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Conflict of Laws-Bills and Notes-Forged Indorsement

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RECENT CASE NOTES

Conflict of Laws—Bills and Notes—Forged Indorsement. Suit was brought by the United States to recover from the Guaranty Trust Company one hundred and sixty dollars as damages resulting from the payment to the Trust Company of a check payable to one Macakanja drawn on the Treasury of the United States. The check was sent to the payee in Jugoslavia, where the signature of the payee was forged on the back of the check, the check transferred to a Jugoslavian bank, a bona fide purchaser for value, which subsequently transferred it to the defendant. Under the laws of Jugoslavia a bona fide purchaser of a negotiable instrument on which there has been a forged indorsement secures good title to the instrument. Held, the law of Jugoslavia governs the validity of the transfer.¹

Although the Uniform Negotiable Instruments Statute has removed the major differences in the law of commercial paper in the states of the United States, nevertheless, wide divergencies continue to exist between the rules of this country and those of other countries, particularly the rules of civil law countries.² The problems involved in this case are not only likely to arise in cases involving commercial paper, but the rules applicable to such paper are to a large extent applicable also to the transfer and title of movable chattels.

It is now agreed that by the weight of authority the law of the place of execution determines the validity of the instrument, both as to matters of form and of capacity.³ It also determines whether or not the instrument is negotiable.⁴ The place of execution thus governs defenses arising out of the original making or discounting of a negotiable instrument.⁵ The law of the place where the instrument or chattel is at the time of the transfer, however, determines the validity and effect of the transfer, as well as the defenses which grow out of the circumstances of the transfer.⁶ Matters pertaining to payment, such as demand, notice of dishonor and sufficiency of presentment are governed by the law of the place of payment.⁷ This is an aspect of the general conflicts of law principle that the place of performance governs matters concerning performance of a contract.⁸ The check was both drawn and made payable in the District of Columbia and therefore the law of that place would have determined the formal and essential validity of the check, the interpretation of the contract and the incidents of the obligation, as well as the questions concerning payment.

¹ *United States v. Guaranty Trust Company of New York* (1934), 55 S. Ct. 221.

² Lorenzen, "The Rules of Conflict of Laws Applicable to Bills and Notes" (1917), 1 Minn. L. Rev. 10.

³ *Greenlee v. Hardin* (1930), 157 Miss. 229, 127 So. 777, 71 A. L. R. 741; *Tilden v. Blain* (1874), 88 U. S. 247, 22 L. Ed. 632; *Scudder v. Union National Bank* (1875), 91 U. S. 406, 23 L. Ed. 245; Beale, "What Law Governs the Validity of a Contract?" (1910), 23 Harv. L. Rev. 1, 79, 194, 260; American Law Institute Restatement of Conflicts, Sec. 336.

⁴ *Burns Mortgage Co. v. Fried* (1934), 54 S. Ct. 813, 78 L. Ed. 939; American Law Institute Restatement of Conflicts, Sec. 334.

⁵ American Law Institute Restatement of Conflicts, Sec. 334.

⁶ *Embiroc v. Anglo-American Bank* (1905), 1 K. B. Div. 677; *Weissman v. Banque de Bruxelles* (1930), 254 N. Y. 488, 173 N. E. 885; American Law Institute Restatement of Conflicts, Sec. 349.

⁷ *Wooley v. Lyon* (1886), 117 Ill. 244, 6 N. E. 885; *Gurnsey v. Imperial Bank of Canada* (1911), 188 F. 300; *Price v. Indseth* (1883), 106 U. S. 546, 27 L. Ed. 254; American Law Institute Restatement of Conflicts, Sec. 369.

⁸ *Louis Louis-Dreyfus v. Patersen Steamships* (1930), 43 F. (2d) 824; *Thompson v. Lakewood City Development Co.* (1919), 174 N. Y. S. 825, 188 App. Div. 996; *Peak v. International Harvester Co. of America* (1916), 194 Mo. App. 128, 186 S. W. 574; American Law Institute Restatement of Conflicts, Sec. 355.

The court in the principal case, in deciding that the law of the place of the check at the time of the transfer governed the validity of the transfer, undoubtedly applied the correct conflicts of law rule. The transfer of the check or other negotiable instrument creates a separate contract from the one made by the maker and the payee, and the rights and liabilities created by the new contract between the transferor and transferee are governed by the law of the place where such transfer is made.⁹ Since by the law of Yugoslavia a bona fide purchaser for value without notice of the forgery acquired good title to the check and the rights to its proceeds, the bank purchasing the check acquired all the rights the original payee had against the United States. The indorsement to the New York bank gave it the rights the indorsor had as against the prior holders and the maker. The New York Guaranty Trust Company, having obtained good title to the check, would be entitled to retain the proceeds paid to it by the federal reserve bank.

The Supreme Court in saying, "under established principles of conflicts of law, adopted by both federal and state courts, the validity of the transfer of a chattel brought into the country by the consent of the owner is governed by its law; and that rule applies to negotiable instruments" seems to infer that if the check were taken into Yugoslavia without the consent of the owner, the law of the District of Columbia would apply. Some cases do make this distinction,¹⁰ and it seems to be a valid one, because by such consent the owner subjects himself to the law of the state into which the chattel is taken.

C. L. C.