Michigan Law Review

Volume 36 | Issue 3

1938

BILLS AND NOTES - QUALIFIED INDORSEMENT - BY ASSIGNMENT OF "RIGHT, TITLE AND INTEREST"

Michigan Law Review

Follow this and additional works at: https://repository.law.umich.edu/mlr

Part of the Banking and Finance Law Commons

Recommended Citation
Michigan Law Review, *BILLS AND NOTES - QUALIFIED INDORSEMENT - BY ASSIGNMENT OF "RIGHT, TITLE AND INTEREST"*, 36 MICH. L. REV. 483 (1938).
Available at: https://repository.law.umich.edu/mlr/vol36/iss3/12

This Regular Feature is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

BILLS AND NOTES — QUALIFIED INDORSEMENT — BY ASSIGNMENT OF "RIGHT, TITLE AND INTEREST" — Defendant, payee of a promissory note, transferred it by writing on the back, "For value received, I hereby assign all my rights, title and interest to the within note. . . ." *Held*, defendant's indorsement was qualified, and she was not liable for its payment. *Fecko v. Tarczynski*, 281 Mich. 590, 275 N. W. 502 (1937).

Under the N. I. L. a qualified indorsement may be made "by adding to the indorser's signature the words 'without recourse' or any words of similar import." [1] At the outset it should be noted that there is a distinct difference between the words used in the principal case and words such as, "I hereby assign the within note to. . . ." [2] We are here concerned only with assignments of "right, title and interest." In determining whether the words assigning right,

[1] 2 Mich. Comp. Laws (1929), § 9287; Uniform Negotiable Instruments Law, § 38.

[2] This distinction is made in Markey v. Corey, 108 Mich. 184, 66 N. W. 493 (1895), and pointed out in the principal case. See also Adams v. Blethen, 66 Me. 19 (1877); 44 A. L. R. 1353 (1926).

title and interest are "words of similar import," the courts have tried to give effect to the intention of the transferor, and at the same time so to limit their construction as not to endanger the currency of negotiable paper generally. Consistently with the latter purpose, a numerical majority has held that words identical with, or very similar to, those used in the principal case do not constitute a qualified indorsement.[3] A few[4] hold with the Michigan court. Most of the courts in the majority group base their decisions on the theory that the mere signature of the transferor is sufficient to transfer all right, title and interest in the note, and that the expression of what the law already implies accomplishes nothing.[5] But the assignment of right, title and interest is only half what the law implies. A promise to pay the note, conditioned upon proper presentment, dishonor, and notice, is also implied.[6] So, in theory, the maxim on which the minority bases its result, that the expression of one of two things implied by law excludes the other, may seem more logical.[7] But in construing the intent from words used, theory is not always too accurate. Among those accustomed to dealing with negotiable paper, the words "without recourse" are well understood and almost invariably used to qualify indorsements. With them, the question in the principal case is not so likely to arise. But with those less familiar with negotiable paper and its legal implications, it has a tendency to arise more frequently. It is submitted that to such persons, the assignment of all right, title and interest probably means nothing different from any ordinary indorsement in blank. It would seem, therefore, that a strict construction of the words used is more consistent with the actual intention of the transferor. The New York Court of Appeals, in a fairly recent case, seems to have had

[3] The cases are numerous, but among the most prominent are Sears v. Lantz, 47 Iowa 658 (1878); Maine Trust & Banking Co. v. Butler, 45 Minn. 506, 48 N. W. 333 (1891); Prichard v. Strike, 66 Utah 394, 243 P. 114 (1926). For others, see 36 L. R. A. 117 (1897); L. R. A. 1917A 1167 at 1169; 44 A. L. R. 1353 (1926).

[4] Spencer v. Halpern, 62 Ark. 595, 37 S. W. 711 (1896); Hammond Lumber Co. v. Kearsley, 36 Cal. App. 431, 172 P. 404 (1918); Kane v. Eastman, 110 Cal. App. 753, 295 P. 63 (1931); Mathes v. Bangs, 128 Cal. App. 171, 16 P. (2d) 749 (1932); Kern v. Henry, 138 Cal. App. 46, 31 P. (2d) 454 (1934); Bond v. Holloway, 18 Ind. App. 251, 47 N. E. 838 (1897); Evans v. Freeman, 142 N. C. 61, 54 S. E. 847 (1906); Medlin v. Miles, 201 N. C. 683, 161 S. E. 207 (1931); Marion Nat. Bank v. Harden, 83 W. Va. 119 (1918). See also Hailey v. Falconer, 32 Ala. 536 (1858), where the indorsement was slightly different, and Aniba v. Yeomans, 39 Mich. 171 (1878), which held that words nearly identical with those used in the principal case did not constitute an indorsement.

[5] Prichard v. Strike, 66 Utah 394, 243 P. 114 (1926). For a discussion of the theories and arguments of the majority, see 24 MICH. L. REV. 846 (1925).

[6] Wolf v. American Trust & Savings Bank, 132 C. C. A. (7th) 410, 214 F. 761 (1914); Clark v. Sigourney, 17 Conn. 511 (1846).

[7] See 15 MICH. L. REV. 71 (1916). It should be noted, however, that the Michigan court seems not to have based its decision on this maxim, but rather on the case of Aniba v. Yeomans, 39 Mich. 171 (1878). It would seem that this case does not support the result of the principal case, but rather holds that words such as those used here do not constitute an indorsement at all. Any reasoning that the N. I. L. has changed the result is precluded by the court's statement to the effect that the statute has not altered the state of the law as held in Aniba v. Yeomans.

somewhat the same idea in mind when, though it acknowledged the force of the theory by which the minority result is reached, it said: [8] "We find no words in this indorsement [9] which state expressly that the payee or indorser assigns or transfers the note, but is not to be held liable over in case of default. . . . We may *imply* by the use of the word 'assign,' as did the Appellate Division, that the payee considered himself no longer liable, but implication is not permitted by the statute. The denial of recourse to a prior indorser must be found in the express words, 'without recourse,' or *words* of similar import." At least it seems more in consonance with maintaining the currency of such paper to take a practical viewpoint and require, as the New York court and some others [10] have, that "words of similar import" be words which clearly and unequivocally *express* an intention not to be bound as a general indorser.

[8] Fay v. Witte, 262 N. Y. 215 at 218, 186 N. E. 678 (1933).

[9] The indorsement read, "I hereby assign all my right and interest in this note to. . . ."

[10] Adams v. Blethen, 66 Me. 19 (1877); Copeland v. Burk, 59 Okla. 219, 158 P. 1162 (1916); Hurt v. Wiley, 18 Ga. App. 420, 89 S. E. 494 (1916).