

CODE OF OBLIGATIONS

Questions of delays
in sections 1106 and 1107.

The Committee of Translation have called the attention upon the delays specified in sections 1106 and 1107, which are perhaps not sufficiently fit to the requirements of the country. .

Recourse against the drawer and indorsers (prior parties):- According to section 1106, the holder of a cheque loses his recourse if he does not present the cheque for payment within two months from the date of drawing.

Recourse against the drawee:- According to section 1107, the holder has no recourse against the banker who refuses to pay a cheque presented for payment more than one year after the date of drawing.

If we consider how these questions are dealt with in the foreign legislations, we see from the documents and discussions in the conference of the Hague (1912) that it was quite clear for the Governments that, in the present conditions, the delays to be specified in the cases dealt with by sections 1106 and 1107 are a pure question of local customs and have to be fixed by each national law accordingly. It was perhaps deemed desirable to

adopt a uniform and international delay in case of cheques drawn from a country to another country (French proposal) but the point is not finally settled.

Then, if we try to find which delays are adopted in other countries, we see that they are very different.

The English Law (Bills of Exchange Act, 1882, s. 74) says that the cheque must be "presented for payment within a reasonable time of its issue", and adds that "in determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case". This is so vague, that the English delegate to the Conference of the Hague was asked to specify what may mean "reasonable time" according to the English jurisprudence, and he did answer that the delay admitted by such jurisprudence is 24 hours, but that as a matter of fact the banks have the custom to pay cheques within six months of their issue, and even after and up to the time of prescription (that is to say six years) but then after approval of the drawer. The French Law (law 14th. June 1865) says that the cheque must be presented within five days if to be paid in the same place, and eight days if to be paid in another place; but as a fact we know that the French bankers also have the custom to extend this too short

delay. As a conclusion, the delay is short in law, more extensive in custom, and shall meet the special requirements of the country.

As to the recourse against the drawer and indorsers, the answer of the British Government in the Conference of the Hague has been that "the drawer of a cheque is liable thereon if it is presented for payment at any time within six years of its issue, unless he has suffered damage by reason of its non-presentment. But if the cheque is not presented or forwarded for presentment within a reasonable time after its issue, and the drawer is damaged by the delay (as for instance by failure of the bank) he is then discharged to the extent of any damage he may have suffered. The holder of the cheque, however, in that case can prove against the bank instead of the drawer (sect. 74 Bills of Exchange Act). Reasonable time for this purpose has been judicially held to be 24 hours". Again, "the holder of a cheque loses his right of recourse against the indorser unless he presents it for payment within a reasonable time; and that means that he must either present it for payment or forward it for presentment within 24 hours unless he is prevented from so doing by something in the nature of force majeure..... As regards the drawer, presentment is excused where the banker is not bound as between himself and the drawer to pay the cheque, and

the drawer has no reason to believe that the cheque would be paid when presented (Bills of Exchange Act, sect. 46)". The answers of the other Governments are, as a rule, that the holder of a cheque not presented within the legal delay must lose his recourse against the indorsers in any case, and against the drawer when the deposit-money in bank did disappear by the fault of the drawee after the delay specified by law for the presentment to the said drawee has expired (French) or even in any case (German). As a conclusion, if the English Law makes the delay against the drawer the same as civil prescription against the holder, the general tendency is to fix a shorter delay but to let it again to the special consideration of the country concerned.

Consequently, it appears that the delays stated in sections 1106 and 1107 can be specified in each country after due consideration of the local requirements. It belongs to the Siamese members of the Commission to examine the point and to consider if the said delays are to be extended or reduced to meet the best requirements of the country, - being understood that Siam is a country where the use of cheques is widespread (like in England or U.S.A.; and contrary to continental countries of Europe). The Committee of Redaction will have no objection to the delays proposed, so much the more if they remind that the delay of section

1106 (two months) was of six months in the
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