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Putnam vs. Broton et al: B. and wife executed three mortgages on real estate owned by B. viz: Nov. 1, 1920, to St. Paul Bank for $2,000; Oct. 2, 1922, to Mpls. Bank for $850; and Oct. 18, 1922, to Fargo Bank for $5,700. Third mortgage was assigned day of date to one A., who started foreclosure in 1926, and premises were sold under such proceedings, with sheriff's certificate going to A. Two months before foreclosure was started A. also received assignment of the Mpls. Bank mortgage from T., who had obtained an assignment in 1923. In 1924 T. obtained an assignment of the St. Paul Bank mortgage, but this assignment was not recorded until 1928, while a satisfaction of it, executed in 1926 by the St. Paul Bank, was recorded in 1926. After foreclosure of the third (Fargo Bank) mortgage, A. assigned the sheriff's certificate, stipulating that he was the owner of the second (Mpls. Bank) mortgage, and that the priority of the two should be reversed, notwithstanding the prior recording of the second (Mpls. Bank) mortgage. Feb. 28, 1928, sheriff's deed issued on the foreclosure of the third (Fargo Bank) mortgage; and Feb. 15, 1929, sheriff's deed issued on the foreclosure of the second (Mpls. Bank) mortgage; the deeds going to two different parties. Plaintiff became owner by deed from foreclosure of third (Fargo Bank) mortgage, about a month prior to issuance of sheriff's deed on foreclosure of second (Mpls. Bank) mortgage. P. then gave mortgage to Intervenor Trust Company. On action to determine adverse claims, the holders of the sheriff's deed on foreclosure of second (Mpls. Bank) mortgage claim priority. Claim of fraud on the part of A. in procuring satisfaction of first (St. Paul Bank) mortgage was charged. HELD: Any interest acquired upon foreclosure of second (Mpls. Bank) mortgage was with full record knowledge of the valid agreement made between A. and Plaintiff's grantor, reversing priority of the mortgage liens. As to the claim under the first (St. Paul Bank) mortgage, failure to record the assignment rendered it void as against any subsequent purchaser in good faith and for value. Evidence in the record contradicts the allegation of fraud in procuring the satisfaction. Title quieted in Plaintiff, subject to lien of Trust Company mortgage.

Depositors Holding Co. vs. Ashley Bank: Plaintiff seeks to recover for drafts drawn by Defendant on a Wishek Bank, payable to Defendant's order. Drafts were forwarded to a Bismarck correspondent bank of Defendant, the practice being to credit Defendant's account in the Bismarck Bank, charging back uncollectible items. The "advice of credit" memo stated, in this instance, "outside items and sight drafts credited subject to payment." Upon presentation to the W. Bank, payment was refused and drafts returned. Bismarck Bank was closed Oct. 14, presentation was made to W. Bank Oct. 15, and Defendant Bank had requested W. Bank not to pay the items prior to presentation. The items were not charged back, but assigned to plaintiff. Defendant refused to pay on demand, and the action was started. HELD: Contention that Defendant's unrestricted endorsement made the closed bank absolute owner of the items cannot be sustained, although the decisions are not harmonius. "The lack of uniformity, however, is more apparent than real. Each case must be judged by its own particular facts. This court in the case of *State vs. McClelland*, 58 *N. D.* 365, 226 *N. W.* 540, approved the rule that

"The positive authority of a decision is coextensive only with the facts on which it is made." The language of Judge Mitchell, in 56 *Minn.* 119, 57 *N. W.* 336, is adopted, viz: "After all, the question is one of the agreement of the parties, either express or implied, from the general course of business between them. There can be no doubt that if a draft or other paper is delivered to a bank for collection, the mere fact that the indorsement of the owner is unrestricted, will not, as between him and the bank, make the latter the owner of the property. Neither is it conclusive upon the question of ownership of the paper that before collection the amount of it is credited to the customer's account, against which he has the privilege of drawing by check. It has been frequently held, with the approval of the best text writers, that if paper is delivered by a customer to a bank for collection, or 'for collection and credit,' a credit of the amount to the customer before, and in anticipation of collection, will be deemed merely provisional, and the privilege of drawing against it merely gratuitous, and that the bank may cancel the credit, or charge back the paper to the customer's account, if it is not paid by the maker or drawee. . . . The right of banks to do this in case of the deposit of checks on other banks, without any special contract, is generally exercised and recognized. This is inconsistent with the idea that the title to the checks passes absolutely to the bank, and is only consistent with the theory that the bank is the agent of the customer for collection, notwithstanding the credit of the latter." The Plaintiff stands in the same position as the Bismarck Bank.

Carufel vs. Kounts: Action for purchase price of burial vault, defense being invalidity of written contract because signature obtained by misrepresentation and fraud. Defendant, an alert, intelligent woman, signed contract on condition she might rescind if her crops did not turn out well. This was in July. In September, plaintiff's representative talked with defendant, who again stated she was unable to make a decision until about November 1st, but signed a similar contract, which, plaintiff's agent is alleged to have represented as merely an expression of preference for a vault, but defendant gave the inscription desired. This is the contract on which suit was brought. It carried this statement: "No special agreement entered into by agents will be honored unless specified in the within original contract." "This contract is not subject to cancellation." Plaintiff proceeded with manufacture of the vault, but defendant refused to accept delivery. Upon trial verdict was rendered for defendant, and subsequent motion for judgment notwithstanding was denied. HELD: Quoting Williston on Contracts, and supporting cases, 'The parol evidence rule does not become applicable unless the parties have assented to a certain writing as the statement of a contract between them. Accordingly, it . . . may be shown by parol evidence that a writing was never executed or delivered as a contract, or that assent thereto was impaired by fraud, illegality, duress, mistake, or failure of consideration, rendering the contract void or voidable.' "If, notwithstanding such false and fraudulent representations, the aggrieved party, exercising reasonable care and attention, should not have been deceived, he cannot complain. . . . So, in the instant case, notwithstanding any false and fraudulent representations that may have been made by the plaintiff, the defendant was required to exercise reasonable vigilance in protecting her rights." But that question "is a question of fact to be determined upon a con-

sideration of all the circumstances connected with the transaction. . . . While the transaction involved in this case was a business transaction, so far as the defendant was concerned it was largely colored by sentiment. On the other hand, the plaintiff was experienced in business. . . . So it cannot be said that the parties were dealing wholly at arms lengths, each on an equality in a business way with the other."

COMPULSORY AUTO INSURANCE

The November issue of the American Bar Association Journal carries two very important discussions of the question raised by the proposals to require compulsory insurance against motor vehicle accidents. The first, by Fred M. Wilcox, of the Industrial Commission of Wisconsin, will be found on page 753 of the Journal. In it Mr. Wilcox argues very forcefully in favor of compensation insurance, regardless of fault. The second, by Austin J. Lilly, General Counsel of the Maryland Casualty Co., will be found on page 756. In it Mr. Lilly argues, with equal effectiveness that the enactment of such a proposal would be an economic and social error, a step backward rather than a step in advance. It will be recalled that the 1930 annual meeting of the Association went on record in favor of a licensing system and opposed to compulsory insurance.

We quote Mr. Wilcox: "It goes without saying that the owner of every motor vehicle included in the state system should be required to insure his risk, subject perhaps to the right of exemption to those who establish their financial ability to discharge all obligations under the law, the same as now obtains under workmen's compensation in a majority of the states. License of the vehicle to use the streets and highways should not issue until proof of insurance coverage is made. And such policy should by law be declared to be non-cancellable and non-revocable except upon adequate notice to public authority. A good live experience rating system of debits and credits should be adopted as an adjunct to the insurance plan, and perhaps a schedule rating system to encourage use of non-shatterable glass, good brake and light equipment. Process by which licenses may be revoked, cars impounded, and other restraining influences secured should be made easily available to administrative authority to protect the public and the insurer against those who abuse their privilege in the streets. Anyone who has had experience in the administration of workmen's compensation will sense many other obstacles to be met in applying such a plan to the adjustment of liability for the road and street injury. The wage basis, the child who has not yet arrived at earning age, the elderly person already past productive earning years, the pedestrian and other street users and many other problems will appear to trouble the development of a workable plan. Difficult as will be the meeting of these and other obstacles they are not insurmountable. They will be solved by intensive, interested, far-seeing consideration."

Mr. Lilly replies: "In complete contrast (to workmen's compensation systems) is the situation which exists under the compensation plan when it is applied to motor vehicle injuries. There is no privity of contract between the parties to a motor vehicle compensation case. There is no fixed and established relationship between them, as there is in industry. The controversy is not between different classes, definitely established, but in large part between members of the same class: motorists are also pedestrians, and pedestrians motor-