Michigan Law Review

Volume 34 | Issue 1

1935

BILLS AND NOTES - BILLS OF EXCHANGE - ASSIGNMENT

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

Part of the Banking and Finance Law Commons, and the Litigation Commons

Recommended Citation
BILLS AND NOTES - BILLS OF EXCHANGE - ASSIGNMENT, 34 MICH. L. REV. 119 (1935).
Available at: https://repository.law.umich.edu/mlr/vol34/iss1/13

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 — BILLS OF EXCHANGE — ASSIGNMENT — Under an agreement with the intervener that the intervener would "finance" his purchases of stock, the defendant shipped stock to the garnishee, drawing on the garnishee in advance for the purchase price, the intervener being named as payee. With knowledge of the drawing of the draft, the garnishee received and sold the stock, but was thereafter served with summons in this garnishment suit before acceptance or payment of the bill. *Held*, that the intervener is entitled as equitable assignee to the amount of the draft as against the plaintiff. *Baird v. Simonstad*, (Minn. 1934) 258 N. W. 570.

"A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof," [1] but the giving of a bill coupled

[1] Uniform Negotiable Instruments Law, § 127; Jones v. Crumpler, 119 Va. 143, 89 S. E. 232 (1916).

with other factors may amount to an assignment.[2] It is doubtful, however, whether the evidence in the instant case sustains the finding of an assignment. An agreement by the payee to finance purchases would seem more consonant with a mere loan, the draft being given for security only; this is so particularly where, as here, the bill of lading does not accompany the draft. The court, however, laid emphasis upon the fact that the drawee had notice of the existence of the draft at the time the stock was received.[3] Notice to the debtor, however, of an assignment of a non-negotiable chose in action is not necessary to give the assignee an equitable right, even as against subsequently garnishing creditors of the assignor.[4] Nor is notice to the debtor sufficient of itself to constitute an assignment between the creditor and the assignee.[5] It is at most corroborative evidence of an assignment otherwise established.[6] The result in this case was reached upon the controlling authority of *First National Bank v. Rogers-Amundson-Flynn Co.*[7] Insofar as that case depended upon the existence of an assignment, it is distinguishable in that the court expressly found, from evidence of transactions between the assignor and assignee, as a fact, an assignment on the part of the assignor;[8] no such finding is made in the principal case. The earlier case, however, may well have depended upon the finding of a trust when a consignee receives goods or funds with knowledge that the consignor has drawn in favor of a third party against the proceeds.[9] The principal case can perhaps be sustained upon the

[2] Fourth St. Nat. Bank v. Yardley, 165 U. S. 634, 17 S. Ct. 439 (1897); Muller v. Kling, 209 N. Y. 239, 103 N. E. 138 (1913); People's Nat. Bank v. Swift, 134 Tenn. 175, 183 S. W. 725 (1916); BRANNAN, NEGOTIABLE INSTRUMENTS LAW, 5th ed., 980, 981 (1932). Other cases are collected in Aigler, "Rights of Holder of Bill of Exchange Against the Drawee," 38 HARV. L. REV. 857, especially pp. 862-872 (1925).

[3] The syllabus prepared by the court reads: "While a draft, drawn generally, will not of itself operate as assignment of anything in the hands of the drawee, yet, if the latter is given notice that the draft was intended to vest in the payee an interest in, or a right to receive, funds coming into his hands from designated goods, and with such notice the drawee takes the goods and sells them, he is liable to the payee; the latter being an equitable assignee of that portion of the fund called for by the draft."

[4] 1 WILLISTON, CONTRACTS, § 434 (1931).

[5] No cases have been found sustaining the affirmative of this proposition. No such holding is found in the cases cited in First Nat. Bank of McClusky v. Rogers-Amundson-Flynn Co., 151 Minn. 243 at 245, 186 N. W. 575 (1922); the cases there cited do, however, tend to support recovery upon the theory of a trust.

[6] People's Nat. Bank v. Swift, 134 Tenn. 175, 183 S. W. 725 (1916).

[7] 151 Minn. 243, 186 N. W. 575 (1922).

[8] 151 Minn. 243 at 246, 186 N. W. 575 (1922).

[9] "There is respectable authority for the proposition that, if one to whom goods are consigned for sale receives the consignment with notice that the consignor has made a draft on him on the credit of the goods, he is bound to accept the draft. He may not take and retain the consignment with such notice and repudiate the draft." 151 Minn. 243 at 248.

Many cases have held that the payee of a bill or check has a direct action against the drawee where the drawer has made remittances to the drawee for the purpose of having the draft honored; frequently, this holding has been based at least partly upon the trust conception. See DeBernales v. Fuller, referred to in Williams v. Everett, 14

ground of such a trust relationship; some support for this view is found in those cases which hold that, although a debtor may not become trustee of his own debt,[10] a deposit of funds for a special purpose known to the debtor at the time of the deposit is equivalent to a trust.[11] This result, however, can hardly be sustained upon the ground of an assignment.

W. J. S.

East. 582 at 590, 104 Eng. Rep. 725 at 728 (1811); Seligman v. Wells, (C. C. S. D. N. Y. 1880) 1 F. 302; Ballard v. Home Nat. Bank, 91 Kan. 91, 136 P. 935 (1913); Hitt Fireworks Co. v. Scandinavian Bank, 114 Wash. 167, 195 P. 13 (1921).

[10] Molera v. Cooper, 173 Cal. 259, 160 P. 231 (1916).

[11] Northwest Lumber Co. v. Scandinavian-American Bank, 130 Wash. 33, 225 P. 825 (1924); Star Cutter Co. v. Smith, 37 Ill. App. 212 (1890); Blummer v. Scandinavian Bank, 169 Minn. 89, 210 N. W. 865 (1926); Blythe v. Kujawa, 175 Minn. 88, 220 N. W. 168 (1928).