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Castoria is a harmless substitute for Castor Oil, Paregoric, Drops and Soothing Syrups. It is pleasant. It contains neither Opium, Morphine nor other Narcotic substance. Its age is its guarantee. It destroys Worms and allays Feverishness. For more than thirty years it has been in constant use for the relief of Constipation, Flatulency, Wind Colic, all Teething Troubles and Diarrhoea. It regulates the Stomach and Bowels, assimilates the Food, giving healthy and natural sleep. The Children's Panacea—The Mother's Friend.

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Effects a soothing cure for the nervous ills of life.

Makes life more pleasant and cheers the heavy heart.

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Endows existence with hopes and aspirations.

Restores man to fulness of strength and activity.

OREGON SUPREME COURT DECISIONS

Full Text Published by Courtesy of E. A. Turner, Reporter of the Supreme Court.

United States National Bank of Vale, v. First Trust and Savings Bank, Malheur County.

Decided, December 5, 1911.

United States National Bank of Vale, Oregon, a corporation, respondent, v. First Trust and Savings Bank of Brogan, Oregon, a corporation, appellant. Appeal from the circuit court for Malheur county. The Hon. Dalton Biggs, Judge. Argued and submitted at Pendleton, Nov. 2, 1911. J. W. McCulloch, (H. C. Eastman, McCulloch, Solis & Duncan on brief) for respondent. G. W. Hayes, (Hayes & Crandall, on brief) for appellant. Bean, J. Reversed and remanded.

This is an appeal by defendant, from a judgment upon the verdict of a jury, for \$280.47.

This action is based upon two inland bills of exchange for \$120.47 and \$160 respectively, upon which the plaintiff charges defendant as an acceptor; the first with the alleged acceptance, being in the following form:

"Brogan, Or., Nov. 22, 1910. No.—First Trust & Savings Bank "Pay to the order of U. S. National Bank, (\$120.47). One Hundred and Twenty 47-100 Dollars.

"Morrison & Son. "O. K. by Tschirgi, Cashier. "11-22-10."

The second bill is in the same form except as to amount and name of payee.

The complaint alleges the corporate existence of the plaintiff and defendant; the execution of the bills and the delivery thereof to plaintiff; the presentment of the bills to defendant and its due acceptance of the same in writing, upon the face thereof, as follows: "O. K. Tschirgi, cashier." At said time E. S. Tschirgi was cashier of the First Trust and Savings Bank, of Brogan, Oregon. Plaintiff, relying upon said bills and their acceptance by defendant, then and there paid to the drawer, Morrison & Son, the amount of the bills. November 29, 1910, plaintiff presented the bills to defendant for payment which was refused. Two causes of action are separately stated in substance as above. As to the alleged acceptance as it appears upon the face of the bills in evidence, it is noticed that the word "by" is omitted in the complaint.

Defendant by its answer denies the acceptance of the bills, or that they were presented for acceptance, and admits that defendant refused to pay the same, and avers that Morrison & Son, at the time had no funds deposited with defendant with which to pay them.

The reply puts in issue the new matter of the answer, and avers that at the time of the transaction, defendant held certain assignments of accounts, and expected to get returns from certain consignments if allfalls seed belonging to Morrison & Son.

Bean, J. It appears from the evidence which is all contained in the record, that Mr. J. P. Dunaway, at the time the transaction occurred, was the vice president and acting cashier of the plaintiff bank, at Vale, Oregon; and Mr. E. L. Tschirgi was the cashier of the defendant bank at Brogan, Oregon. At the date mentioned on the bills, W. J. Morrison of the firm of Morrison & Son, gave the plaintiff the two bills in payment of a note, and for \$160 in cash.

Mr. J. P. Dunaway testified that he called Mr. Tschirgi up over the telephone, a few minutes after he had taken the bills or checks of Morrison & Son, and told him that Mr. Morrison had stated that he had arranged with Mr. Tschirgi to take care of his checks, and he wanted to know if he would do so if the checks were presented. Mr. Tschirgi answered "that they would not," that Mr. Morrison was looking for a remittance from Welsor, and if the same were received, he would take care of the checks, but unless the money came he could not accept them.

After Mr. Dunaway phoned to the Commission Co. in regard to the remittance, and reported to Mr. Tschirgi that he was informed that the remittance had been mailed; and after Mr. Morrison talked over the phone to Mr. Tschirgi, Mr. Dunaway said to the latter, "I'll mark the checks O. K. by you and send them to Boise for clearance," and Mr. Tschirgi

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the liability of the defendant, independent of the acceptance of the checks. There was much evidence introduced as to the condition of Morrison & Son's account at the Bank of Brogan; and the opportunity of the defendant bank to obtain funds from the sale of seed and hay whereby it would be recompensed for the payment of Morrison & Son's checks, which were presented for payment November 29, 1910; and as to the arrangement claimed to have been made by Morrison & Son with the Bank of Brogan to honor the checks. At the close of the evidence, counsel for defendant requested the court to instruct the jury to return a verdict in favor of defendant.

Section 6018, L. O. L., provides that "A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions of this act applicable to a bill of exchange payable on demand apply to a check."

The legislative enactment now in force in this state, provides that a check or bill does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder unless and until it accepts or certifies to the check; Sec. 6022, L. O. L. And Sec. 5960, L. O. L., makes a like provision in regard to a bill of exchange. This renders the testimony referred to immaterial. In the absence of an acceptance or certification of the checks involved, the defendant bank was not liable. This is now the law in those states that have adopted the negotiable instruments law; (Selover on Neg. Inst. Law, Sec. 93) and in our opinion is decisive of this feature of the case. However, the complaint alleges the acceptance of the checks by defendant as the basis of this action, and the plaintiff must proceed upon theory until the end, and recover, if at all, upon this asserted right of recovery; Mescal v. Tully, 91 Ind. 96; The Toledo, St. Louis & Kansas City Ry. Co. v. Levy, 127 Ind. 168; Whitten v. Bryant, Or. (Decided Nov. 21, 1911).

After a careful consideration of all the matters submitted in this case we are of the opinion that there was no evidence produced to sustain the allegations of the complaint or to be submitted to the jury, and that the circuit court erred in not instructing the jury to return a verdict for defendant.

Therefore the judgment of the lower court is reversed, and the cause will be remanded with directions to enter a judgment of the same force as upon a verdict, in favor of defendant, in accordance with this opinion.

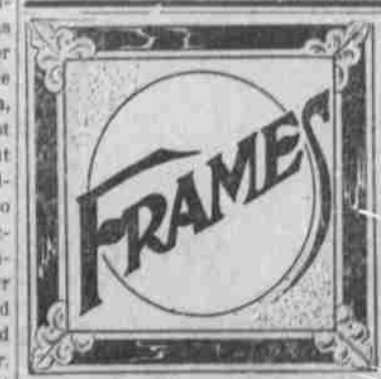
Notice of Sale of Personal Property. Notice is hereby given that on Monday, December 18th, 1911, at the hour of 10 o'clock a. m., on said date, the store premises in the building adjoining the Peoples Bank, on Main street, city of Silverton, county of Marion and state of Oregon, the undersigned, being duly authorized thereunto, will sell at public auction, to the highest bidder for cash in hand all the goods and chattels contained in said premises and covered by the mortgage hereinafter described: the same consisting of "One front bar, one back bar, one cash Register No. 183106, one safe, enumerated slot machines, one billiard and one pool table, four tables, 20 chairs, one desk and all glass and wood partitions, glassware and other chattels, grip machine No. 265, striking machine No. 6430, strength machine No. 5109, draw poker machine No. TG 20, nickel machine No. 376, nickel machine No. 1210, quarter machine No. 1001."

Said sale is to be made for the foreclosure, and pursuant to the provisions of a certain chattel mortgage executed by Ambrose Brooks to Mrs. Louise Weinhard, Mrs. Anna Weisinger, Paul Weisinger, and Henry Wagner, executrices and executors of the estate of Henry Weinhard, deceased, dated the 25th day of September, 1907, and recorded at page 516 in book 11, of the mortgage records of said Marion county, Oregon, to secure the payment of a certain promissory in said instrument described for the sum of \$1700 in gold coin of the United States of America, payable on demand, with interest thereon at six per cent per annum, on which note \$675 has been paid account principal, leaving a balance of \$1025 and interest from date of said note; default having been made in the payment of the said note, though duly demanded.

Dated and first published the 11th day of December, 1911.

ANTON KIRSCHNER. F-Feetashduetaohrdl tao uuu 13-9-76-4ly

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| Ar. Bay City | 2:04 P. M. |
| Ar. Tillamook | 2:25 P. M. |
| Lv. Tillamook | 7:55 A. M. |
| Lv. Bay City | 8:15 A. M. |
| Lv. Beach Points | 9:00 A. M. |
| Ar. Hillsboro | 1:25 P. M. |
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