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Payee of Promissory Note as a Holder in Due Course

BILLS AND NOTES

PAYEE OF PROMISSORY NOTE AS A HOLDER IN DUE COURSE

Defendant executed a note payable to plaintiff or order and delivered the note to A, a stock salesman, to hold on certain conditions. A immediately discounted the note to plaintiff, without indorsement and without defendant's knowledge or consent. Plaintiff, having no notice of any defenses to the note, paid value therefor. *Held,* the payee is a holder in due course of this note, and is free from the defense of want of consideration. *Wabash Valley Trust Co. v. Fisher,* —— Ind. ——, 41 N.E. (2d) 352 (1942).

The issue seems settled that under the common law a payee could be a holder in due course, purely on grounds of negotiable instruments law, *Armstrong v. American Exchange Nat. Bank,* 133 U.S. 433 (1889); *Cagle v. Lane,* 49 Ark. 465, 5 S.W. 790 (1887), although many cases frequently cited in support of this proposition are really decided on grounds of estoppel. *Lucas et al. v. Owens,* 113 Ind. 521, 16 N.E. 196 (1888).

However, with the adoption of the UNIFORM NEGOTIABLE INSTRUMENTS LAW, (1895) UNIFORM LAWS ANN., Vol. 5; IND. STAT. ANN. (Burns, 1933) §§19-101 to 19-1807 (hereinafter cited: N.I.L.), a difference of judicial opinion early arose out of certain provisions, primarily §52(4) (A holder in due course must, among other things, take the instrument by *negotiation* without notice of any infirmity in the instrument or defect in the title of the person negotiating it), and §30 ("An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. . . . If payable to order it is negotiated by the indorsement of the holder completed by delivery").

One of these conflicting rules applies a strict and literal interpretation of the statute, whereby it is generally found that the payee is not a holder in due course. *Davis v. Nat. City Bank of Rome,* 46 Ga. App. 194; 167 S.E. 191 (1932); *Vander Ploeg v. Van Zuuk et al.,* 135 Iowa 350, 112 N.W. 807 (1907); *Long v. Shafer et al.,* 185 Mo. App. 641, 171 S.W. 690 (1914). The basis of this view rests in the interpretation of the requirement of N.I.L. §52(4) that the holder take the note by *negotiation,* which, in the case of an order instrument,

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14. Since the overruling of Proctor & Gamble v. United States, 225 U.S. 282 (1912), and the cases following it, the "negative order" doctrine seems to present no difficulty in the present case. Rochester Tel. Co. v. United States, 307 U.S. 125 (1939); accord, United States v. Maher, 307 U.S. 148 (1939); Fed. Power Comm. v. Pac. Power & Light Co., 307 U.S. 156 (1939). For a discussion of the doctrine and the cases in support of and against this now dead doctrine, see Note (1940) 24 Minn. L. Rev. 379. In view of the Rochester case, it is clear that the fact that the regulations in the instant case did not in terms prohibit plaintiff from doing certain acts seems immaterial. Once again the test seems to be one of substance. See note 8, supra.

must be by indorsement of the holder and by delivery (N.I.L. §30). Reasoning that the statute is clear and unambiguous in this requirement, some courts have held that a payee *cannot* be a holder in due course. *Davis v. Nat. City Bank of Rome, supra; Britton Milling Co. v. Williams,* 44 S.D. 464, 184 N.W. 265 (1921), 21 A.L.R. 1352, 1365 (1922), *aff'd on rehearing,* 45 S.D. 274, 187 N.W. 159, 21 A.L.R. 1356, 1365 (1922). Frequently, however, it is admitted that the payee can in proper circumstances be a holder in due course. *Vander Ploeg v. Van Zuuk et al., supra.* Courts adhering to this view usually state that a transfer to the payee by a maker or by an intermediate party is not a "negotiation", but is more accurately described as an "issuance." *Britton Milling Co. v. Williams, supra; Kimball-Krough Pump Co. v. Judd,* 88 S.W. (2d) 579, 584 (Tex. Civ. App. 1935); *Southern Nat. Life Realty Corp. et al. v. Peoples' Bank,* 178 Ky. 80, 85, 198 S.W. 543, 546 (1917).

The opposite view holds that the payee can be a holder in due course. *Drumm Constr. Co. v. Forbes, supra*; *Boston Steel & Iron Co. v. Steuer,* 183 Mass. 140, 66 N.E. 646 (1903); *National Bank of Suffolk v. American Bank and Trust Co.,* 163 Va. 710, 177 S.E. 229 (1934). This is the majority view. See, BEUTEL, BRANNAN'S NEGOTIABLE INSTRUMENTS LAW (6th ed. 1938) §52 at 543 to 550; WILLISTON, NEGOTIABLE INSTRUMENTS (1931) at 110; Aigler, *Payees as Holders in Due Course* (1927) 36 YALE L. J. 608, at 623 to 627. The courts adhering to this rule adopt a liberal construction of the requirement of negotiation in §52(4), construing it in the light of the broad *first* sentence of §30, on the theory that the remaining sentence of §30 was not intended to include all the ways in which an instrument might be negotiated, nor to restrict the comprehensive terms of the preceding sentence. *Liberty Trust Co. v. Tilton,* 217 Mass. 462, 105 N.E. 605 (1914), L.R.A. 1915B 144; *Bank of Commerce and Savings v. Randell,* 107 Neb. 332, 186 N.W. 70 (1921), 21 A.L.R. 1360, 1365 (1922). Cases in this view usually involve, as the principal case does, an intermediate party, *Drumm Constr. Co. v. Forbes, supra; Bank of Commerce and Savings v. Randell, supra; Howard Nat. Bank v. Wilson et al.,* 96 Vt. 438, 120 Atl. 889 (1923); but this is not a factual situation necessary to the view that the payee may be a holder in due course, *Liberty Trust Co. v. Tilton, supra at* 464, 105 N.E. at 606; *American Nat. Bank v. Kerley,* 109 Ore. 155, 220 Pac. 116 (1923).

The principal case is in accord with the latter view, and adds another jurisdiction to those adhering to the majority rule. It is gratifying to learn that the Indiana court has reached a proper decision in adopting what is submitted to be the better view.

Though the court also based its decision on grounds of estoppel, which applies equally to negotiable and non-negotiable transactions, see 3 SYMONS, POMEROY'S EQUITY JURISPRUDENCE (5th ed. 1941) §811 at 227, it is submitted that the case is defendable solely on principles of N.I.L. without reliance on the doctrine of estoppel.