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Bills and Notes - Fictitious Payee - Construction of 9(3) of the Negotiable Instruments Law

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RECENT CASES

BILLS AND NOTES — FICTITIOUS PAYEE — CONSTRUCTION OF §9(3) OF THE NEGOTIABLE INSTRUMENTS LAW. — Appellant, doing business as Mike's Bar, cashed 42 checks for one Berke who, in his capacity as bookkeeper for the Farmer's Union, fraudulently requisitioned them for the payment of claims to fictitious payees. The checks were made out by the cashier, signed by the proper officer, and returned to Berke for delivery. Appellant required no security of Berke and did not investigate his right to the checks. The checks were deposited by appellant and, in the regular channel of business, subsequently charged to the account of the Farmer's Union. The fraud was discovered in the course of an official audit of the company's books some months later and appellee, who insured the company against fraud, paid the loss and brought this action to recover from appellant. The lower court directed a verdict against appellant. On appeal it was *held* that § 9(3) of the Negotiable Instruments Law was not applicable since there was no intent or knowledge on the part of the maker of the checks that the payees furnished by Berke were non-existent. The checks were therefore not "bearer" paper and consequently appellant received no title by reason of the forged signatures. *New York Cas. Co. v. Sazenski*, 60 N.W.2d. 368 (Minn. 1953).

§ 9(3) of the Negotiable Instruments Law provides: "The instrument is payable to bearer when it is payable to the order of a fictitious or non-existing person, and such fact was known to the person making it so payable." This provision extended the protection given bona fide purchasers of negotiable instruments under the common law. The common law made it mandatory for the person being charged on the instrument to have knowledge of the fraud¹ whereas under the Negotiable Instruments Law, responsibility for the fraud of the employee making the check is cast upon the employer.² This change would seem to indicate a necessity for changing laws to keep abreast of changing world conditions. In adopting the provisions of the Negotiable Instruments Law the legislatures of the various states put their stamp of approval on this progressive step.

At the time the wording of the Negotiable Instruments Law was chosen by the Commission for Uniform Laws, progress indicated a change from the common law and it was recognized by the draftsmen of the Negotiable Instruments Law.³ Further progress has long indicated a change in the section in question and this need has been recognized by the American Bankers Association who recommended that the section be amended by adding: "or known to his employee or other agent who supplies the name of such payee."⁴ Idaho led the way by adopting this amendment in 1931.⁵ Montana⁶ and Illinois,⁷ too, have found this addition necessary. The draftsmen of the Uniform Commercial Code were alert to the need for a change giving further protection to innocent purchasers for value. Their amendment to this section of the code would eliminate such a fraudulent instrument as bearer paper

1. Britton, Bills and Notes §148 (1943).

2. Negotiable Instruments Law §9 (3).

3. *Ibid.*

4. Britton, Bills and Notes §149 (1943).

5. Idaho Code Ann. §26-109 (3) (1932).

6. Mont. Rev. Code Ann. §8416 (3) (1935).

7. Ill. Rev. Stat. c. 98, §29 (3) (1945).

under all conditions, but would make effective all endorsements within the apparently normal chain.⁸

A primary purpose of statutory construction is to fulfill the legislative intent and remedy the evil that prompted the legislation.⁹ Although the narrow construction of this section of the Negotiable Instruments Law handed down in the instant case is unquestionably in agreement with the majority of cases today¹⁰ it does not fulfill this purpose. There can be little doubt that the intention of the legislature in adopting § 9(3) of the Negotiable Instruments Law was to enhance the negotiability of negotiable instruments by protecting innocent purchasers for value. In order to effectuate this intent the court in the instant case should have discarded the doctrine of *stare decisis* in favor of a broad construction. Under the present majority rule¹¹ the statute is rendered ineffectual, for the security systems used in the business world of today seldom permit the maker of a negotiable document to designate the payee or afford him an opportunity to negotiate the instrument.

The doctrine of *stare decisis* is without question a firm foundation for the guidance of our courts, but precedent, like an automobile, does become outmoded.

BAYARD LEWIS.

INFANTS — JUVENILE COURTS — JURISDICTIONS OVER OFFENSES ARISING UNDER MUNICIPAL ORDINANCES — The petitioners, two minors, were sentenced to confinement in the city jail after pleading guilty to disorderly conduct before a police magistrate. They applied to the District Court, sitting in its capacity as a juvenile court, for writs of habeas corpus. These were granted on the ground that the police magistrate lacked jurisdiction to try the petitioners without the consent of the juvenile court. *Held*, order affirmed. The constitutional provision vesting exclusive jurisdiction to try violations of municipal ordinances in the police magistrate did not authorize him to try minors without the consent of the juvenile court. *State ex rel City of Minot v. Gronna*, 59 N.W.2d 514 (N. D. 1953).

8. Uniform Commercial Code §3-405.

9. See, *E. g.*, *Houghton Mifflin Co. v. Continental Ill. Nat. B.E.T. Co.*, 293 Ill. App. 423, 12 N.E.2d 714, 716 (1938); *Schoellkopf v. DeVry*, 366 Ill. 39, 7 N.E.2d 757, 759 (1937) "A primary purpose of statutory construction is to ascertain the legislative intention."; *People v. Continental Illinois Nat. Bank and Trust Co.*, 360 Ill. 454, 196 N.E. 515, 517 (1935); *People v. Hughes*, 357 Ill. 524, 192 N.E. 551, 553 (1934) (to find the intent of the legislature the courts will look at "the evil to be remedied and the object to be attained").

10. *E. g.*, *Commonwealth v. Globe Indemnity Co.*, 323 Pa. 261, 185 Atl. 796, 798 (1936); *American Sash and Door Co. v. Commerce Trust Co.*, 332 Mo. 98, 56 S.W.2d 1034, 1040 (1933); *See Swift and Company v. Bankers Trust Co.*, 280 N.Y. 135, 19 N.E. 992, 994 (1939).

11. *Jorgenson Chevrolet Co. v. First National Bank*, 217 Minn. 413, 14 N.W.2d 618, 621 (1944); *City of St. Paul v. Merchants Nat. Bank*, 151 Minn. 485, 187 N.W. 516, 518 (1922) "Where by the fraud of a third person a depositor of a bank is induced to draw a check payable to a non-existing person or order, the drawer ignorant of the fact and intending no fraud, the bank is not authorized to pay . . . although it appears to have been previously endorsed by the party named as payee."; 24 Minn. L. Rev. 988 (1940) (where an agent with fraudulent intent is not authorized to sign but merely supplied the name of the payee, "the general rule is that his knowledge that the payee is fictitious cannot be imputed to the principal.").