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Bills and Notes-Accommodation Maker-Holder for Value

BILLS AND NOTES—ACCOMMODATION MAKER—HOLDER FOR VALUE—The facts found by the trial court were as follows: Appellee Myers was induced by fraudulent representations to purchase worthless oil stock for which she gave her note. This note was discounted at appellant bank by the cashier who had participated in the fraud. Some time later appellant bank informed appellee Myers that before it could effect a consolidation according to an agreement into which it had entered, it would be necessary to show that the note was paid and requested her to give another note

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Florida: Brown v. Peoples Sav. Bank, 59 Fla. 163, 52 L. R. A. (N.S.) 608, 52 So. 719.

Illinois: Wilson v. Cartersville Nat. Bank, 187 Ill. 222, 52 L. R. A. 632, 58 N. E. 250.

Indiana: Irwin v. Reeves Pulley Co., 20 Ind. App. 101, 48 N. E. 601, 50 N. E. 317.

Iowa: Guelich v. Nat. State Bank, 56 Iowa 434, 41 Am. Rep. 113, 9 N. W. 328.

Kentucky: Commercial Nat. Bank v. First Nat. Bank, 158 Ky. 392, 165 S. W. 398.

Maryland: Citizens Bank v. Howell, 8 Md. 530, 63 Am. Dec. 714.

Massachusetts: Lord v. Hingham Nat. Bank, 186 Mass. 161, 71 N. E. 312.

Mississippi: Louisville Third Nat. Bank v. Vicksburg Bank, 61 Miss. 112, 48 Am. Rep. 78.

Missouri: Daly v. Butcher's etc. Bank, 56 Mo. 94, 17 Am. Rep. 663.

Nebraska: Omaha First Nat. Bank v. Moline First Nat. Bank, 55 Nebr. 303, 75 N. W. 843.

North Carolina: Rocky Mount. Bank v. Floyd, 142 N. C. 187, 55 S. E. 95.

Pennsylvania: Hazlett v. Commercial Nat. Bank, 132 P. 118, 19 Atl. 55.

South Dakota: Fansett v. Garden City State Bank, 24 S. D. 248, 123 N. W. 686.

Tennessee: Winchester Milling Co. v. Winchester Bank, 120 Tenn. 225, 111 S. W. 248.

Wisconsin: Stacy v. Dane County Bank, 12 Wis. 629.

[11] Brown v. Peoples Sav. Bank, 29 Fla. 163, 52 L. R. A. (N. S.) 608, 52 So. 719.

[12] Evansville Old Nat. Bank v. German-American Bank, 155 U. S. 556, 15 S. Ct. 221, 39 L. ed. 259; Commercial Nat. Bank v. Armstrong, 148 U. S. 50, 13 Sup. Ct. 533, 37 L. ed. 363; White v. Miner's Nat. Bank, 102 U. S. 658, 26 L. ed. 250; Crown Point First Nat. Bank v. Richmond First Nat. Bank, 76 Ind. 561, 40 Am. Rep. 261.

[13] Reeves v. State Bank, 8 O. St. 465.

[14] Holder v. Western German Bank, 136 Fed. 90, 68 C. C. A. 554.

for a lesser sum and a check for the balance. The bank knew that there were no funds available to meet the check. Appellee Myers gave the note and check, then under threats of prosecution for issuing the check, at the suggestion of the bank, procured the note in suit which was signed by her sister, appellee Parr, as an accommodation maker. Appellee Myers indorsed this note to the bank and received the unpaid check. The bank promised to surrender the note and accept another from appellee Myers as soon as the consolidation was effected, but brought suit instead. Held, that there was sufficient evidence to support the trial court's finding that the bank was not a holder in due course because it had knowledge of the fraud, and that the absence of consideration constitutes a defense against the holder of an accommodation note who is not a holder in due course because of some fact other than knowledge of accommodation.[1]

Section 29 of the Negotiable Instruments Law provides that an accommodation party to a negotiable note is liable on the instrument to a "holder for value" notwithstanding that such holder at the time of taking the instrument knew him to be only an accommodation party.[2] Obviously it would be unjust to permit an accommodation party to set up the defense of no consideration, since his very purpose is to enable the accommodated person to obtain credit on the faith of his name. The only element of confusion is in the interpretation of the phrase "holder for value." Some text writers[3] and at least one of the few cases on this point go so far as to hold[4] that this section of the Negotiable Instruments Law permits a "holder for value" to recover from an accommodation maker even though he knew that the instrument had been obtained by fraud, or had notice of other defects which would prevent him from being a holder in due course. This section, considered alone and without regard to policy, might justify such an interpretation, but in view of Section 58 of the Negotiable Instruments Law[5] which provides that "in the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were nonnegotiable" it would seem that the court's holding in the principal case that the phrase merely means that "the absence of consideration between accommodated and accommodating parties does not of itself constitute a defense against a holder" is right both in logic and justice. An opposite decision would give the holder of accommodation paper greater rights than the holder of other negotiable instruments.[6] As pointed out in a leading case[7] accommodation paper plays a very important part in the commercial world, and to deprive the accommodating party of

[1] National City Bank v. Parr (1933), 185 N. E. 904 (Ind. Sup. Ct.).

[2] Burns' Ann. Statutes 1926, Sec. 11388. For cases decided under this section see: Walker v. Reese (1930), (Kan.), 289 Pac. 425; Miller v. Stuart (1927), 69 Utah 250, 253 Pac. 900; Naef v. Potter (1907), 226 Ill. 403, 129 N. E. 149; First National Bank of Aberdeen v. Thompson (1929), (Kan.), 227 N. W. 81; New Haven Bank v. Jordan Co. (1918), (Conn.), 104 Atl. 392; Marling v. Jones (1909), 138 Wisc. 82, 119 N. W. 931; First National Bank of Willmar v. Malmquist (1924), 158 Minn. 140, 197 N. W. 271.

[3] Professor Herring (1910-11), 59 U. of Pa. Law Rev. 471, 532.

[4] Marling v. Jones (1909), 138 Wisc. 82, 119 N. W. 931.

[5] Burns' Ann. Statutes 1926, Sec. 11417.

[6] Brennan's Negotiable Instruments Law (5th ed.), p. 390.

[7] Cottrell v. Walker (1893), 89 Va. 801, 17 S. E. 328.

defenses available to other parties to a negotiable instrument would tend to suppress this class of paper and cripple business transactions.

Having once decided that a purchaser for value must also be a holder in due course, the court had no difficulty in holding that the bank could not recover, since the note in suit was a renewal of the original notes executed by appellee Myers, and the bank would take the renewal note subject to the same defenses as the original notes.

Undoubtedly the principal case is correct both on principle and authority,[8] and is an excellent example of thorough analysis and application of all the pertinent sections of the Negotiable Instruments Law.

A. A. C.

HABITUAL CRIMINAL ACT—CONSTITUTIONALITY—EVIDENCE—Defendant was charged by a grand jury indictment with assault and battery with intent to kill and with being an habitual criminal, as provided by the Indiana Statutes. There was a verdict of guilty of the crime of assault and battery with intent to kill as charged and a finding that the defendant had been convicted of a felony, on two previous occasions, and imprisoned for the offenses committed. The court sentenced the defendant to the state prison for life as an habitual criminal. Defendant appealed, assigning as error the introduction of evidence in proof of the prior convictions as prejudicial, and attacking the constitutionality of the Habitual Criminal Act, claiming it to be a denial of the equal protection of the law. The verdict of the trial court was affirmed.[1]

The Indiana Habitual Criminal Act[2] is in accordance with the general legislative thought throughout the country, practically every state having a similar statute.[3] Although the Act has been in effect in Indiana since 1907, yet its punishment has seldom been invoked, the convictions under it averaging one a year.[4] The writer thinks this is not due to the amount of data available for identification but to the failure of the public officials to use that which is available;[5] Indiana[6] and the Federal Department of Justice[7] both maintaining bureaus of identification. And further, the present undeveloped status of our criminal identification constitutes a

[8] Pacific-Southwest Trust and Savings Bank v. Valley Finance Corporation (1929), 99 Cal. App. 728, 279 Pac. 222; Weiser National Bank v. Peters (1927), 174 Ark. 984, 298 S. W. 878; Bartels v. Suther (1928), 130 Okla. 7, 266 Pac. 753; Wilhoit v. Seavall (1926), 121 Kan. 239, 246 Pac. 1013; (1924) 24 Col. Law Rev. 791.

[1] Barr v. State (1933), 187 N. E. 259 (Ind.).

[2] Burns' Ann. Stat. (1926), 2339, 2340.

[3] Oregon Laws (1921), c. 70; Wash. Comp. Stat. (Remington 1922), § 2286; W. Va. Code Ann. (Barnes 1923), c. 152, § 24; N. Y. Ann. Cons. Laws (Supp. 1926), c. 41, §§ 1942-3; Cal. St. 1927, p. 1066 (amending sec. 644 Penal Code); Iowa Section 1964 (1) of Code of 1924; Conn. Indeterminate Sentence Act (Gen. St. 1918, § 6660); Ohio Laws 82, 237; Minn. section 4772, R. L. 1905; Ill. Laws 1883, p. 76; Okla. Laws 1911, c. 70; Mass. St. 1887, c. 435; Missouri Rev. St. 1909, c. 4913.

[4] Report of Indiana Committee on Observance and Enforcement of Law, January 5, 1931.

[5] Frank O. Lowden, Criminal Statistics and Identification of Criminals, 19 Journal of Criminal Law 36.

[6] Burns' Ann. Stat. 1929, Supp. 2409, 1-2409.12.

[7] United States Code Ann. 5:300.