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# Negotiable Instruments: The Imposter Rule

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precise amount of corroboration required, there is no rule at all, accurately speaking.

Although some substantiation of a complainant's testimony is doctrinally required before a divorce will be granted, trial judges requiring very little support of such testimony have been sustained in other jurisdictions in instances in which the possibility of collusion was shown to be slight[28] or the proof of essential facts difficult.[29] The attitude of the Supreme Court of Florida on this particular point has not been definitely expressed; its readiness to reverse decrees of divorce is usually predicated on insufficiency of the evidence offered by complainant.[30] The appellate policy just mentioned as regards certain other jurisdictions serves in most instances to reduce the burden on complainant. Still more important, it recognizes that, when the subject-matter is of such a nature that creation of a precise rule is impossible in a given field at a given time, the discretion of a chancellor produces results at least satisfactory as those effected on a cold record by an appellate court that by its own showing is as yet unable to lay down a rule. Appellate courts generally are not prone to question the exercise of discretion by the chancellor unless there is a lack of any substantial corroboration. This, however, was the situation in the principal case; and on this there is a rule. Some corroboration is necessary.

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## NEGOTIABLE INSTRUMENTS: THE IMPOSTOR RULE

*United States v. Continental-American Bank and Trust Co. et al., 175 F.2d 271 (C. A. 5th 1949)*

Bertha Smith, pretending to be and using the name of Beulah Gibbs, widow of a deceased soldier, presented by mail an application and affidavits requesting six checks from the Veterans Administration. She thereby secured these checks, which were made to the order of Beulah Gibbs; endorsed the checks by signing the name of Beulah

[28]Cairo v. Cairo, 197 P.2d 208 (Cal. 1949); Olson v. Olson, 47 Idaho 374, 276 Pac. 34 (1929); Locksted v. Locksted, 208 Minn. 551, 295 N. W. 402 (1941).

[29]Gobler v. Gobler, 209 Ark. 459, 190 S. W.2d 975 (1946).

[30]*E.g.*, Garland v. Garland, 158 Fla. 643, 29 So.2d 693 (1947); Chisholm v. Chisholm, 98 Fla. 1196, 125 So. 694 (1929).

Gibbs; and negotiated them at one of the defendant banks. The banks, on their own endorsement reading, "Prior Indorsements Guaranteed," obtained payment of the checks from the United States through the Federal Reserve Bank. The United States later sought to recover on the guaranties in the endorsements made by defendants. From a judgment for the latter, plaintiff appealed. HELD, this does not constitute forgery, and the impostor rule is applicable to government checks procured through fraud. Judgment affirmed, Circuit Judge Hutcheson dissenting.

The impostor rule, as applied to negotiable instruments in its original sense, rests on the theory that the maker intends to deal with the person actually before him, even though he does so in the mistaken belief that the impostor is another individual, whom the impostor is fraudulently impersonating. Accordingly, payment to the impostor or his endorsee merely effectuates the maker's intent,[1] even though his motive is based on an erroneous assumption. When the transaction is handled by mail, however, and the maker never meets the impostor, the application of this rule shades over toward the domain of forgery, and — to some at least — improperly enters that field. The principal case squarely presents this very issue.

The impostor rule was first recognized in *Elliot v. Smitherman*,[2] wherein the loss resulting from the fraudulently procured issuance of a promissory note was placed on its maker. Since then the rule has become well established in the law of negotiable instruments,[3] its purpose being to foster circulation of commercial paper with the maximum feasible protection to the bona fide holders for value.[4]

Application of the impostor rule is dependent upon the intent of the drawer[5] of the negotiable instrument.[6] In most instances the

[1]United States v. First Nat. Bank of Prague, Okla., 124 F.2d 484 (C. C. A. 10th 1941).

[2]19 N. C. 322 (1837).

[3]United States v. First Nat. Bank of Albuquerque, 131 F.2d 985 (C. C. A. 10th 1942), *cert. denied*, 318 U. S. 774 (1943); Boatsman v. Stockmen's Nat. Bank, 56 Colo. 495, 138 Pac. 764 (1914); Robertson v. Coleman, 141 Mass. 231, 4 N. E. 619 (1886); Montgomery Garage Co. v. Manufacturers Liability Ins. Co., 94 N. J. L. 152, 109 Atl. 296 (1920); Land-Title & Trust Co. v. Northwestern Nat. Bank, 196 Pa. 230, 46 Atl. 420 (1900).

[4]Missouri Pac. R. R. v. M. M. Cohn Co., 164 Ark. 335, 261 S. W. 895 (1924); Goodfellow v. First Nat. Bank, 71 Wash. 554, 129 Pac. 90 (1913).

[5]The term "drawer" is here used, but the reasoning applies with equal force to the maker of a negotiable note.

[6]Land-Title & Trust Co. v. Northwestern Nat. Bank, 196 Pa. 230, 46 Atl.

maker and the impostor deal with each other in person, in which event the law can impute to the drawer either of two possible intents. One is to deal with the person that the impostor represents himself to be; the other is to deal with the person physically present, namely, the impostor.[7] The majority of the courts impute the latter intent[8] and accordingly render the drawer liable on his note. Some, however, choose to deduce the former intent, with the result that the loss is not imposed on the drawer.[9]

The majority view, which concludes that the drawer intends to deal with the person actually in his presence, reaches this result on the theory that normally one wishes to deal not with a name only but rather with a person,[10] and that a name, although one means of identification, is neither the only nor the surest means, particularly when contrasted with physical presence.[11] Frequently, however, the communications between the drawer and the impostor are made by mail. Even in this type of situation most of the cases impose the loss on the drawer,[12] although some courts hold other-

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420 (1900); *cf.* BRANNAN, NEGOTIABLE INSTRUMENTS LAW 476-477 (7th ed., Beutel, 1948); 34 HARV. L. REV. 76 (1920); 22 MICH. L. REV. 61 (1923); 41 MICH. L. REV. 1195 (1943).

[7]Uriola v. Twin Falls Bank & Trust Co., 37 Idaho 332, 215 Pac. 1080 (1923); Montgomery Garage Co. v. Manufacturer's Liability Ins. Co., 94 N. J. L. 152, 109 Atl. 296 (1920).

[8]United States v. First Nat. Bank of Albuquerque, 131 F.2d 985 (C. C. A. 10th 1942), *cert. denied,* 318 U. S. 774 (1943); Security-First Nat. Bank of Los Angeles v. United States, 103 F.2d. 188 (C. C. A. 9th 1939); United States v. Nat. Exchange Bank, 45 Fed. 163 (C. C. E. D. Wis. 1891); Cureton v. Farmers' State Bank, 147 Ark. 312, 227 S. W. 423 (1921); Milner v. First Nat. Bank of Waynesboro, 38 Ga. App. 668, 145 S. E. 101 (1928); Burrows v. Western Union Tel. Co., 86 Minn. 499, 90 N. W. 1111 (1902); Commercial Bank & Trust Co. v. Southern Industrial Banking Corp., 16 Tenn. App. 141, 66 S. W.2d 209 (1932).

[9]Cohen v. Lincoln Savings Bank, 275 N. Y. 399, 10 N. E.2d 457 (1937); Tolman v. American Nat. Bank, 22 R. I. 462, 48 Atl. 480 (1901).

[10]Meridian Nat. Bank v. First Nat. Bank of Shelbyville, 7 Ind. App. 322, 33 N. E. 247 (1893); *see* Cohen v. Lincoln Savings Bank, 275 N. Y. 399, 405, 411, 10 N. E.2d 457, 460, 463 (1937).

[11]United States v. Nat. Exchange Bank, 45 Fed. 163 (C. C. E. D. Wis. 1891); Meyer v. Indiana Nat. Bank, 27 Ind. App. 354, 61 N. E. 596 (1901); Robertson v. Coleman, 141 Mass. 231, 4 N. E. 619 (1886).

[12]Boatsman v. Stockmen's Nat. Bank, 56 Colo. 495, 138 Pac. 764 (1914); Uriola v. Twin Falls Bank & Trust Co., 37 Idaho 332, 215 Pac. 1080 (1923); Peninsular State Bank v. First Nat. Bank, 245 Mich. 179, 222 N. W. 157 (1928).

wise.[13] The distinction between impersonations by mail and in person, which is recognized in other branches of the law, such as sales,[14] has not impressed the majority of the jurisdictions as a useful one in dealings involving negotiable instruments.[15] Indeed, on occasion it has been expressly rejected,[16] although it has more usually been simply disregarded.

The drawer cannot be held liable, of course, that is, the impostor rule is not applied, when the instrument is negotiated by means of a forged signature.[17] Whether a forgery is actually committed depends upon whether the endorsement is made by the person to whom the drawer intended to deliver the instrument.[18] But this does not solve the problem. Those courts that impute to the drawer an intent to deal with a name, that is, to deal with the person whom the impostor represents himself to be, reach their result on the theory that a forgery, and not merely a fraud, occurs in this situation. The drawer intends that the named payee should endorse the instrument, and an endorsement by anyone else constitutes a forgery.[19] This theory thereupon invokes the Uniform Negotiable Instruments Act, and accordingly relieves the drawer from loss.[20]

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[13]Moore v. Moultrie Banking Co., 39 Ga. App. 687, 148 S. E. 311 (1929); American Surety Co. v. Empire Trust Co., 262 N. Y. 181, 186 N. E. 436 (1933).

[14]Hickey v. McDonald Bros., 151 Ala. 497, 44 So. 201 (1907); Martin v. Green, 117 Me. 138, 102 Atl. 977 (1918); Phelps v. McQuade, 220 N. Y. 232, 115 N. E. 441 (1917).

[15]Boatsman v. Stockmen's Nat. Bank, 56 Colo. 495, 138 Pac. 764, (1914); Metzger v. Franklin Bank, 119 Ind. 359, 21 N. E. 973, (1889).

[16]States v. First Nat. Bank of Montrose, 17 Pa. Super. 256 (1901), *aff'd*, 203 Pa. 69, 52 Atl. 13 (1902).

[17]Hamlin's Wizard Oil Co. v. United States Express Co., 265 Ill. 156, 106 N. E. 623 (1914). The Uniform Negotiable Instruments Act, Sec. 23, states: "Where a signature is forged or made without authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party against whom it is sought to enforce such right, is precluded from setting up the forgery or want of authority."

[18]Halsey v. Bank of New York & Trust Co., 270 N. Y. 134, 200 N. E. 671 (1936).

[19]Tolman v. American Nat. Bank, 22 R. I. 462, 48 Atl. 480 (1901); Simpson v. Denver & Rio Grande R. R., 43 Utah 105, 134 Pac. 883 (1913).

[20]See notes 17, 19 *supra*.