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## THE ATTITUDE OF THE BENCH AND BAR OF PENNSYLVANIA TOWARDS THE NEGOTIABLE INSTRUMENTS LAW.

The Negotiable Instruments Law has been adopted in forty-seven States, Territories, the District of Columbia and the Insular Possessions of the United States. Since its adoption in these various jurisdictions the writer has gathered, analyzed and card catalogued one thousand and ninety-one cases determinable under its provisions in those jurisdictions. In three hundred and eighty-seven of these cases, thirty-five and forty-seven hundredths per cent., the Act was ignored, as well as the cases under it.

The writer does not mean that in all those cases the decisions were contrary to the provisions of the Act. In some of them it was, but it has not seemed to him to be a part of his duty to determine which were erroneous. Whether they were right or wrong, he contends that in every case where the Act clearly states a principle that governs the case before the court (always supposing, of course, that the Act is in force in that jurisdiction) the Act should be cited as the true source of authority. The fact that this is a uniform law, a code for all the States, makes this all the more imperative. If the particular section or sections applicable to the particular case are contrary to prior statutory provision or prior judicial decision in that State, it is clear

that the Act is the real source of authority. The writer contends that it is equally the real source of authority even when the principle thus enunciated happens to be the same already in force in that jurisdiction. How can it be contended that the Act is the source of authority in one case and not in the other? It is only by maintaining it as the source of authority in *all* cases that we can hold our profession (including judges and lawyers) to one invariable course of examining and citing the particular sections of the Act and also the cases under those sections in other jurisdictions and thus secure uniformity in decisions and the growth of a new body of precedents. To depart from this rule, to allow judges and lawyers to ignore the Act and the decisions under it, and to indulge in the common habit of adhering to some notion peculiar to that particular jurisdiction—the result will be dissonance and a gradual divergence from uniformity in decisions involving the same question in different jurisdictions.

It should hardly be necessary to state that while thus interpreting and applying the Act and the decisions under it, the examination of old cases and old text books (meaning those antedating the adoption of the Act) for purposes of elucidation or illustration or for tracing the history and development of the particular principle in question, is always in order. But it cannot be too strenuously insisted that when the law is put in the form of a concise code and particularly when that code is intended and is adopted for the express purpose of bringing into harmony the varying law of different jurisdictions, the source of authority is the code and the cases under it, and the prior law is superseded by the code even though it makes no change in the prior law in that State or jurisdiction. It is confusing, misleading and a source of future error and divergence from the uniform law not to cite it and the cases under it in point, in every case, whether the uniform law changes the law in the particular jurisdiction, or whether it does not change it.

Whenever an opinion ignores the Act and the cases thereunder, and cites old decisions of its own State, it encourages the tendency to continue local development of juristic conceptions and rules of limited sphere, instead of encouraging the develop-

ment of juristic conceptions and rules uniform throughout the country and therefore national in scope.

Since the adoption of the Act in Pennsylvania<sup>1</sup> some fifty cases have arisen in that State under its provisions. The object of this article is to examine the attitude of the Bench and Bar of that State, distinguished for the learning and the ability of her lawyers, towards this law. To do this, these cases must be examined.

*Homewood People's Bank v. Heckert.*<sup>2</sup>

In an action by the payee against the maker, an affidavit of defense tending to show that the note was not to be paid until certain buildings were sold and that they had been sold was held to state evidence that was not admissible because it would vary the terms of the written agreement. But query, does this rule of evidence apply, the suit being between the parties to a negotiable instrument not intended by them to take effect until a certain event? See Sections 91, 98 (52, 59)<sup>3</sup> not cited by the court.

*Chambers v. McLean.*<sup>4</sup>

Upon suit by the payee of a negotiable promissory note against the two makers thereof, it is no defense by one of the makers that he signed the note at the request of the payee and for her accommodation and without consideration from the payee. Sections 54-55 (28-29) were applied, but no cases under the Act were cited. At this time, 1903, although it was only two years after the adoption of the Act in Pennsylvania, the following cases which are cited in the notes had arisen under Section 55 (29) in other jurisdictions.<sup>5</sup>

<sup>1</sup> Act of May 16, 1901, P. L. 194.

<sup>2</sup> 207 Pa. 231 (1903).

<sup>3</sup> The section numbers first given are those of the New York Act, as more cases arise in the courts of New York than in other States. The section numbers next given are those of the Act as adopted by its framers.

<sup>4</sup> 24 Pa. Super. Ct. 567 (1903).

<sup>5</sup> Bankers' Iowa State Bank v. Mason Hand Lathe Co., 90 N. W. 612 (Iowa, 1902), not citing the Act; Bank of Monticello v. Dooley, 113 Wisc. 590 (1902), citing §55 (29); Fleetman v. Ashley, 60 A. D. 201 (N. Y. 1901), ignoring the Act; Howard v. Van Gieson, 50 A. D. 127 (N. Y. 1900), not citing §55 (29), although citing other sections of the Act; State Bank of Chicago v. Carr, 130 N. C. 479 (1902), ignoring the Act; Strickland v. Henry,

*Milton National Bank v. Beaver.*<sup>6</sup>

A promissory note, otherwise negotiable in form but containing a provision authorizing a confession of judgment before maturity, is non-negotiable under Section 24 (5). Section 320 (184) should also have been cited.

*Neil v. Neil.*<sup>7</sup>

A co-partner R. signed his name to a judgment note leaving the name of the payee blank and delivered the note to his co-partner N. to be signed by him and used to raise money for the firm. N. signed the note, inserted his own name as payee and delivered it to the plaintiff in exchange for another note for a larger sum which N. had discounted and appropriated the proceeds to his own use. The court held that the case should be ruled by the doctrine that where one of two innocent parties must suffer a loss, it must be sustained by the one whose conduct, although blameless, caused the loss, and that C. cannot recover from R. and N.; citing old cases and Story's Equity as authorities, instead of citing Section 91 (52) and cases decided thereunder.

Whenever possible, cases concerning negotiable instruments should be determined under the rules of the law merchant and not under the rules of estoppel, nor of equity.

*Siegel v. Hirsch.*<sup>8</sup>

Facts stated held to be sufficient to warrant a conclusion of law that due notice of dishonor had been given to an indorser. Sections 55, 176 and 177 (29, 105, 108) were cited, but no cases under them were referred to.

It is asked why cases in other jurisdictions under the same sections should have been cited unless the interpretation and appli-

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66 A. D. 23 (N. Y. 1901), citing §55 (29), but the decision was reversed, 175 N. Y. 372 (1903), on the erroneous ground that the case should have gone to the jury to determine whether it was accommodation paper; for that was immaterial, see §55 (29). Several cases decided in 1903 are not included in this list. No cases had arisen by 1903 under §110 (60).

<sup>6</sup> 25 Pa. Super. 494 (1904).

<sup>7</sup> 25 Pa. Super. Ct. 605 (1904).

<sup>8</sup> 26 Pa. Super. Ct. 398 (1904).

cation of those sections is doubtful? It is enough to state in reply that their interpretation and application was considered doubtful enough to warrant counsel to bring suit to determine them.

*Rathfon v. Locher.*<sup>9</sup>

A note by a married woman for her husband's accommodation, although legally invalid, imports a moral consideration.

This was held to be enough to support a note in renewal given by her after her husband's death. The fact that the note was dated before her husband's death, was held not to matter, under Section 31 (12), it not having been done for an illegal or fraudulent purpose. Section 51 (25), which provides that "an antecedent or pre-existing debt constitutes value" should also have been cited.

*Kensington National Bank v. Ware.*<sup>10</sup>

In an action against co-partners as indorsers of a note, an affidavit of defense by one partner that he had no notice of protest (meaning notice of dishonor) and that such notice had been fraudulently suppressed by his partner was held to be insufficient; citing Section 170 (99), but not citing *Traders' National Bank v. Jones*,<sup>11</sup> a prior decision under this section.

*Garman v. Gumbiner.*<sup>12</sup>

Upon suit brought on a note, an affidavit of defense averring that the payee had failed to complete according to contract the work for which the note was given, and that the plaintiff, the indorsee of the note, took it with full knowledge of the failure of consideration, is sufficient.

The Act was not cited.<sup>13</sup> In this as in many other cases it is not, as stated previously, the correctness of the decision that

<sup>9</sup> 215 Pa. 571 (1906).

<sup>10</sup> 32 Pa. Super. Ct. 247 (1906).

<sup>11</sup> 104 App. Div. 433 (N. Y. 1905).

<sup>12</sup> 32 Pa. Super. Ct. 181 (1906).

<sup>13</sup> See §§91, 94, 95, 96, 97, 98 (52, 55, 56, 57, 58, 59), and the scores of cases that had been decided thereunder by this time.

is questioned, but the failure to cite the real source of authority, the Uniform Negotiable Instruments Law, and the decisions under it.

*Burgettstown National Bank v. Nill.*<sup>14</sup>

Where the indorser of a note indorses on the note a waiver of protest or demand of payment eighteen months after maturity, with knowledge that no demand for payment had been made, he is bound by the waiver and is liable on the note as indorser. The court concluded:

"It is manifest therefore, that, from the nature of the indorser's contract, a new consideration is not required to support a waiver of protest before or after maturity of the paper."

The Act was not cited.<sup>15</sup> But inasmuch as the real point involved is explicitly determined by the express terms of the law on the statute book, why spend time in discussing old cases that plainly showed a lack of knowledge of the principles of the law merchant and saturation of mind with the common law doctrine of consideration not applicable in cases under the law merchant?

*Diffenbachers' Estate.*<sup>16</sup>

Knowledge by the holder for value that the defendant is an accommodation indorser is no defense, citing many old Pennsylvania cases, but ignoring the law of the State, Section 55 (29) and all the cases under it.

*Chatham National Bank v. Gardner.*<sup>17</sup>

When a note shows on its face the name of a limited partnership association and the note is signed by two individuals, one as secretary and one as treasurer, the note is deemed to be that of the association and not of the individuals who signed it; citing and following Section 39 (20), but citing no cases under it.<sup>18</sup>

<sup>14</sup> 213 Pa. 456 (1906).

<sup>15</sup> See §§180, 181, 182 (109, 110, 111).

<sup>16</sup> 31 Pa. Super. Ct. 35 (1906).

<sup>17</sup> 31 Pa. Super. Ct. 135 (1906).

<sup>18</sup> In the case of *Daniel v. Glidden*, 38 Wash. 556 (1905), the note was headed in print with the name of a corporation and was signed by one defendant as secretary, and by the other as president. It was held [after citing

*Marshall v. Sonneman.*<sup>19</sup>

A notice of dishonor of a note and of its protest, directed to one of two indorsers and delivered to the second indorser, is not enough to hold such a second indorser; citing old cases and old text books, but not mentioning the Act.

Counsel for appellee claimed that such a notice is "entirely within the requirements of the negotiable instruments law," but without citing any specific section. See Section 167 (96) under which it would seem that as the second indorser had notice which sufficiently identified the instrument and indicated that it had been dishonored by non-payment<sup>20</sup> the indorser was liable. What difference does it make to whom it was addressed, so long as the indorser sought to be charged had actual notice of dishonor? The words "the holders look to you for the payment thereof" are superfluous, not being required by the Act.

*Birmingham Iron Foundry v. Regnery.*<sup>21</sup>

In an action against an alleged indorser of the note of a corporation of which he was President, who added "Prest" after his signature, evidence is admissible under Section 39 (20) to show that his intention to bind the corporation only, was known by the plaintiff.

*Hatboro National Bank v. Stevenson.*<sup>22</sup>

In an action by the last indorser of a note against the maker, the note being payable to the maker's order, an affidavit of defense is sufficient alleging that the defendant indorsed and deliv-

§39 (20) and claiming to follow it, but as the note was non-negotiable the provisions of the Act are not applicable] that the name of no principal was disclosed, and the name of the corporation printed at the top of the note formed no part thereof. It might as well be contended that a printed letter-head or a printed promissory note with the name of the place printed instead of being written, does not disclose where the note was made or filled in; or that the printed part of a date (191 ) filled in so as to read (1910) does not disclose the date; or as the figures in print form no part of the note, the date of the note was the year 0; or was undated.

<sup>19</sup> 216 Pa. 65 (1906).

<sup>20</sup> The language used in §167 (96).

<sup>21</sup> 33 Pa. Super. Ct. 54 (1907).

<sup>22</sup> 33 Pa. Super. Ct. 144 (1907).

ered the note to the second indorsee and that the plaintiff was not the owner of the note, but that he brought suit for the use and benefit of the second indorsee to deprive the defendant of his just defense and to prevent him from setting off against the payment of the note an amount claimed to be due from the second indorsee to the defendant. The Act was not cited.<sup>23</sup>

*Whitman v. First National Bank.*<sup>24</sup>

The drawee receiving a cheque drawn upon itself without sufficient funds to the drawer's credit to meet it, making an effort to induce the drawer to make his account good, and telegraphing notice of dishonor that day to its correspondent in a distant city, is not liable to the holder because it did not protest the cheque until the next day. The Act was not cited.<sup>25</sup> The correctness of the course pursued by the bank is more evident upon citation of these sections of the law upon the statute book of the State.

*Link v. Bergdoll.*<sup>26</sup>

In an action on a note against an indorser, an affidavit of defense stating that no notice of the dishonor or protest of said note was given to this deponent by the plaintiffs . . . is enough to put the plaintiff to proof before a jury. The Act was not cited, but see Section 160 (89). As before stated, under Section 189 (118), while protest is permissible, it is not requisite except in the case of foreign bills of exchange. This is so often overlooked by the courts of many States besides those in Pennsylvania that it calls for particular notice.

*State Bank of Pittsburgh v. Kirk.*<sup>27</sup>

Where the directors of a bank whose capital is impaired, make their notes to the bank, to take the place of certain bad loans, with an understanding that these directors' notes are to be paid out of profits, and the bank fails, the directors cannot set

<sup>23</sup> See §§91 to 98 (52 to 59).

<sup>24</sup> 35 Pa. Super. Ct. 125 (1907).

<sup>25</sup> See §§174, 185 (4), 189 (103), 114 (4), 118.

<sup>26</sup> 35 Pa. Super. Ct. 155 (1907).

<sup>27</sup> 216 Pa. 452 (1907).

up want of consideration, on being sued on their notes by the receiver of the bank.

The Act was not cited, the court resting its opinion on estoppel. But see Section 51 (25) under which there was a valid consideration, constituting value, for the directors' notes taken in gradual extinguishment of bad loans. By thus ignoring the law and citing only old cases (by which is meant cases decided before the adoption of the Act) the benefit was lost of all the cases decided under that law.

*Allentown National Bank v. Clay Product Supply Co.*<sup>28</sup>

Where a bank accepts from a debtor a negotiable promissory note indorsed by the debtor and extends time to him, crediting his account with the proceeds, receipting and surrendering bills of lading pledged as collateral, there being nothing to connect the bank with what took place between the original parties to the note, the bank is not only a holder for value, but is also a holder in due course, being without notice of any infirmity in the instrument or of any right of set-off in connection therewith. The Act was not mentioned; but see Sections 51 and 91 (25 and 52). By this time (1907) twenty-four cases had arisen under Section 51 (25) and thirty-nine cases under Section 91 (52). The law itself not being cited all these sixty-three cases were also ignored.

*Lindsay v. Dutton.*<sup>29</sup>

In an action on a note against the maker, an affidavit of defense that the indorsement was after maturity with full notice of the maker's defense, will only avail the defendant so far as he may have a defense against the payee. The Act was not cited; but see the Sections 91 to 98 (52 to 59).

*First National Bank of York v. Diehl.*<sup>30</sup>

Where a payee agrees with one of several indorsers that if such indorser will pay the note sued on as soon as possible or at most within sixty days, other notes of that indorser will be ex-

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<sup>28</sup> 217 Pa. 128 (1907).

<sup>29</sup> 217 Pa. 148 (1907).

<sup>30</sup> 218 Pa. 588 (1907).

tended, the note in suit having been duly protested and notice of dishonor having been given to all the indorsers, none of the indorsers are released. Mere delay in enforcing collection after maturity, the liability of the indorsers having become fixed, will not discharge the indorsers. The Act was not cited, but see Sections 200, 201 (119, 120).

*Provident Securities and Banking Co. v. First National Bank of Gallitzin.*<sup>31</sup>

Section 225 (137) cited and followed, imposes a statutory duty on the drawee of a bill of exchange or cheque to return it to the holder, accepted or non-accepted, within twenty-four hours after delivery to the drawee, unless the drawee allows a longer period, and the failure so to return it renders the drawee liable as an acceptor, following the law as determined in *Wisner v. First National Bank of Gallitzin.*<sup>32</sup>

This section of the Act was much discussed in the controversy between Dean Ames of the Harvard Law School and others.<sup>33</sup>

*Croyle v. Guelich.*<sup>34</sup>

Citing a statute of 1881,<sup>35</sup> it was held that an acceptance of a bill of exchange must be in writing, ignoring the later and therefore the real source of authority, the Negotiable Instruments Law, Section 220 (132).

Under the Act of 1881 a bill of exchange for less than twenty dollars may be accepted orally. Under Section 220 (132) even an acceptance of such a bill must be in writing. Surely it cannot be claimed that the Act of 1881 is the law as to the acceptance of bills of exchange for less than twenty dollars! It is Section 220 (132) that is the law in every case of an acceptance of a bill, and not the law of 1881, whether the bill be for less than, or more than, twenty dollars.

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<sup>31</sup> 37 Pa. Super. Ct. 17 (1908).

<sup>32</sup> 220 Pa. 21 (1908).

<sup>33</sup> See, Brannan on the Negotiable Instruments Law (2nd Ed.), p. 162.

<sup>34</sup> 35 Pa. Super. Ct. 356 (1908).

<sup>35</sup> Act of May 10, P. L. 17.

*Flanders v. Snare.*<sup>36</sup>

There is nothing in the Act, Sections 60, 61, 23, 36 (30, 31, 4, 17), cited and followed, that prevents the use of a rubber stamp in the indorsement of negotiable instruments.

*Stouffer v. Kelchner.*<sup>37</sup>

In the absence of evidence of fraud impeaching the title of one suing on bills of exchange the offer in evidence of the bills, with their indorsements, makes out a *prima facie* case, and the plaintiff is not required to show that he is an innocent holder for value before maturity.

Why not cite Section 98 (59) instead of "the rules of practice in the court below" as the source of authority?

*Johnson Co. v. Koch.*<sup>38</sup>

The purchaser of negotiable paper in due course of business, for value before maturity, without notice of any ground of defence by the acceptor, is entitled to a verdict directed for him.

Although the Act was not referred to by counsel (so far as the report shows), the court cited and followed Sections 90, 91 and 95 (51, 52, 56).

*Cunningham v. First National Bank of Indiana.*<sup>39</sup>

Where a cheque is paid on a forged indorsement and the drawer delays six weeks in giving notice thereof to the drawee, the drawer cannot recover from the bank the amount of the loss, the bank in which the cheque was first deposited having meantime failed. Sections 42, 112 (23, 62) should have been cited, but were not, so far as the report indicates.

*Tibby Bros. Glass Co. v. Farmers & Mechs. Bank.*<sup>40</sup>

The law was here laid down as to the absence of any contractual relationship between the payee of an unaccepted cheque

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<sup>36</sup> 37 Pa. Super. Ct. 28 (1908).

<sup>37</sup> 38 Pa. Super. Ct. 475 (1908).

<sup>38</sup> 38 Pa. Super. Ct. 553 (1908).

<sup>39</sup> 219 Pa. 310 (1908).

<sup>40</sup> 220 Pa. 1 (1908).

and the bank on which the cheque is drawn, ignoring the fact that such is the statute law of the State under Section 325 (189).

The defendant bank cashed cheques on other banks on forged indorsements of the plaintiff payee's name, paying the several amounts to the plaintiff's bookkeeper who absconded. The defendant bank then collected the amounts of the cheques through the clearing house. It was held that the plaintiff, as depositor in the defendant bank, has no right of action to recover such moneys as moneys received for the depositor's benefit. Section 42 (23) was not cited.

*Wisner v. First National Bank of Gallitzin.*<sup>41</sup>

Presentation for acceptance is a demand for acceptance, which, if the bill is retained by the drawee, implies a demand for its return, if acceptance is declined. Mere failure to return the bill within twenty-four hours, is acceptance and a cheque is subject to the same rules.

Sections 220, 224, 225, 321 (132, 136, 137, 185) were cited and two cases under the Act, *State Bank v. Weiss*,<sup>42</sup> and *B. & O. R. Co. v. First National Bank*.<sup>43</sup> At this time, 1908, seven cases had arisen under Section 220 (132); one case had arisen under Section 224 (136); and eleven cases had arisen under Section 321 (185).

*Bank of Morehead v. Hernig.*<sup>44</sup>

A plaintiff suing on a note is put to proof of the *bona fides* of the transaction when the affidavit of defence avers that the plaintiff took the note after notice of the payee's defective title, and that no consideration or but little consideration passed.

The Act was not mentioned by counsel but was referred to in the opinion, without stating, however, what sections are applicable or citing any of the scores of cases by this time, 1908, decided thereunder in the States where the Act was in force.<sup>45</sup>

<sup>41</sup> 220 Pa. 21 (1908).

<sup>42</sup> 91 N. Y. S. 276 (1904).

<sup>43</sup> 102 Va. 753 (1904).

<sup>44</sup> 220 Pa. 224 (1908).

<sup>45</sup> See §§91, 93, 94, 95, 96 and 98 (52, 54, 55, 56, 57 and 59).

*McNeeley Co. v. Bank of North America.*<sup>46</sup>

Upon suit by a depositor against the bank in which the deposits were made, payments having been made by the bank of cheques on this account which were forgeries, a delay of three months in giving notice to the bank by the drawer, after discovery of such forgeries and payments, will deprive the depositor of his right to recover.

Counsel for the appellee relied on the old leading case of *Price v. Neal*,<sup>47</sup> and old cases in the Supreme Court of the United States and of Pennsylvania, but failed to cite Section 42 (23) or any cases under it. The opinion ignored the Act.<sup>48</sup>

*Snyder v. Corn National Bank.*<sup>49</sup>

Where a clerk having unlimited power of attorney to draw cheques against his employer's account, draws cheques to the order of one having no business relation with such employer, and then forges the name of such person as indorser and the bank pays the cheque, the depositing employer cannot recover the amount of the cheques from the bank, under Section 28 (9). The payee of such cheques is a fictitious person within the meaning of this section. Being therefore payable to bearer, the forgery of the fictitious payee's name has no bearing, so far as the liability of the bank is concerned.

*Ott v. Seward.*<sup>50</sup>

On page 632 of the opinion it is stated that:

" . . . the defense that the appellant was a mere accommodation indorser for them, to enable them to raise money on the notes, is absolutely barren of merit. Professional zeal hardly excuses the attempt to make it."

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<sup>46</sup> 221 Pa. 588 (1908).

<sup>47</sup> 3 Burr. 1354 (Eng. 1762).

<sup>48</sup> The depositor was precluded from setting up the forgery or want of authority (in the language of the section) by his negligence in asserting his rights. See *Cunningham v. First National Bank of Indiana*, 219 Pa. 310 (1908), the Act not cited; *Murphy v. Met. Nat. Bk.*, 191 Mass. 159 (1906), the Act not cited. Counsel arguing the case cited *Price v. Neal*, yet failed to cite §112 (62), which is founded on *Price v. Neal*.

<sup>49</sup> 221 Pa. 599 (1908).

<sup>50</sup> 221 Pa. 630 (1908).

Why did not the court go further and say that under the law of the State, the Negotiable Instrument Law, Section 55 (29), the accommodation indorser was liable to a holder for value, even though the holder at the time of taking the instrument knew him to be only an accommodation party?

It would have been well to add to this some of the numerous decisions in cases arising under this section.

But the Act and all the cases under this section were ignored.

*Savings Institution of the City of Williamsport v. Folk.*<sup>51</sup>

An indorser of a cheque is liable upon his indorsement, to the bank cashing the cheque, though the bank sent the cheque for collection through its usual channels and it was returned unpaid, one of the intermediate banks having entered up a judgment note against the maker and having attached the maker's deposit before the cheque was received by the bank on which it was drawn.

While old Pennsylvania cases were cited, the Act was not cited; but see Section 116 (66).

*National Bank of Phoenixville v. Bonsor.*<sup>52</sup>

When a bank makes advances or gives further credit on the faith of a negotiable instrument deposited with it by a customer, for collection, he having been credited therewith, it is entitled to a lien thereon and on its proceeds for the amount thus advanced. Sections 53 and 2 (27 and 191) were cited; but not one of the six cases that by this time, 1909, had arisen under Section 53 (27).<sup>53</sup>

*Murray v. Real Estate Title Ins. & Trust Co.*<sup>54</sup>

Here examination is made of the duty of a depositor in a bank to give prompt notice to the bank upon finding out that it

<sup>51</sup> 38 Pa. Super. Ct. 54 (1909).

<sup>52</sup> 38 Pa. Super. Ct. 275 (1909).

<sup>53</sup> The six cases referred to are: *Payne v. Zell*, 98 Va. 294 (1900); *Brooks v. Sullivan*, 129 N. C. 190 (1901); *Black v. First National Bank*, 96 Md. 399 (1903); *Mersick v. Alderman*, 77 Conn. 634 (1905); *Bank of Montreal v. Howard*, 44 Wash. 10 (1906), and *Graham v. Snutte*, 155 Mich. 65 (1908).

<sup>54</sup> 39 Pa. Super Ct. 438 (1909).

has paid and charged to his account a cheque with a forged signature.

There is no doubt as to the correctness of the principle laid down, but why did not the court cite Section 4 (193) of the statute instead of relying upon *McNeeley v. Bank of North America*?<sup>55</sup> The fact that the principle established is the same in both should make no difference. The statute, when there is one, should be cited as the source of authority, with the cases under it, either in that or in other jurisdictions, and lastly, if deemed necessary, prior decisions may be cited, to show what change, or that no change, has been made by the Act. Seven cases had arisen by this time, 1909, under this section. As the Act was not cited, none of these cases were hunted up and cited.<sup>56</sup>

*Zollner v. Moffitt.*<sup>57</sup>

Due notice of dishonor is deemed to have been given to a defendant indorser when it is shown that the notice was properly addressed and deposited in the post office, under Sections 167, 176 (96, 105). Such a notice may be verbal or written and no special form is necessary.

*Schultheis v. Sellers.*<sup>58</sup>

Where fraud in the inception of a note is shown by the defendant maker, the burden is cast upon the indorsee of establishing the fact that he is a holder in due course, even though he makes out a *prima facie* case by putting the instrument in evidence.

<sup>55</sup> *Supra*, note 47.

<sup>56</sup> It is conceded that when no light is thrown on a case by cases under the same section in other jurisdictions, there is good excuse for not citing them. But on the vexed question of "reasonable time," the only way to arrive at a national conception on the subject, is by examining all cases in other jurisdictions bearing in any way upon what is "reasonable time." As to cases construing what is a reasonable time under §4 (193), see: *Commercial Nat. Bk. v. Zimmerman*, 185 N. Y. 210 (1906); *Gordon v. Levine*, 194 Mass. 418 (1907); and 197 Mass. 267 (1908); *Mfg. Co. v. Summers*, 143 N. C. 102 (1906).

<sup>57</sup> 222 Pa. 644 (1909).

<sup>58</sup> 223 Pa. 513 (1909).

Section 98 (59) was correctly cited as authority, but no case under it was mentioned. Neither counsel cited the Act, so far as the report shows.

*Lowry National Bank v. Hazard.*<sup>59</sup>

In an action by an indorsee against the maker of a note an affidavit of defence setting up alleged misrepresentations by the payee to the maker, being merely statements of intention by the maker, as inducement for the note, were held insufficient to prevent judgment for the indorsee. The Act was not cited.

Why did not the court go further and hold that to put the indorsee upon proof that he was a holder for value under Sections 91, 98 (52, 59) the affidavit of defense must show (under Section 95 (56) that the indorsee had actual knowledge of the facts alleged and that his action in taking the instrument amounted to bad faith? By ignoring these sections of the Act the benefit of hundreds of decisions thereunder was lost.

*Hannon v. Allegheny Bellevue Land Co.*<sup>60</sup>

Where a cheque was given at 1.30 P. M., but was not presented for payment until the third day thereafter, which was one day after failure of the bank the cheque was drawn on, all the parties and the bank being in the same city, the delay in presentment for payment was held to be unreasonable. Sections 321, 322, 130 (185), 186, 214) were cited, but none of the cases decided thereunder.

*Morrison v. Whitfield.*<sup>61</sup>

An indorsee who takes a note for an antecedent debt, is a holder for value.

Counsel for the appellant made this claim on their brief, but instead of citing Section 51 (25) and the decisions under it as their authority, they cited two old Pennsylvania cases. The court, in its opinion, cited Section 51 (25), but none of the decisions under it.

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<sup>59</sup> 223 Pa. 520 (1909).

<sup>60</sup> 44 Pa. Super. Ct. 266 (1910).

<sup>61</sup> 46 Pa. Super. Ct. 103 (1911).

Upon comparison of this decision with that in *State Bank of Pittsburgh v. Kirk*,<sup>62</sup> it appears that the higher court ignored the law and rested its decision on erroneous grounds, while the lower court cited the law (though not the cases under it) and followed it, even though counsel failed to cite it.

*Grange Trust Co. v. Brown.*<sup>62a</sup>

An indorser's signature followed merely by "Agt" leaves the indorser personally liable. The court cited as its authority *Sharpe v. Belles*,<sup>62b</sup> instead of citing the real authority, Section 39.

*Neyens v. Port.*<sup>63</sup>

A request or order for goods, concluding with what by itself would be a negotiable note, is not a negotiable instrument under Sections 22, 23 (3, 4). Section 20 (1) should also have been cited.

*Falconi v. Magee.*<sup>64</sup>

The defendant, an attorney, collected eight hundred dollars for the plaintiff, his client, deposited it in a bank to his own credit, drew a cheque for the amount to the order of the plaintiff, placed it in a sealed envelope and sent it to the plaintiff in care of one to whose address he had been instructed to send it by his client. This person opened the envelope, forged the plaintiff's name as payee, collected and appropriated the proceeds. The attorney was held to be liable to his client, as the attorney can recover from the bank that paid the cheque on the forged endorsement; citing Sections 42 (23), but not citing any case under it.<sup>65</sup>

*Volk v. Shoemaker.*<sup>66</sup>

Citing Section 20 (1), it was held that a bond otherwise negotiable in form, authorizing entry of judgment at any time, is not negotiable.<sup>67</sup>

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<sup>62</sup> *Supra*, note 28.

<sup>62a</sup> 49 Pa. Super. Ct. 274 (1911).

<sup>62b</sup> 61 Pa. 69 (1869).

<sup>63</sup> 46 Pa. Super. Ct. 428 (1911).

<sup>64</sup> 47 Pa. Super. Ct. 560 (1911).

<sup>65</sup> The writer has collected thirty-six cases on this section.

<sup>66</sup> 229 Pa. 407 (1911).

*Second National Bank of Pittsburgh v. Hoffman.*<sup>68</sup>

In an action against the indorser of a note where the defendant shows that the note was procured from him by fraud of the maker, the burden is on the plaintiff to show affirmatively that it was an innocent purchaser for value.

Sections 94, 95 (58, 59) were cited by the court, although not cited by counsel, but no case under the Act was cited in the decision. Counsel cited cases indiscriminately whether before or after the adoption of the Act in Pennsylvania.

*Allred's Estate (No. 1).*<sup>69</sup>

Where directors of a corporation indorse its notes for the benefit of the corporation before delivery, and afterwards accept the benefits of a deed of trust of the corporation's property to indemnify them against loss as such indorsers, they become principals, and cannot rely on the defence of non-presentment and lack of notice of dishonor. The Act was not cited on this aspect of the case, but see Sections 130, 180, 186 (70, 109, 115) and *O'Bannon Co. v. Curran.*<sup>70</sup>

It was held, further, that the signature of one not otherwise a party, in blank, before delivery, makes the signer an indorser; changing the law in Pennsylvania. Section 114 (64) was cited.<sup>71</sup>

<sup>67</sup> See *Wisconsin Yearly Meeting &c. v. Babler*, 115 Wisc. 289 (1902) not cited by the court.

<sup>68</sup> 229 Pa. 429 (1911).

<sup>69</sup> 229 Pa. 627 (1911).

<sup>70</sup> 129 A. D. 90 (N. Y. 1908). *Contra*, but not to be commended, *McDonald v. Luckenbach*, 170 Fed. Rep. 434 (1909). See also *Mercantile Bk. of Memphis v. Busby*, 120 Tenn. 652 (1908), in which, while following the old law in Tennessee, the court went far afield in taking into consideration how many shares of the capital stock each indorser owned, and what the defendants understood, without inquiring whether the holder of the note understood so also.

<sup>71</sup> See: *Cohn v. The Cons. Butter & Egg Co.*, 30 Misc. 725 (N. Y. 1900); *Far Rockaway Bk. v. Norton*, 186 N. Y. 484 (1906); *Baumeister v. Kuntz*, 42 So. 886 Fla. (1907); *Deaney v. Choquet*, 27 R. I. 338 (1907); *Dollar Sgs. Bk. v. Barberton Pottery Co.*, 117 Ohio Decs. 539 (1907); *Rockfield v. First Nat. Bk.*, 77 Ohio St. 311 (1907); *Gibbs v. Guaragha*, 75 N. J. L. 168 (1907); *Haddock, Blanchard & Co. v. Haddock*, 192 N. Y. 409 (1908); *Roessle v. Lancaster*, 130 A. D. 1 (N. Y. 1909); *Thorpe v. White*, 188 Mass. 333 (1905); *Walker v. Dunham*, 135 Mo. App. 396 (1909), in which the Act was cited. How is it possible to follow the Act, as to part of a case, and to ignore it, as to another part of the same case?

*First National Bank v. McBride.*<sup>72</sup>

In an action on a note against an accommodation indorser, the declaration stating that the note was not paid at maturity, due presentation and demand having been made, that the defendant had due notice of non-payment, and the notary's certificate attached certified that the notary exhibited the note where payable, at the proper time, and demanded payment which was refused "the answer being no funds, whereof I duly notified the indorser," an affidavit of defence is sufficient that specifically denies oral service or that notice of dishonor was sent in accordance with the requirements of law, with a positive averment that no notice was ever received. An old law of 1854<sup>73</sup> was cited, but the Act was ignored.

*Peoples National Bank of Pensacola v. Hazard.*<sup>74</sup>

A plaintiff who is a *bona fide* holder of negotiable paper, without notice of any defect, can recover against the maker, notwithstanding any equities existing between the maker and the payee. Old Pennsylvania cases were cited as authority, although they were anterior to the Negotiable Instruments Law which was ignored.<sup>75</sup>

*Rosenbaum v. Hazard.*<sup>76</sup>

When the affidavit of defense of the defendant who was sued on his cheque nearly six years old, contains no averment of loss nor of injury through the delay in suing, the plaintiff can recover without proving that the defendant suffered no loss nor injury through such delay, citing Section 322 (186), but not citing any of the thirteen cases that prior to 1911 had arisen under this section.

*Colonial Trust Co. v. Bank of Western Pa.*<sup>77</sup>

The Act of 1849,<sup>78</sup> giving one who has paid a forged cheque the right to recover the amount from the one to whom it has

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<sup>72</sup> 230 Pa. 261 (1911).

<sup>73</sup> Act of Dec. 14, 1855, P. L. 724.

<sup>74</sup> 231 Pa. 552 (1911).

<sup>75</sup> §§91, 95, 96 (55, 59, 60).

<sup>76</sup> 50 Pa. Super. Ct. 510 (1912).

<sup>77</sup> P. L. 424.

been paid, if prompt notice is given, is not repealed by the Negotiable Instrument Law. Mere payment of the forged cheque is not acceptance under Section 112 (62), and under Section 220 (132) acceptance must be in writing.

But even without such a law, could not suit be brought for money had and received?

*In Re Young's Estate.*<sup>79</sup>

Under Sections 96, 116 (57, 66) cited and followed, where a bank discounted a note made by a wife to her husband's order, indorsed by him, the bank knowing it was the husband's debt, and of the lunacy of the husband, the bank takes from the wife her new note, indorsed by her sister, and after several renewals thereof the sister dies, her administrator cannot defeat recovery against her estate on the ground of invalidity of the original note, as against the wife.

As the result of the examination it is found that in about one-half of these decisions the Act was entirely ignored as well as all the cases in other jurisdictions under the same sections of the same uniform law. This is sufficiently remarkable, but what is even more remarkable is that in all the cases in which the Act is cited, in only one case<sup>80</sup> is there a citation of decisions in other jurisdictions under the Act and in that case but two such decisions are cited.

It is said that after the Code Napoleon was adopted, the French courts ignored it for a generation. Is it to take a generation for our courts to recognize the Uniform Negotiable Instruments Law?

To carry out the beneficent purpose of the Conference of Commissioners on Uniform State Laws, the Bench and the Bar of this country must do their part. We cannot expect to establish a body of precedents under a uniform law common to the whole country (and thus gradually form a national common law so to speak), unless the courts pay attention to the uniform law and to

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<sup>79</sup> 234 Pa. 287 (1912).

<sup>80</sup> Wisner v. First Nat. Bk. of Gallitzin, 220 Pa. 21 (1908).

the decisions under it in all jurisdictions that have adopted it. To bring into existence a uniform common law throughout the country, uniformity in decisions and in opinions is as necessary as uniformity in legislation.

*Amasa M. Eaton.*

*Providence, R. I.*