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Bills and Notes - Holder in Due Course - Purchase in Good Faith

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RECENT DECISIONS

BILLS AND NOTES—HOLDER IN DUE COURSE—PURCHASE IN GOOD FAITH.—Graham, the petitioner, held in his own right eight negotiable coupon bonds issued by the State of Illinois. The bonds were stolen from Graham and were eventually purchased by the respondent's Chicago office from a listed bond dealer in Minnesota. Three days after the theft Graham had taken steps to notify bond dealers throughout the country. Notice was received by the respondent at its main office and at its Chicago branch. At the time when the purchase was made the respondent's clerks had forgotten about the information contained in the notice received. The treasurer of Illinois began this proceeding according to the local practice to have determined whether the holder, the respondent, or the claimant, the petitioner, had the better right to the bonds. The trial judge ordered a decree for the petitioner concluding that the purchaser could not qualify as a holder in due course because it had received notice at its office about the stolen bonds. This order was reversed and the case remanded by the appellate court. *White- Philips Co.* v. *Graham,* 74 F. (2d) 417 (C.C.A. 7th, 1935). On certiorari in the Supreme Court, *held,* judgment affirmed; the good faith of the purchaser must be determined as of the date of the purchase. *Graham* v. *White-Philips Co.,* 56 Sup. Ct. 21 (1935).

The issue in the instant case is narrow. Shall the position of the purchaser be fixed by reason of his having received notice of the theft or shall his position be fixed according to what he or his representatives knew or remembered at the date of purchase? If his position is to be fixed by reason of the fact that he or his clerks have received notice of the theft the inquiry is definitely objective. If his position is to be fixed according to his or his clerk's state of mind at the time of the purchase the question of "bad faith" becomes one for more or less subjective estimate. The Supreme Court chose to consider the status of the purchaser as being determined by his state of mind at the time of the purchase which the Court felt has been the traditional test applied in cases of this kind. It has been held that the receiving of notice by clerks at the office did not mean that officers who completed the deal for the company-purchaser had knowledge of or had seen the notice when so received, and that the company could qualify as a bona fide purchaser. *Merchants' Nat. Bank* v. *Detroit Trust Co.,* 258 Mich. 256, 242 N.W. 739, 85 A.L.R. 350 (1932); *Heney* v. *Sutro & Co.,* 28 Cal. App. 698, 153 Pac. 972 (1915). And if the person who has received notice himself forgets when he makes the purchase he does not, according to some courts, necessarily lose his status as a holder in due course. *Lord* v. *Wilkinson,* 56 Barb 593 (N.Y. Sup. Ct., 1870); *cf. Raphael* v. *Bank of England,* 17 C. B. 161, 33 Eng. Rep. 276 (1855). The choosing intentionally to disregard all notices of theft may be enough to affect the status of the professional purchaser-bank unless the latter can explain the disregarding on the grounds of business convenience. *Seybel* v. *National Currency Bank,* 54 N.Y. 288, 13 Am. Rep. 583 (1873). In the instant case the petitioner contended that the rule had been fixed in Illinois that the sending of notice to the purchaser's office was enough without more to fix the status of the purchaser. The petitioner cited *Northwestern Nat. Bak.* v. *Madison & Kedsie St. Bak.,* 242 Ill. App. 22 (1926). The Supreme Court refused to accept the decision of an intermediate appellate court as fixing the rule for the particular jurisdiction particularly when there is language in some of the state supreme court's opinions which cannot be reconciled with the decision in the cited case. See *Paine* v. *Sheridan Trust & Savings Bank,* 342 Ill. 342, 348, 174 N.E. 368, 369 (1930).

It is the policy of courts generally to protect the free transfer of negotiable paper. It is submitted, however, that the loser of the stolen bonds deserves some consideration. If the disposition in a particular case depends upon the finding with respect to the state of mind at the time of the purchase the judgment of the fact finder is virtually unrestricted. In an equity case, and the instant case was an equity case, the record will have to contain a finding with respect to the purchaser's memory and recollections or the memory of the purchaser's clerks at the time of the purchase before a conclusion with respect to good or bad faith can be supported. It is submitted that an additional objective standard the fact finders might be required to consider is whether the purchaser, for example a bond house or a bank, has devised some scheme consistent with business convenience to check stolen bond notices and to protect themselves against making purchases of such bonds. See (1935) 45 YALE L. J. 539. In such a case, too, the real determination would be with the fact finder, but to consider what amounts to reasonable business practice would be an inquiry in some degree less subjective than to inquire as to whether the officers of the purchasing company have forgotten the notice of theft at the time of the purchase. A bond house or a bank might well be held to abide by a higher standard of conduct with respect to "checking notices" than an "unprofessional" purchaser would be required to follow.

CORPORATIONS—BY-LAWS—RIGHT OF FIDUCIARY OFFICERS TO COMPENSATION.—The defendant, a director, served also in the capacity of president and treasurer of the corporation. Over a period of years, he appropriated to himself a considerable amount of money as salaries and commissions. This action is by minority stockholders for the appointment of a receiver and for judgment against the defendant for the amount of corporate funds alleged to have been improperly paid to him for his services. The contention is based on a by-law which forbade any compensation for services of any nature to be allowed to any officer or director of the corporation unless consent to the same had first been given by the owners of three-fourths of the trust certificates. The defense was that the by-law was void since it violated Section 180.13 of the Wisconsin Statutes (1933) which provides that: "the stock, property, affairs, and business of every such stock corporation, shall be under the care of and be managed by a board of directors." The trial court found for the plaintiff. On appeal, *held,* judgment as to this defendant reversed and the cause remanded. *Security Savings and Trust Co.* v. *Coos Bay Lumber and Coal Co.* (Wis. 1935) 263 N.W. 187.

The by-laws of a corporation which are contrary to or inconsistent with a governing statute, are void, even though they may have been unanimously assented to by the stockholders. They must be consistent both with the terms and with the spirit and intent of the governing statute. 14 C. J. 362. In the case of *State ex rel. Badger Telephone Co.* v. *Rosenow,* 174 Wis. 9, 182 N.W. 324 (1921) the by-laws provided that the corporation's secretary-treasurer was to be elected by the stockholders. The court pointed out that such a by-law was repugnant to a statute which provided that it is within the province of the directors to elect that officer. See WIS. STAT. (1933) § 180.13. The same rule applies to situations where the charter vests the management of the corporate affairs in a board of directors and where later a by-law is enacted vesting the