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Contracts—Negotiable Instruments Law

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The court correctly found plaintiff's complaint failed to state a cause of action. The bank was a mere agent of the government and could only pay subject to the direction of its principal.[56]

Negotiable Instruments Law

A couple approached a bank to obtain a loan for the purchase of a car. After requiring them as payees to endorse a cashier's check for $1,000 to a specific car agency, the bank issued the check in return for a note for the same amount. Upon tender, a partner of the agency noticed a further recital on the reverse side of the check stating it was in full payment of a car. He declined to accept the check, since he knew that the payees had already purchased a car on which they owed a balance of only $200. The payees endorsed the check with the name of the agency and the purported signatures of two agency officials and, a few days later, approached a grocery store owner, with whom they had dealt previously. After examining the endorsements, and requiring an endorsement in blank from one of the payees, the storekeeper cashed the check. Subsequently, the bank refused to honor the check.

The Court of Appeals held, in *Hall v. Bank of Blasdell*,[57] that the plaintiff storeowner was a holder in due course, rejecting the claim of the bank that under the facts plaintiff could not even be a holder.

The defendant's argument was threefold:

1. since the check was not accepted by the agency, it was never negotiated,[58]
2. the unauthorized signing of the agency's name as indorsee was a forgery,[59] and
3. even if the payees had the power to endorse and deliver, they had not in fact done so.[60]

In rejecting the defendant's first assertion, the court pointed out that this would necessitate a finding that the defendant regarded the payees as mere messengers, and intended to make the agency the true party in interest.[61] Since there was no indebted-

56. See *In re Interborough Consol. Corp.*, 288 F. 334, (2d Cir. 1923) for comparison with situation where a fund is set aside to meet declared dividend payments.
57. 306 N. Y. 336, 118 N. E., 2d 464 (1954).
58. *Negotiable Instruments Law* § 35.
59. *Id.* § 42.
60. *Id.* § 60.
61. The court distinguished *Wolfin v. Security Bank of New York*, 170 App. Div. 519, 156 N. Y. Supp. 474 (1st Dep't 1915), *aff'd* 218 N. Y. 709, 113 N. E. 1068 (1916). There, the maker required the payee to endorse the instrument to the plaintiff, and instructed him to deliver the note to the plaintiff. It was held constructive delivery was effected so as to vest the plaintiff with legal title to the instrument.

ness or other obligation owed by the drawer to the agency, there was no intent to confer a proprietary interest in the agency. The bank did in fact intend that the check be used for a specific purpose, but the existence of such a condition could not effect the rights of an innocent third party.[62] When the agency refused to accept the check, the endorsement to the agency no longer had any legal signifiance.[63] Hence, there was no basis for an assertion of forgery, since an unauthorized signature is significant only if the person seeking to enforce payment has acquired title "through or under such signature."[64]

The court then found that having the power to negotiate, the payees had in fact done so. After the agency refused to accept the check, the payees elected to treat the endorsement as "fictitious" and thus transformed the instrument into bearer paper.[65] The court noted that while this is known as the "fictitious payee doctrine" it applies as well to indorsees. The only operative factor is the intent of the indorser or drawer,[66] and since he could easily have made the check payable "to bearer," the law regards him as having done so.

The case may well be regarded as a caveat to those who issue negotiable paper to choose carefully the form in which that paper is issued. If, as the court pointed out, the car agency had been made the payee, either the limited purpose for which the check was issued would have been fulfilled or the attempted further negotiation of the check could have been effected by a signature of the agency that would, in such circumstances, be a forgery.

V. Criminal Law

Statutes

a. Purview of Vagrancy Statute: Some broad language in the New York vagrancy statute[1] centered the attention of the Court of Appeals in *People v. Gould*,[2] wherein defendant was convicted under that statute, having suggested in vain to a policewoman in

62. *Supra*, note 58.
63. *Id.* § 78; *McNeill v. Shellito*, 185 App. Div. 857, 173 N. Y. Supp. 810 (1st Dep't 1919).
64. *Supra*, note 59; *Britton, Bills and Notes*, 697 (1943).
65. *Negotiable Instruments Law* § 28 (3).
66. *Phillip v. Mercantile Nat. Bank*, 140 N. Y. 556, 35 N. E. 982 (1894); *Cohen v. Lincoln Sav. Bank of Brooklyn*, 250 App. Div. 702, 274 N. Y. Supp. 488 (1st Dept 1937), aff'd 275 N. Y. 399, 10 N. E. 2d 457 (1937).

1. Code Crim. Proc. § 887 (4) (b) defines a vagrant as "A person . . . who offers or offers to secure another for the purpose of prostitution, or for any other lewd or indecent act . . ."
2. 306 N. Y. 352, 118 N. E. 2d 553 (1954).