The right to own and use property, protected by the Fourteenth Amendment of the federal Constitution, can be denied or restricted by a state only when the interference is justified as a valid exercise of police power. Freund, Police Power (1904), 3. The orthodox rule is that the police power of a state is limited to legislation affecting the public health, safety, morals and general welfare. *Cusack Co. v. City of Chicago*, 242 U.S. 526 (1916)