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BILLS AND NOTES-INDORSEE TAKING AN INCOMPLETE INSTRUMENT AS A HOLDER IN DUE COURSE

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RECENT DECISIONS

BILLS AND NOTES—INDORSEE TAKING AN INCOMPLETE INSTRUMENT AS A HOLDER IN DUE COURSE—Plaintiff purchased from the payee defendant's note which was blank as to amount, date, and provisions for installment payments. Plaintiff immediately filled up the blanks in accordance with actual authority given by defendant. *Held,* plaintiff took free of an agreement between defendant and payee that the note was not to be negotiated until completion of work for which note was given, plaintiff having no knowledge of such agreement. *First National Bank of Springfield v. Di Taranto,* (N.J. Super. Ct., App. Div. 1950) 75 A. (2d) 907.

It is recognized in the principal case that to take free of the diversion, the indorsee-plaintiff must be a holder in due course under the Negotiable Instruments Law.[1] But section 52[2] of that law provides that one cannot be a holder in due course unless he takes an instrument that is "complete and regular" upon its face. The court justifies its position, viz., that plaintiff is a holder in due course, by reference to the first clause of section 14[3] which gives the person in possession of an incomplete instrument prima facie authority to fill it up.[4] The note in the principal case, it should be noted, was filled up strictly in accordance with authority of the defendant, the defense being that the note was negotiated without authority. On this point, the final clause of section 14 provides that "if any such instrument, *after completion,* is negotiated to a *holder in due course,* it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with authority and within a reasonable time." Reading this clause together with section 52, it seems clear that an indorsee of an incomplete instrument, despite satisfaction of the other general

[1] N.J. Rev. Stat. (1937) §§7:1-7:4.

[2] N.J. Rev. Stat. (1937) §7:2-52.

[3] N.J. Rev. Stat. (1937) §7:2-14: "Where the instrument is wanting in any material particular, the person in possession thereof has a prima facie authority to complete it by filling up the blanks therein; and a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a prima facie authority to fill it up as such for any amount; in order, however, that any such instrument when completed, may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time; but if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time."

[4] However, a reading of the third clause of section 14 clearly shows that third persons dealing with the person in possession do *not* "have the right to presume that authority to fill the blank was a general and not a special authority, and . . . [are relieved of] any private instructions as to the amount to be inserted in the note," as the court contends at page 910. See, for example, Bronson v. Stetson, 252 Mich. 6, 232 N.W. 741 (1930) and Hannen v. Peoples State Bank, 195 Ky. 58, 241 S.W. 355 (1922). The same result has been reached when plaintiff takes an instrument knowing that it was originally incomplete. Dumbrow v. Gelb, 72 Misc. 400, 130 N.Y.S. 182 (1911). The common law alone supports the court's position in this respect. Johnson Harvester Co. v. McLean, 57 Wis. 258 (1883).

requirements for holding in due course enumerated in that section, cannot take free of equities and defenses, even those having no causal connection with the act of completion. The cases so hold,[5] and those cited by the court do not support a contrary proposition.[6]

Cleaveland J. Rice, S. Ed.

[5] Cache Valley Commission Co. v. Genter Sales Co., 63 Utah 574, 228 P. 203 (1924) (diversion); Moore v. Vaughn, 167 Miss. 758, 150 S. 372 (1933) (failure of consideration); Tower v. Stanley, 220 Mass. 429, 107 N.E. 1010 (1915) (material alteration); Commercial Credit Corp. v. Freiler, (La. App. 1949) 42 S. (2d) 296, noted in 24 TULANE L. REV. 485-7 (1950) (agreement to cancel). See, however, BRITTON, HANDBOOK OF THE LAW OF BILLS AND NOTES §113 at 471 (1943).

[6] Mechanics Bank v. Chardavoyne, 69 N.J.L. 256, 55 A. 1080 (1903) (case decided before Negotiable Instruments Law); Hudson County National Bank v. Alexander Furs, Inc., 133 N.J.L. 256, 44 A. (2d) 73 (1945) (does not involve blanks in an instrument); Central Savings Bank Co. v. Barber, 92 N.J.L. 31, 105 A. 22 (1918) (does not appear that plaintiff took an incomplete instrument and decision rests on other grounds).