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The Law Relating to the Alteration of Negotiable Instruments

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T H E S I S .

THE LAW RELATING TO THE
ALTERATION OF NEGOTIABLE INSTRUMENTS .

-By-

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C O N T E N T S .

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THE LAW RELATING TO THE
ALTERATION OF NEGOTIABLE INSTRUMENTS.

Introduction.

The subject "Alteration" is of vast practical importance in the business transactions of a civilized and flourishing community, where commercial paper is frequently substituted for legal tender, in return for property or services received. Commerce would be greatly inconvenienced should it be compelled, in all its many lines of business, to proceed strictly upon a cash basis, and in no manner derive the advantages afforded by the use of commercial paper in cases where the parties are widely separated, or in those transactions where time is required in order that a party may better or improve his financial standing among business men. But there is this one feature, where such instruments are employed, which must be closely watched and guarded, that it be not employed to change the instrument the parties intended to make when they entered into the contract, or to unlawfully better the position of some party or parties to it. It is a subject which

has required and obtained much deep thought and study on the part of some of the best writers of legal works on the subject of negotiable paper, to reconcile and bring the many cases into harmony with each other ; but after all that has been said and done, each case seems to stand upon its own facts and surrounding circumstances.

Contemporaries.

Like each poet of the past, Alteration has its contemporaries. It is to be distinguished from Forgery on the one side, and from Spoilation on the other.

Forgery is the fraudulent making or alteration of an instrument, with intent to defraud. In order that the alteration of a negotiable instrument amount to forgery, it must be done fraudulently, and then is as much forgery as the making of the instrument outright. Forgery may include alteration, but it is in nowise necessary that alterations be forgeries. By forgery, not only the instrument is avoided, but the debt which constitutes the consideration of the document is extinguished. Alterations, if innocently made, are not forgeries, but if material they avoid the instrument, while action may generally be maintained upon the considera-

tion for which the instrument was given. Forgery, as is generally understood by the term, applies only to a false making or signing of an instrument with intent to defraud ; while Alteration refers to the change made in the terms of the document after it has been constructed. Thus the two circumstances can be clearly distinguished from each other.

Now comes the case where the change is made in the terms of the paper by a stranger to it, as a person to whom it is given for custody merely. This is not Alteration, but Spoilation. England and Scotland refuse to recognize any difference in the effect of either, while in America a spoilation has no effect upon the parties to the instrument so long as the words are free from doubt, and the intention of the parties can be gathered from them intelligibly. The English and Scotch rule seems to have its foundation upon the negligence of the holder. The courts of these countries say that a bill or note is avoided by a material alteration in its terms, even though the change be made by an entire stranger to the contract, and found their reasoning on the basis that the custodian is the person bound to preserve the integrity of an instrument. The instrument would be avoided if the change should be made by one of the parties, and therefore is

avoided if made by any other person through that party's negligence. American courts do not draw the line so closely as the British. They look at Spoilation from a more humane point of view. They consider a change so made as a misfortune to the holder, and he is in no way deemed to be at fault. The universal rule is to regard the instrument as avoided. It is said by the New York courts that where a bill is made unintelligible by a person not a party to it, the instrument will be treated as virtually destroyed.

History of Alteration.

When the subject first came before the courts, it was insisted that the avoidance by alteration applied only to deeds, because of their solemn character. The first important case in England in which this question was considered was that of Pigot's case, (11 Coke Reports, 26,) where it was resolved that a material point of the deed being altered, the instrument was avoided. This case was then followed by Master v. Muller, in Court of King's Bench, (4 T. Repts. 320,) where this same rule was applied to bills of exchange and all written instruments. Judge Ashurst said, "There is no magic in parchment or wax, and the principle to be extract-

ed from the cases is, that any alteration avoids the contract." Then the question came before the United States courts, and this same doctrine, now thoroughly established in England, was asserted and adopted here. New York had occasion to apply the rule for the first time in the case of Woodworth v. Bank, (19 Johnson, 391,) in which an indorser was held to be discharged by an alteration made after his indorsement, but before inception of the note, by an addition in a separate memorandum, fixing the place of payment.

Definition of Alteration.

That point in the discussion has now been reached where the treatment of Alteration should properly be commenced, and a fitting beginning seems to be made by a definition of the term itself. Alteration is an act done upon an instrument which, without destroying the identity of the document, introduces some change into its terms, meaning, language or details. But if that which is written upon or erased from the instrument has no tendency to produce such results, or mislead a person, it is not an alteration. Under such circumstances, the part added or stricken out would be immaterial and have no effect upon the document. This frequently hap-

pens in the addition of words implied by law, or the striking out of words of no importance, as the description of A in his signature to a note -- "A, Cashier, First National Bank." This latter being stricken out, the act done is held immaterial to the validity of the document. Such is the case whether the act was done fraudulently or innocently, so long as it is immaterial in effect.

Materiality.

Now comes the extremely important question : When is an alteration material ? This is necessarily the first question to be decided, for upon this is hinged the validity of the instrument. If material, the parties to the instrument are discharged. If not, they are still bound.

If a change is made in the terms of a written contract, which varies its original legal effect or operation, whether in respect to the legal obligation it imports, or its force as a matter of evidence, when made by a party thereto, the alteration is a material one, and the parties are discharged. If the document is made to speak a language legally different from that which it originally spoke, it is material ; and unless all the parties give their express or implied consent

to the change, the legal obligation of the instrument is destroyed, whether made with or without a fraudulent intent. The reason for so holding the instrument avoided, is to prevent fraud, in the first instance ; and, secondly, to secure the identity of the document. Of course, if the parties consent, they will be bound by the instrument as altered, for in effect it is the formation of a new and independent contract. In England, if such alteration was made after the instrument was issued, the bill or note would still be declared invalid, as under the Stamp Act, all new agreements must have their stamp. Under this act, the time when the bill was issued becomes of importance. This provision has not been adopted in America, and for that reason the question has no weight in the United States. In the case of Speak v. U. S., (9 Cranch, 38,) one of the names on the bond was erased and another substituted in its place by consent of the parties. Judge Story said, in that case, "It is clear at common law that an alteration or addition in a deed, as by adding a new obligor, or by striking out an obligor's name, if done with consent or concurrence of all parties to the deed, does not avoid it."

Those parts of a bill or note which if changed by one of

the parties will amount to a material alteration, and the parties to the instrument be discharged therefrom, are date, time, place of payment, amount of interest or principal, and number and relation of the parties. Some authorities add the following material parts to the list : change in general character or effect of the instrument as matter of obligation or evidence ; currency in which payment is to be made ; and, finally, by adding some new provision, striking out some provision, or substituting one provision for another. The question of materiality arises most frequently upon the five cases first named, and when it is up for decision it is a question of law for the court, and never a question of fact for the jury. (Oliver v. Hawley, 5 Neb. 444 ; 2 Wend. 255 ; 22 Pa. St. 207.)

Time and Date.

Time is almost identical with date and constitutes a material change of the instrument, if it be made in the year, month or day of the bill or note, or a bill on demand is made to read after date, or a substitution of "after date" for "after sight." Time is the counterpart of Date. The mention of one includes the other.

Date derives its significance from the facts that it shows when the bill or note becomes a contract, in many cases the time when the contract is to be performed, while many circumstances may arise making it of vast importance when the bill or note was issued.

Tennessee courts hold that the date of indorsement is not material, but such rule cannot be readily adopted, for a serious phase of the question as to materiality may arise when it is sought to find whether the indorsement was made before or after maturity. In the case of Wood v. Steele, (6 Wall. 80,) there appeared upon the face of the instrument that "September" had been stricken out, and "Oct. 11" substituted as the date. This was done after Steele had signed as surety for one Newson, without Wood's or Steele's knowledge or consent. The court held that Steele was discharged from all liability.

In Crawford v. West Side Bank, (100 N. Y. 56,) the plaintiff drew his check on defendant, dated April 22, payable to his clerk, who was directed by him to draw the money on that day and pay employees of the plaintiff. The clerk altered the check to April "21st", drew the money and left the locality. Plaintiff sought to recover a balance upon

account. The defendant sought to set up the payment of this altered check, as part of the balance due plaintiff. This he was unable to do, as there was no negligence on the part of the plaintiff in leaving blanks unfilled or in any way aiding in the commission of the fraud by the clerk in whose hands the check was placed, and the check had never become a valid instrument for any purpose, as before its inception it was vitiated by a fraudulent alteration.

Parties.

It is a settled rule in England and America, that change in the number or relation of the parties to a bill or note is a material alteration. The case of Chappel v. Spencer, (23 Barb. 584,) first laid down the rule. Here the payee of a note, before its maturity, transferred it to another, and, for the purpose of giving his own personal security to the purchaser, wrote his name upon the note, under the name of the maker and added the word "security", without any fraudulent intent. The court said this was such an alteration as to vitiate the note, and was borne out in its decision by the case of Gardiner v. Walch, (32 Eng. L. Repts. 162,) where it was said that the other party to the instrument would be

discharged from his liability if the altered instrument would operate differently from the original instrument, whether the change be or be not to his prejudice.

Where such names are added, the note instead of being the several or joint obligation of the original party or parties, becomes the joint or joint and several undertakings of different parties. It has been thought that the rule as given in the Chappel case had been overruled in New York by the later cases of McCaughey v. Smith, (27 N.Y. 39,) and Brown v. Winnie, (29 N. Y. 400.) This is not the case, however, in this State. In the last cited case, Winnie altered the instrument in his own favor, and when action was brought upon it he set up the alteration as a defense, which is contrary to all principles of justice to allow. In the first cited case, it was stated that the addition of the name of another person to a several note as maker, without knowledge or consent of the original signer, is not such a material alteration as will avoid the note. This case, at the first glance, appears to directly overthrow the Chappel case, but in reality it does not have that effect, nor does it so profess to act. One Hungerford signed the several note of one Hall after it was made, delivered and indorsed by Smith.

The judge who wrote the opinion recognized the doctrine of the Chappel case, in 23 Barb. 584, as good and subsisting law, but shunned it, as a traveller would a plague-infected city, by holding Hungerford a guarantor of the note, and not a maker. Therefore, the early case is still the New York rule as to change of parties.

Place of Payment.

This has also been held a material part of a negotiable instrument, and its change avoids the instrument, unless consented to when made. The best example of it is in the early case in New York of Nazro v. Fuller, (24 Wend. 373,) where action was brought upon a promissory note which had been altered after delivery of possession to payees, they having inserted the words, "Payable at Wayne County Bank." The defendant sought to show that the insertion was a mere memorandum, which was immaterial ; but the court said it was not a memorandum, but a part of the contract, and its insertion was material, was inserted by a party to be benefited thereby, and therefore the note was wholly void.

Amount.

This is the next material part of a bill or note to attract attention with reference to its alteration. It is spoken of in reports as forgery, which shows how closely the two terms are linked together. The most common way of producing this change is by introducing figures between the dollar sign and the amount written on the note. This was done in the case of Greenfield Bank v. Stowell, (123 Mass. 196,) where a note drawn for sixty-seven dollars was made to read "four hundred, sixty-seven dollars", and it was held that the holder could not recover of the maker. The doctrine founded by this case is denied in several States, New York and Pennsylvania among them, on the grounds of the negligence of the maker in leaving such blanks. They seem to have lost sight of the facts that a change committed in this manner, or any other, could not create a contract on the part of the maker, and that when committed in this way is no less liable to be detected. These courts state as a general rule that where one writes out a bill or note so as to leave spaces which can be easily filled without exciting suspicion, and the note is altered by filling in such spaces, he will have to suffer the consequences of his negligence and be liable to

a bona fide holder for value. This rule is hardly just or equitable, and surely it places a severe precision upon a business community. If promissory notes are only given by first-class business men who are skilled in drawing them in the best possible manner to prevent forgery, it may be well to adopt a high standard of accuracy and perfection, which the argument on the part of the plaintiff requires. But for the great mass of people such a standard would be entirely too high and would tend to encourage forgery, by the protection it would give to knaves and their forged paper.

Memorandum.

It is always a question, to be determined upon the circumstances, whether a memorandum upon a bill or note is intended as a part of the contract and a modification of the instrument, or whether it is merely an ear-mark for the purpose of identification. When the latter is the case, and it is so situated as to be easily detached without defacing the instrument, it does not modify the contract, nor does it have any effect upon it. But the addition of a memorandum to a note, by which it is materially affected, will avoid it ; and where the memorandum modifies the note or consideration,

and the note is torn off and negotiated, the instrument is again invalid. In Benedict v. Cowden, (49 N. Y. 396,) a memorandum made at the foot of a promissory note, stating the manner of payment, and intended as a part of the contract, was cut off, and the note thus altered was negotiated to a bona fide holder for value. The plaintiff was unable to recover upon the note, as the memorandum was so substantive a part of the contract as though inserted in the body of the instrument. The two combined formed the contract.

Reason of Discharge.

The reason why these different changes amount to a discharge is obvious. The agreement is no longer the one into which the defendant entered. Its identity is changed; another is substituted without his consent, and by one who has no power to consent for him. There is no longer the necessary concurrence of minds. If the instrument is under seal, he may plead that it is not his deed, and, if it be not under seal, that he did not so promise. To prevent and punish such tampering, the law does not permit the plaintiff to fall back on the contract as it was originally. But in pursuance of a stern and wise policy, it annuls the instrument as to a party

sought to be wronged.

Exceptions.

There are exceptions, however, to the general rule that all parties to a bill or note are discharged from all liability thereon by a material alteration, when made by a party interested and without the other's consent.

1. If an altered bill is restored to its original form and transferred to a bona fide holder, he may recover against all parties.

2. A bill may be altered at any time for the purpose of correcting a mistake and conforming the instrument to the intention of the parties at the time of issue.

The case of Kountz v. Kennedy, (63 Pa. St. 187,) is a fine case illustrating these points. One Hunt gave his note to Kennedy for a printing office. The note was soon after indorsed by Kennedy to the plaintiff, who immediately returned the note to Hunt's clerk, saying that it was to be on interest. The clerk, with Hunt's consent, inserted "with interest." The note was unpaid at maturity, and plaintiff sued the indorser. He offered the note as evidence, with the addition removed. The court held that this was not a fraud

upon the indorser, and he was still liable. The note was the same as when he indorsed it. It had been returned to its original shape. The identity of the note remained, and there was nothing in it to enlarge the obligation of the indorser, and as what was done was done innocently but mistakenly, and expunged perhaps within an hour of the time when inserted, there is no rule of law so unreasonable as to hold it avoided by this act.

Of course, where a note has been materially injured by an innocent alteration, it is within the power of a court of equity to decree the restoration of the instrument to its original form, and suit may be brought upon it directly.

As to mistake, a bill dated "1822", when it was the year 1823, was changed by the agent of the drawer and acceptor, and was held not to invalidate the bill. In another case, a drawer intended to make a bill negotiable and indorsed it over omitting the words "or order." Their subsequent insertion, in pursuance of the original intention, did not make the bill void.

With reference to the latter clause of the second exception, as to conforming to the original intention of the parties, a good illustration is the case of Cole v. Hills, (44

N. H. 244.) Both parties intended to make a note payable to B. C., but it was accidentally written "B. R. C." The "R." was erased by the payee, after delivery, and this act was held by the court not to discharge the parties, as it was immaterial.

Retracing names or words in an instrument, which have become dimmed by blots, or obscure from other means, does not avoid the obligation ; nor writing over with ink words written with a pencil ; or, in the case where a third person who has written the note and with whom it is left, in good faith, changes the date, but on the maker's disapproval restores it to its original form.

Whether the intent of an alteration is to vary the original contract or merely to correct a mistake, is always a question of fact for the jury.

Checks.

Although checks have not been mentioned before, what has been already said relating to bills and notes refers equally as well to checks. Where altered checks, commonly known as "raised paper", have been paid by banks, the general rule is that the money so paid may be recovered from the party receiv-

ing it, as a transaction without consideration. The bank is bound to know the drawer's signature only, and in absence of any circumstances which inflict injury upon another party, there is no reason why the bank should not be reimbursed.

If a bank certifies a check, it is not thereby precluded from showing an alteration ; nor does the declaration of a teller as ^{to} the validity of the instrument preclude the showing of such defect. The case of Security Bank v. National Bank, (67 N. Y. 461,) illustrates this principle in a very good light. A raised check was taken to the bank and certified by the teller. The person presenting it said he did not like the appearance of the person who brought it to him and he wanted it closely examined before it was certified. The teller said it was a good check in every particular and drawn upon one of the directors of that bank. When the case was contested, the Court of Appeals held that the teller could only bind the bank to the extent of the genuineness of the drawer's signature, and farther than that was merely a statement of the teller's opinion.

In check cases, the question of negligence frequently arises. When it does, the courts universally rule that the loss must fall upon the party whose negligence has been the

means of producing the fraud. In Espy v. Bank of Cincinnati, (18 Wall. 605,) Stall and Myer were customers and depositors with the defendants' bank. They drew their check on that bank for the sum of \$26.50, payable to Mrs. E. Hart, and delivered it to a stranger to all the parties to the transaction, who represented himself to be Mrs. Hart's agent. The stranger erased the payee's name, and also the amount for which the check was given. He then inserted the name of Espy, Heidelbach & Co., Bankers and Brokers, as payee, and \$3920 as the amount. He passed the check to this firm in payment for bonds and gold which he purchased from them. The check was paid by the bank, through the clearing house, and on the following day the fraud was discovered. Espy made demand for the amount paid through mistake, and the court ruled that where money is paid on a raised check by mistake, neither party being in default, it may be recovered as paid without consideration. But if either party has been guilty of negligence or carelessness, by which the other party has been injured, the negligent party must bear the loss.

Intent.

The first important question that has to be decided in treating of Alteration cases is, whether the change made was or was not in a material part of the bill or note. The second important question that is now to be considered is, whether the alteration was made with an innocent or fraudulent intent. Of course, if it was fraudulently made, the instrument is destroyed, and likewise the debt which it was intended to cover. But, on the other hand, large amounts may be saved to the holder of the altered bill or note, where innocently made, by reason of his right to recover upon the consideration for which the document was issued to him.

Text writers commonly make the statement that the holder of a bill which has been avoided by a material alteration cannot recover upon the consideration in respect to which it was negotiated to him. They do not intend this, however, as a rule to be strictly applied in all cases, but exclude those cases where the bill was negotiated to the holder after alteration, he being not privy thereto, cases where the party sued would not have had any remedy over on the bill if it had not been altered, and lastly those cases where he did not intend to commit a fraud by the alteration. The cases

commonly cited by writers in support of such statements, are Myer v. Huneke, (55 N. Y. 412,) and Wheelock v. Truman, (13 Pick. 165.) Both were cases of a fraudulent act and with fraudulent intent. In the first named case, a note drawn for \$1000.00 had inserted in it by the plaintiff, without the defendant's knowledge, the words "with interest". The plaintiff was unable to recover on the note or the consideration, because it was fraudulently altered by the plaintiff to defraud the debtor and improve the creditor's own position. In the second case, the court recognized the same doctrine, where a memorandum to a note, which was essential and constituted one of its stipulations, was detached and the remainder of the note sued upon by the party detaching the clause.

It has been said that the obvious policy of the rule which avoids a written contract on the account of a fraudulent alteration was to prevent fraud, and it is apparent that if the party guilty of the fraud may found a claim upon the original consideration, the rule would be defeated. To allow parties to take the chances of success in fraudulently raising the amount of written obligations of their debtors without risk of loss in detection, would be an encouragement

to this description of fraud which the law should not afford. And alterations of the instruments by the holders thereof, such as to destroy their identity, in Vogel v. Riper, (34 Ill. 100,) and Hunt v. Grey, (35 N. J. Law,) did not cancel the debt of which the instruments were evidence, where they were innocently made. Courts have even gone farther than this, but in the same channel. In Fraker v. Little, (24 Kan. 598,) the court said that where a party makes a payment on a bill, from which he is discharged by reason of an alteration, he may recover the amount so paid, on the ground of money paid by mistake.

Presumption as to Intent.

As to whether an alteration will be presumed fraudulently made, or made innocently and in good faith, is a question that is not settled in this country. The weight of authority probably, is in favor of holding the change fraudulently made. Generally, when an alteration is shown, the burden is upon the holder to show that the alteration was made innocently by himself or by another for a proper purpose, in the absence of which, it is presumed to have been made fraudu-

lently. The cases of Robinson v. Reed, (46 Iowa, 221,) Wheeler v. Freeman, (13 Pick. 165,) and Wardner, Bushnell & Glessner Co. v. Willyard, (49 N. W. 300,) illustrate this principle. In this latter case, the court said the plaintiff must show the absence of a fraudulent intent in the alteration, or when the most glaring forgeries are committed the maker or party sought to be charged would have to discover the motive of the forger and establish it by proof, which would be well nigh impossible in every case. In Hartley v. Corboy, (150 Pa. St.) a promissory note, showing on its face a material alteration, was not admissible in evidence without showing the change to have been made lawfully. On the other hand, in the case of Franklyn v. Baker, (27 N. E. 550,) it was claimed by the defendant that the promissory note upon which suit was brought had been altered since execution. It was held that the burden was upon him to show that it was not so altered, for it was presumed to have been innocently made until the contrary was shown. If before execution, it did not effect the validity ; but if after, and without consent of the maker, it was a crime which the law would not presume.

Presumption as to Time.

The latter part of the decision of the court in this last case brings up the presumption as to the time when the alteration is made in the instrument. Here again are the courts of the different States of this country at variance. In the case of Hagers v. Bankers' Insurance Co., (46 N. W. 1114,) the court said it was incumbent upon the party alleging the alteration to prove it, since there was no presumption that it was made after, but was made before delivery. While in Hesse's Appeal, (19 At. 434,) in the case of an altered check, the court said that the burden of proof was on the holder, to show by competent proof either that the alteration was made before execution, or after with the drawer's consent. It may be said, however, that many of the courts have adopted a criterion by which the question of presumption as to time may be decided. They take into consideration the general appearance of the instrument and all the surrounding circumstances. If the alteration is not suspicious or beneficial to the holder, the alteration is presumed to have been made prior to or contemporaneous with the execution of the document. This is the rule laid down in Connecticut and Ohio, and lately passed upon and affirmed in the highest court

of Texas. In the case of Stillwell v. Patton, (18 S. W. 1075,) where a note was written on poor paper, the figures and signature blurred as though blotted with a newspaper, but the same kind of ink used throughout, the court said there was no cause of suspicion, and honesty was presumed.

On the contrary, if the alteration be one of a suspicious character or beneficial to the holder, fraud will be presumed against him, and the benefit derived by the presumption of honesty will be lost to him. Upon this point is the case of Bowman v. Mitchell, (79 Ind. 84,) In New York, a material alteration is held to create such a suspicion, as is shown by a case in 22 Wend. 387. But a mere interlineation is not sufficient to create such a suspicion. The case of National Bank v. Madden, (114 N. Y. 280,) was that of a check indorsed by the payee and made to appear as having been altered after payee's indorsement and without his consent. The alteration was presumed to have been so made as to vitiate the instrument as against the indorser, and the burden was upon the party seeking to enforce it to relieve it from the effect of the change, by showing it to have been made by a stranger to the instrument.

Burden of Proof.

The subject of Alteration has now been treated with reference to its scope, its history, how constituted, when it is so made as to affect the instrument, presumption of intent of the parties making the change, presumption as to time when made, and now comes the final important division, previously referred to herein, but not so fully treated as it deserves, - namely, Burden of Proof. The most common cases that have arisen and been considered are those in which the alteration has appeared upon the face of the instrument, although there have been cases in which the alteration was non-apparent ; and consequently a different rule has had to be propounded for these cases, which would not be of weight in deciding the first class named. Here, as is shown by U. S. v. Lynn, (1 Howard, 104,) the burden of proof is upon the party alleging the alteration. In England, where the alteration appears upon the face of a bill or note, it lies upon the plaintiff to show that it was made under such circumstances as not to vitiate the instrument, and he cannot recover by merely showing that he is a holder for value before maturity. In America, as has been seen, the cases are not entirely harmonious ; but the English rule is considered by the weight of

authority to be the just holding. This is a reasonable ruling, for if it was thrown upon the defendant to show that the alteration was improperly made, it might be a great hardship, for he may have no means of proving that the bill went unaltered from his hands, or showing the circumstances of the subsequent alteration. But there is no hardship on the part of the plaintiff, for if the bill was altered in his hands, he may and ought to account for it. If before, then he took it with the marks of suspicion on its face, which ought to have induced him either to have refused it entirely, or required evidence of the circumstances under which the alteration was made. Clearly he is the party in default and should bear the burden of explaining and extricating himself. He must know the circumstances which induced the alteration, and to require the party wronged to go into the enemy's camp for evidence would aid in the invention of fraud.

The question of burden of proof first arose in the Supreme Court of Pennsylvania, in the case of Simpson v. Stackhouse, (9 Barr, 186,) where Chief Justice Gibson considered the underlying principle of such proof, and I can do no better than quote his words as follows : "He who takes a blemished bill or note, takes it with its imperfections on

its head. He becomes sponsor for them, and though he acts honestly, he acts negligently. But the law presumes against negligence as a degree of culpability, and it presumes that he had not only satisfied himself of the innocence of the transaction, but had provided himself with the proof of it to meet a scrutiny he had reason to expect. It is of no little weight, too, that the instrument is found in his hands, and that no other person else can be called upon to speak of it, for without a presumption to sustain him, the maker would in every case be defenseless. It may be said that the holder with such presumptions against him would also be defenseless. But it was his fault to take such a note. As bills and notes are intended for circulation, and as payees do not usually receive them clogged with impediments in their circulation, there is a presumption that such an instrument starts fair and untarnished, which stands until repelled, and the holder ought, therefore, to explain why he took it branded with marks of suspicion which would render it unfit for his purpose. The maker cannot be expected to account for what may have happened to it after leaving his hands, but the payee who takes it discredited and condemned on its face ought to be prepared to show what it was when it was received by him.

The very fact that he received it is presumptive evidence that it was unaltered at the time, and, to say the least, his folly or knavery raises a suspicion that it is his duty to remove."

Jordan C. Cobb.

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