Validity and Time of Presentment through the Clearing House

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The purpose of this article is to examine and discuss the decisions relating to the validity of presenting checks for payment through the clearing house and the decisions relating to the time of presentment of checks where presentment is made through the clearing house.

An extended description of the operation of the city clearing house is not necessary to an understanding of the legal problems presented. It is sufficient to recall that in a city which has a clearing house, each bank takes its checks to the clearing house, where all checks drawn on a given bank are delivered to its clerk or messenger, who takes them to the drawee bank, where they are examined and debited against the drawer's account, or returned if not good. Temporary credits and debits are entered at the clearing house, but may be revoked under certain conditions with which we are not here concerned. If not so revoked, they become final.

Validity of Presentment at or through the Clearing House

The Negotiable Instruments Law requires that the instrument be presented for payment in order to charge the drawer and indorsers, and that the presentment be made at a proper place as therein defined. By Section 73 (2), presentment for payment is made at a proper place:

1 For such a description, see Andrews, The Operation of the City Clearing House, 51 Yale L. J. 582 (1942).
2 See Andrews, supra note 1, at 590.
3 Negotiable Instruments Law §§70, 72 (3). Section 185 makes these and the other sections cited infra applicable to checks.
Where no place of payment is specified, but the address of the person to make payment is given in the instrument and it is there presented.4

Interpreted literally, this authorizes presentment at the office of the bank if the address appears upon the check, but does not tell the holder what to do with a check which omits the address. Happily, the void is filled by the next subsection, providing that presentment for payment is made at the proper place:

(3) Where no place of payment is specified and no address is given and the instrument is presented at the usual place of business . . . of the person to make payment.5

Nothing in the quoted sections designates the clearing house as a proper place for presentment. However, as explained above, the drawee bank's delivery clerk brings the packages of checks from the clearing house to his bank, where the checks are examined and either honored or returned dishonored. Thus, under the ordinary procedure, the check actually reaches the office of the drawee bank, and if the delivery of the checks by the delivery clerk to the proper employee at the bank constitutes a presentment for payment, the Negotiable Instruments Law is satisfied. From a common sense viewpoint the routine referred to should be regarded as a presentment for payment. The purpose of requiring such presentment is to find out whether or not the drawee is willing to pay the check. This is accomplished as well through the medium of the clearing house as by direct presentment at the drawee's counter.

The situation is analogous to that involved in an early New York case, decided before the establishment of the clearing house. Pursuant to the custom then existing in New York, the drawee bank's porter called upon the plaintiff bank and received from it the checks held against the drawee. The porter took the checks to the drawee bank's office, where the check in litigation was dishonored and sent back to the plaintiff bank. In a suit by the latter against an indorser, the court decided that there had been a valid presentment. Considering the drawee bank's porter as plaintiff's agent for the purpose of presenting the check, the court held that the procedure was as effectual as a direct presentment by one of the plaintiff's officials.6

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4 Section 191 defines "person" as including a body of persons, whether incorporated or not.

5 It should be noted in passing that by the first subsection of § 73 presentment is made at the proper place, "Where a place of payment is specified in the instrument and it is there presented."

6 Merchants' Bank v. Spicer, 6 Wend. 443 (N.Y. 1831).
No less effectual is a presentment through the clearing house, and the courts have upheld such a method. As remarked in the Columbia-Knickerbocker Trust Company case, the clearing house routine obviates the necessity of having someone stand at the counter of the drawee bank to receive payment, and answers the same purpose. Since the check actually reaches the drawee bank's office and is handed to the employee whose duty it is to honor or dishonor it, Section 73 of the Negotiable Instruments Law is satisfied.

Section 6 of the Bank Collection Code stipulates that it shall be deemed the exercise of ordinary care to present a check for payment through the clearing house. However, this code concerns the legal relationship between the depositor and the collecting bank, and its application would not extend to a suit against the drawer or an indorser other than the depositor.

The Columbia-Knickerbocker Trust Company case placed some emphasis upon the fact that the presentment took place through, rather than at, the clearing house; and, as previously noted, in the ordinary clearing house routine the check reaches the drawee bank's office. But suppose the presentment is looked upon as occurring at the clearing house. May it be successfully contended that this satisfies the law?

It has already been maintained that the chief reason for presenting an instrument for payment is to find out whether the instrument is to be honored or dishonored. If a factual situation arises wherein the drawee's clearing house clerk has final authority to pass upon this question at the clearing house, it is desirable that

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7 Columbia-Knickerbocker Trust Co. v. Miller, 215 N.Y. 191, 109 N.E. 179 (1915); Turner v. Bank of Fox Lake, 3 Keyes 425 (N.Y. 1867); Harris v. Packer, 3 Tyr. 370 n. (Lent Assizes, 1833); accord, Commercial and Farmers' National Bank of Baltimore v. First National Bank of Baltimore, 30 Md. 11 (1869) (presenting check through clearing house not negligence; consequently, no recovery from holder by drawee on forged check). The principle is tacitly recognized in many of the cases cited in the next section of this paper, dealing with the time of presentment for payment.

8 Supra note 7.

9 The custom of presentment through the clearing house does not invalidate a presentment at the drawee's office. Kleekamp v. Meyer, 5 Mo. App. 444 (1878).

10 The Bank Collection Code was drafted by counsel for the American Bankers Association and has been adopted in a number of states. For a list of the states see Leary, Deferred Posting and Delayed Returns, 62 HARv. L. REV. 905, 919 n. 23 (1949).

An analogous situation existed in \textit{Geibe v. Chicago Lake State Bank}, an unusual case decided by the Minnesota Supreme Court.\footnote{160 Minn. 89, 199 N.W. 514 (1924), 9 MINN. L. REV. 67 (1924).} The drawer of a check sued the drawee for damages for loss of credit resulting from the dishonor of the check. The drawee claimed that the check had never been presented to it for payment, and therefore could not have been dishonored. The drawee did not belong to the local clearing house, but cleared through the \textit{X} bank as its clearing agent. The bank holding the check presented it to the \textit{X} bank at the clearing house. The facts do not show whether the check reached the office of the \textit{X} bank. At any rate, it never reached the drawee bank, for, due to the state of the drawee bank's account with the \textit{X} bank, the latter dishonored the check. The court held the presentment to the clearing agent sufficient, and the drawer recovered despite the fact that the drawee would have paid the check had presentment been made to it directly.

May we not argue from this decision that if a check is presented at the clearing house to an agent of the drawee, clothed with the power to honor or dishonor the check, the presentment is sufficient? Of course, one obstacle to the use of the \textit{Geibe} case to sustain the above argument arises from the fact that the \textit{drawee} was the party setting up the lack of presentment. Since the drawee, by appointing the \textit{X} bank its clearing agent, consented to a presentment to the \textit{X} bank, its position differed from that of a drawer or indorser sued by the holder. In the latter instance, the drawer, presumably ignorant of the relationship between the drawee and the \textit{X} bank, may scarcely be said to have consented to such a presentment unless considered as impliedly consenting to the whole of the clearing house procedure, including the regulations for clearing by nonmembers.\footnote{The effect of clearing house rules on nonmembers will be covered in a}
Admitting the desirability of upholding a presentment at the clearing house if the drawee's agent has authority to honor or dishonor the check, there remains the question of whether or not the Negotiable Instruments Law permits such a presentment. Adverting to the second and third subdivisions of Section 73, it requires quite a stretch of the imagination to hold that presentment at the clearing house constitutes presentment at either "the address of the person to make payment" or "the usual place of business . . . of the person to make payment," although one might argue, with some degree of logic, that "the usual place of business" for the purpose of honoring or dishonoring checks includes the place at which a duly authorized agent is stationed for that purpose.

The fourth subdivision of Section 73 offers a stronger possibility for reaching the desired end. It reads:

[Presentment for payment is made at the proper place:]
In any other case if presented to the person to make pay-ment wherever he can be found . . .

In a proper case a court might well hold that the bank was "found" at the clearing house in the person of the authorized agent.\textsuperscript{14} Interesting as speculation upon the validity of presentment for payment at the clearing house may be, the matter is ordinarily of academic interest only, for, as has been indicated, clearing house procedure in the United States does not contemplate anything more at the clearing house than the exchange of items and calculation of balances. The honoring or dishonoring of the items takes place at the office of the drawee bank.

\textit{Time of Presentment}

Section 186 of the Negotiable Instruments Law reads as follows:

A check must be presented for payment within a reason-able time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay.

Section 193 provides that in the determination of what is a subsequent article. In the presentment cases the courts for the most part do not consider the question of express or implied consent by nonmembers to clearing house procedure but base their decisions solely upon the Negotiable Instruments Law requirements with reference to method and time of pre-sentment.\textsuperscript{14} Might Negotiable Instruments Law § 196 be invoked to help solve the problem?
reasonable or an unreasonable time, "regard is to be had to 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."

The typical situation involving the above sections occurs when the drawee bank fails, as a consequence of which the check is dishonored. If the presentment took place within a "reasonable time", the payee's position against the drawer is secure; otherwise the payee (or other holder) must suffer the loss.\(^{15}\)

In view of the drastic effect of a failure to present the check within a reasonable time, it is important to determine what constitutes a reasonable time. If the payee and drawee are in the same city, it is generally held that the check must be presented before the close of banking hours on the next business day after its issue, and this is true both at common law and under the Negotiable Instruments Law.\(^{16}\)

With the wisdom of this "one-day rule" we are not concerned. The problem of present interest involves the relaxation of the rule to conform to customary methods of check collection in clearing house cities. It is not usual for the payee to present his checks directly to the drawee bank. Instead, he deposits them in his own bank. This he may do in person or through the mails. The bank of deposit, in turn, does not make direct presentment either. It sends the checks to the clearing house, where they are delivered to the drawee's clerk, and by him taken to the drawee. The complete routine usually consumes more than a day. Thus, for example, a check might be received by the payee on Monday, deposited in his bank on Tuesday, and cleared on Wednesday, resulting in a technical violation of the "one-day rule". Yet it is unreasonable to expect the payee or the bank of deposit to make

\(^{15}\) Of course, the suit may be against an indorser rather than the drawer. In that case § 71 of the Negotiable Instruments Law applies, plus § 185, making the provisions relating to bills of exchange applicable to checks. As against the indorser, failure to present within a reasonable time operates as an absolute discharge, regardless of the question of loss. Negotiable Instruments Law § 70; Beutel's Brannan, Negotiable Instruments Law 996, 1292 (7th ed. 1948); Bigelow, Bills, Notes, and Checks § 226 (3rd ed. 1928). The question of the burden of showing loss, presumptions, etc., is beyond the scope of this paper. See Beutel's Brannan, Negotiable Instruments Law 1293 (7th ed. 1948).

\(^{16}\) Beutel's Brannan, op. cit. supra note 15, at 1296; Bigelow, op. cit. supra note 15, at 159, 266; 5 U.L.A. (pt. 2) 662 (1943); 20 Banking L. J. 13 (1903); 8 U. of Cin. L. Rev. 204 (1934). It is obviously impracticable to treat this matter fully. We are dealing with only one phase of it; i.e., clearing house presentment.
direct presentation on Tuesday; in fact, such a requirement would entirely upset the beneficial clearing procedure and would necessitate a return to the evils of the pre-clearing house era.\textsuperscript{17} Of course, the delay might be averted if the payee received the check at an early enough hour on Monday to enable him to deposit it on the same day, for it could then be cleared on Tuesday. But he might receive the check at such a time or under such circumstances that it would be an unjustified inconvenience to require him to deposit it on the same day. Furthermore, such a requirement fails to take account of the rather prevalent custom of depositing by mail.

There is no reason for courts to refuse recognition of the customary procedure. In fact, Section 193 enjoins upon them the duty to recognize it. And this section, together with Section 186, has been regarded as merely expressing the common law.\textsuperscript{18} Hence, both before and after the adoption of the Negotiable Instruments Law, courts should have made an exception to the "one-day rule" if necessary to conform to local business usage.

In most of the decided cases the payee received the check after banking hours. This obviously strengthens the payee's case, although even in such a situation a confirmed "one-day rule" court might refuse to budge. However, a majority of the states which have decided the question have held that if the payee receives the check after banking hours and it is presented through the clearing house two days later, the presentment is made within a reasonable time.\textsuperscript{19}

In creating this exception, some courts have salved their judicial

\textsuperscript{17} See Andrews, \textit{supra} note 1, at 582, 584, 603.

\textsuperscript{18} Maryland Title Guarantee Co. v. Alter, 167 Md. 244, 173 Atl. 200 (1934); Farm and Home Savings and Loan Association v. Stubbs, 231 Mo. App. 87, 98 S.W. 2d 320 (1936); Rosenbaum and Mendel v. Thomas, 8 Tenn. App. 89 (1928).

\textsuperscript{19} (Unless otherwise noted, the Negotiable Instruments Law was in force.) Federal Land Bank of St. Louis v. Goodman, 173 Ark. 489, 292 S.W. 659 (1927); Clarke v. Davis, 48 Idaho 214, 281 Pac. 3 (1929); Bistline v. Benting, 39 Idaho 534, 228 Pac. 309 (1924); Oosterbeck Motor Co. v. Joy, 268 Ill. App. 278 (1932) (cashier's check); Marrett v. Brackett, 60 Me. 524 (1872) (common law); Maryland Title Guarantee Co. v. Alter, 167 Md. 244, 173 Atl. 200 (1934); Zaloom v. Ganim, 72 Misc. 36, 129 N.Y. Supp. 85 (Sup. Ct. 1911), aff'd mem., 148 App. Div. 892, 132 N.Y. Supp. 1151 (1st Dep't 1911); Loux and Son v. Fox, 171 Pa. 68, 35 Atl. 190 (1895) (common law); Rosenbaum and Mendel v. Thomas, 8 Tenn. App. 89 (1928) (treated as received after banking hours, although payee's agent actually received it a few minutes before close, but did not reach payee's office until after). See 3 \textit{M. L. Rev.} 87 (1938).

A greater degree of diligence is required on the part of a collecting bank taking a check in payment. Bank of Commerce v. Miller, 105 Ill. App. 224
consciences by the rather dubious argument that a check received on Monday after banking hours is really not received until Tuesday, from which it follows that presentment on Wednesday satisfies the rule. But most of the courts decide the question upon the basis of business custom, noting the inconvenience and impracticability of a strict adherence to the "one-day rule".

Section 193 would appear to require the result reached by the majority of the courts. The provision discharging drawers and indorsers for the holder's failure to present on time was not intended to require payees or their employees to spend the day running back and forth between office and bank.

As might be expected, some courts have not taken the progressive point of view, and have adhered to the old landmarks.

The most charitable criticism of these cases is to point out that, for the most part, they were decided at comparatively early dates. Yet certain arguments propounded in them merit attention, if only for the purpose of refutation.

Thus, in Rosenblatt v. Haberman, the court, in a sort of retributive mood, took the position that if the payee wishes to present his checks through the banking system instead of directly, he should jolly well be willing to take the consequences. Similarly, in Edmisten v. Herpolsheimer, the court used the equally flimsy

Knowledge of the drawee bank's unstable condition accelerates the time for presentment. Holbrook v. W. L. Moody & Co., 45 S.W. 2d 685 (Tex. Civ. App. 1931). There are many decisions on this point, which is beyond the scope of this paper.

In general, the courts appear to take judicial notice of the custom. E.g., Maryland Title Guarantee Co. v. Alter, 167 Md. 244, 173 Atl. 200 (1934). For an early common law case in which the custom was proved, see Marrett v. Brackett, 60 Me. 524 (1872).

It might be argued that the payee should send his Monday checks to the bank early enough on Tuesday for the Tuesday clearings; but this is often impracticable, if not impossible, and the courts following the majority view do not require it.


Supra note 23.
ground that a lack of diligence cannot be excused by a showing that it is customary. Both these arguments beg the question, for, as already indicated, custom plays a vital role in the determination of diligence.

The *Edmisten* case stressed also the fact that the drawee bank was located within two blocks of the payee's place of business. If it is customary to send checks to one's bank of deposit rather than to present them directly, the distance element should cut no figure. In an already complex world, it would be ludicrous to force each payee or his attorney to decide whether the distance to the drawee bank is sufficient to relieve the payee from direct presentment.

A criticism of the *Edmisten* case is worth quoting. Writes the critic:

>This decision of the Supreme Court of Nebraska gives a sort of judicial black-eye to clearing houses. It savors of the day of the stage coach and the bank runner when the volume of business was infinitesimal as compared with that of the present day; as if some Rip Van Winkle judge had awakened from a long sleep to preside over a modern business transaction and, not long enough awake to comprehend the growth and needs of business communities of the present day, had applied rules suited to conditions which existed fifty years back.

The drawer and indorsers have no right to expect any higher degree of diligence than that attained by a compliance with the regular and ordinary course of business. Reasonableness is a

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26 A similar argument was advanced by the court in Dorchester v. Merchants National Bank of Houston, 106 Tex. 201, 163 S.W. 5 (1914), *supra* note 23. The *Edmisten* case placed reliance upon Holmes v. Roe, 62 Mich. 199, 28 N.W. 864 (1886), and First National Bank of Wymore v. Miller, 37 Neb. 500, 55 N.W. 1064 (1893), neither of which is in point.

27 In Federal Land Bank of St. Louis v. Goodman, 173 Ark. 489, 292 S.W. 659 (1927), the fact that the distance between the payee's office and the drawee bank was but forty feet did not prevent the court from holding the presentment timely.

28 As a practical matter, the suggested difficulty would seldom occur to the payee, for comparatively few people have the slightest acquaintance with the rules of diligent presentment. It is only when the drawee bank fails that incredulous payees are brought face to face with these exacting mandates.

*Query:* Should the law take cognizance of the custom, if any, among non-business people to wait more than a day before depositing their checks?

29 20 Banking L. J. 13, 18 (1903).

Janus-faced creature, whose countenance should shine upon payee and drawer alike.\textsuperscript{31}

Admittedly a check received before the bank’s closing hour presents a more difficult problem than one received after. Suppose, for example, that the payee receives the check at 9 a.m. Monday, but waits until Tuesday to take it to his bank. Suppose further, either that checks received on Tuesday are not cleared until Wednesday, or that, if cleared on Tuesday, the payee does not deposit his check early enough for the Tuesday clearing. Or, as an alternative, suppose the payee deposits his checks by mail, as a consequence of which they do not reach the bank in time for Tuesday’s exchanges at the clearing house.

Although a court may readily take judicial notice of the custom to deposit one’s checks in one’s own bank rather than to present them directly to the drawee, it is not quite so easy to “judicially know” that payees receiving checks on Monday morning do not deposit them until Tuesday. On the other hand, the custom of depositing by mail seems sufficiently general in some communities to come within the protection of judicial notice; and if a deposit by hand is made on Tuesday about the time when the Monday mail arrives, a court would look rather foolish in holding the depositor delinquent in the one case and diligent in the other.

Even in the mail deposit situation, complicating factors may be present. Suppose that the payee receives the check at 9 a.m. Monday, and that if he mails his deposits before noon, they will reach the bank on Monday afternoon, whereas if he fails to mail them until afternoon, they will not arrive until Tuesday. Assuming that he does not mail them until afternoon, and conceding that a court should take judicial notice of the custom of depositing by mail, should it take the further step of “judicially knowing” that business people usually do not mail their checks to the bank on the morning of their receipt? The possible complexities arising from this and other similar situations are apparent.

Of course, if the payee is able to prove the asserted custom, he should have nothing to worry about, but the problem of proving it presents serious difficulties. To prove that many people deposit by mail is one thing; to prove that they wait until the afternoon mail is a horse of a different color.

There are few cases deciding whether a check received before the close of banking hours is presented within a reasonable time

\footnotesize{\textsuperscript{31} Or upon payee and indorser alike, in a suit between them.}
if deposited the next day and cleared the day after deposit. In an Arkansas case the payee received the check slightly more than two hours before the bank's closing time, yet failed to deposit it until 10 a.m. the next day—too late for the day's clearing.32 Despite this delay the court held the presentment timely. Unfortunately, however, the court failed to direct its attention to the problems incident to the time of receipt and time of deposit; and, even more unfortunately, it reached its decision on the strength of the cases involving checks received after banking hours. The evidence indicated a custom of depositing checks in the payee's own bank, rather than presenting them directly to the drawee, but did not go further except to reveal the custom of presentment through the clearing house. In other words, the evidence did not show that a payee, receiving a check more than two hours before the bank closed, customarily waited until after the next day's clearing before depositing it.

Somewhat less disappointing is a Michigan case reaching a like result.33 The check was received by the payee between 1 p.m. and 3 p.m., in time to have been deposited on the same day. Instead, the payee deposited it the following day, apparently too late for the clearing. There was testimony that the depositing of checks on the morning after their receipt, and their presentment the succeeding day through the clearing house, accorded with the regular custom of business. In upholding the reasonableness of the time of presentment, the court, fully aware that the payee could have deposited the check on the day of its receipt, took the very sensible position that to require a greater degree of promptness than that exercised by the payee would be a bar to the reasonable and practical use of checks in commercial transactions.

As so often happens, however, there is a hitch in the Michigan case as an authority, for the Bank Collection Code had been adopted by the Michigan legislature, and influenced the court to some extent.34 Section 6 (B) of the Code provides that the bank of deposit exercises ordinary care by presenting an item through the local clearing house on the next business day after receiving it. The court reasoned that the payee should not be required to act

34 The effect of the Bank Collection Code upon the problem under discussion will be further considered infra.
more promptly in depositing the check than the bank in clearing it. Whether the decision would have been the same without the aid of the Bank Collection Code cannot be stated with certainty, although the language of the opinion leads to the belief that the absence of the Code would not have led to a contrary holding.

Opposed to the Arkansas and Michigan cases is a decision rendered by a Missouri appellate court.\textsuperscript{5} In view of the fact that an earlier Missouri case\textsuperscript{6} had held the presentment too late even when the payee received the check \textit{after} banking hours, the decision is not surprising. Nevertheless the result is especially regrettable because the delivery of the check to the payee occurred only a short time before the bank's closing hour. Under such circumstances he should not be compelled to put everything else aside and rush to the bank.

Even more significant than the Missouri case is the decision of the Supreme Court of Pennsylvania in \textit{Wendkos v. Scranton Life Ins. Co.},\textsuperscript{37} adhering strictly to the "one-day rule" where the check was received on Monday \textit{morning}. The particular significance arises from the fact that in \textit{Loux and Son v. Fox},\textsuperscript{38} Pennsylvania had held to the contrary where the check was received \textit{after} banking hours. Of the \textit{Loux} case the court in the \textit{Wendkos} case said:

\begin{quote}
That case simply held that the day of receipt is not to be counted when the check was received after banking hours.\textsuperscript{39}
\end{quote}

Thus, the \textit{Wendkos} court held that presentment for payment came too late although the payee deposited his check on Tuesday, and it was presented through customary banking channels on Wednesday.\textsuperscript{40}

The Arkansas and Michigan decisions reach a result more consonant with common sense. And "common sense" and "reasonableness" are akin.

\textsuperscript{5} Farm and Home Savings and Loan Association v. Stubbs, 231 Mo. App. 87, 98 S.W. 2d 320 (1936), 2 Mo. L. Rev. 216 (1937).

\textsuperscript{6} Rosenblatt v. Haberman, 8 Mo App. 486 (1880), cited \textit{supra} note 23.

\textsuperscript{37} 340 Pa. 550, 17 A. 2d 895 (1941).

\textsuperscript{38} 171 Pa. 68, 33 Atl. 190 (1895), cited \textit{supra} note 19.


\textsuperscript{40} Since the check was drawn on a bank not a member of the clearing house, presentment was made through the Federal Reserve Bank in accordance with local clearing house custom.
Even in the absence of a finding, through judicial notice or proof, that a one-day delay in making the deposit is customary, courts should hold as a matter of law that the payee exercises proper diligence by depositing his Monday checks at some time on Tuesday, so that they may go through the clearing house on Wednesday. Section 193 does not require that every phase of the payee's conduct be hallowed by custom. It merely invokes the aid of custom in the determination of the ultimate issue. To hold it unreasonable for a payee to deposit his Monday checks on Tuesday is to demand a degree of efficiency too exacting for this mundane sphere and surely beyond the expectations (if any) of the drawer or indorser.

Of course in some instances the clause of Section 193 directing the court to regard "the facts of the particular case" may be employed to justify the payee's conduct. For example, if the payee were a doctor, and his secretary happened to be sick and away from the office on the Monday in question, no one would expect him to abandon his professional duties for the purpose of depositing his checks. But even without the help of that clause, and without the presence of any exculpatory facts, courts should uphold the "received on Monday, deposited on Tuesday, cleared on Wednesday" routine.

Likewise, the rule should be extended to cover the situation arising from the fact that the payee's bank is not a member of the local clearing house, but clears through a member bank. Under these circumstances an additional delay of a day may occur. For example, in an Illinois case the payee received the check on June 5 and deposited it in his bank on June 6, a Saturday. His bank, not belonging to the clearing house, sent the check to its clearing agent bank, which received the item on Monday, June 8, and made presentment through the clearing house on Tuesday, June 9. The court very properly held that presentment was made within a reasonable time.\(^4\) No reason exists for penalizing a payee because

\(^4\)Johannsen v. Evans, 271 Ill. App. 372 (1933). The only fly in the ointment was that the stipulation of facts recited that defendant had enough money on June 5 to meet the check. Confining the stipulation to the exact facts set forth, it would follow that the check would not have been met even if presented on June 6 or June 8, as a result of which defendant suffered no loss by reason of the delay. How much this influenced the court is impossible to ascertain.

Cf. Willis and Siddons v. Finley, 173 Pa. 28, 34 Atl. 213 (1896) (payee deposited check on day received; his bank did not belong to clearing house); Village of Lombard v. Anderson and Glen Falls Indemnity Co., 280 Ill. App. 283 (1935) (both banks in same village; no clearing house; bank of deposit sent check to its Chicago correspondent, rather than presenting directly).
he chooses to keep his account with a bank which does not belong to the clearing house.

Naturally, a court adopting the view believed preferable in the presentment cases will have no need to invoke Section 6 (B) of the Bank Collection Code, although it will be recalled that the Michigan court bolstered its decision by a reliance thereon. It might be argued that legislative permission for the bank of deposit to send the item to the clearing house on the day after deposit impliedly permits the payee to deposit the item on the day following his receipt of it, although the argument has obvious weaknesses. Be that as it may, the other authorities on the point have dismissed the Bank Collection Code from their deliberations, upon the ground that it relates solely to the rights and liabilities between the depositor and the collecting bank. However, entirely apart from the Bank Collection Code, it is to be hoped that modern courts will adopt the sensible and businesslike view that a check received on Monday, deposited on Tuesday, and cleared on Wednesday is presented for payment within a reasonable time.

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42 See supra p.107. The court held that the practical effect of the Code was to extend the time of presentment by one day.
43 Maryland Title Guarantee Co. v. Alter, 167 Md. 244, 173 Atl. 200 (1934), supra note 19; Farm and Home Savings and Loan Association v. Stubbs, 231 Mo. App. 87, 98 S.W. 2d 320 (1936), supra note 35. The former case upheld the presentment anyhow; the latter, holding the presentment too late, rejected the Bank Collection Code as a reason for a contrary holding.
44 Some states have attempted to solve the problem by statute. See, for example, ALA. CODE, tit. 5, § 130 (1) (Supp. 1947); WYO. COMP. STAT. § 35-1014 (1945).