

Volume 4 | Issue 3

1953

Negotiable Instruments

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Recommended Citation

Fletcher Reed Andrews, *Negotiable Instruments*, 4 W. Res. L. Rev. 246 (1953)

Available at: <https://scholarlycommons.law.case.edu/caselrev/vol4/iss3/23>

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general credit of the issuing municipality, did not constitute a debt of such municipality.

SAMUEL SONENFIELD

NEGOTIABLE INSTRUMENTS

Holder In Due Course: Incomplete Instrument: Warranty of Qualified Indorser

Section 8119 of the Ohio General Code¹ gives a person in possession of an incomplete instrument prima facie authority to complete it by filling up the blanks. To be enforceable it must be filled up in accordance with the authority given. However, if, after completion, it is negotiated to a holder in due course, he may enforce it even though it was filled up in an unauthorized manner. Section 8157 of the Ohio General Code,² which is the holder in due course section, requires, among other things, that the instrument be complete and regular on its face.

In *First Discount Corporation v. Hatcher Auto Sales, Inc.*,³ the plaintiff purchased a negotiable promissory note in good faith and for value. The payee's indorsement was without recourse. When the payee took the note to the plaintiff it was blank as to the amount. The amount was then filled in as authorized. Unfortunately, the maker turned out to be a minor, as a consequence of which the plaintiff brought suit against the payee-indorser on his indorser's warranty that all prior parties had capacity to contract.⁴ The Ohio Supreme Court held that the plaintiff was clearly a holder in due course under the provisions of the Ohio statutes.⁵

In a concurring opinion, Judge Taft concluded that the plaintiff was not a holder in due course because he took an incomplete instrument. Nevertheless, pointed out Judge Taft, the plaintiff was entitled to recover because the warranties of the qualified indorser are not limited to holders in due course but extend to all holders. This is in contrast with the warranties of the person who indorses without qualification, which expressly run to holders in due course.⁶

Forged Indorsement: Recovery by Owner Against Person Who Received Payment: Giving Possession of Unindorsed Check as Precluding Party from Setting Up the Forgery

The case of *Builer Produce & Canning Co. v. Edgerton State Bank*⁷ contains two interesting problems. The payee of checks had a rubber stamp indorsement. Without authority an employee used the stamp to indorse the checks, forging the name of the payee's treasurer. The defendant

bank, without requiring the employee's indorsement or making any inquiry about his authority, cashed the checks for the employee and received payment from the drawee. Although the employee was not authorized to indorse the checks,⁸ he was authorized to have possession of them in his capacity as a bookkeeper.

The court held that an action for money had and received arose in favor of the payee against the defendant bank, which had received payment of the checks.⁹

The court also held that merely giving the employee possession of the unindorsed checks was not sufficient to "preclude" the plaintiff from setting up the forged indorsement.¹⁰

Renunciation

Believed by the court to be a case of first impression in Ohio, and following the clear language of the statute,¹¹ *Shaffer v. Akron Products Co.*¹² held that a renunciation in writing is effective even though the instrument is not surrendered. Consequently, the payee, who executed the renunciation and delivered it to the maker, but kept the instrument under a promise to tear it up, may not subsequently maintain an action on the instrument against the maker.

Equities of Ownership: Innocent Purchaser for Value after Maturity

A number of cases have arisen where the action is not for recovery on the instrument but, rather, involves a dispute about the ownership of the instrument or its proceeds. The typical action is between a person who has some

¹ NEGOTIABLE INSTRUMENTS LAW § 14.

² NEGOTIABLE INSTRUMENTS LAW § 52.

³ 156 Ohio St. 191, 102 N.E.2d 4 (1951).

⁴ OHIO GEN. CODE § 8170(3), NEGOTIABLE INSTRUMENTS LAW § 65(3).

⁵ OHIO GEN. CODE § 8119, NEGOTIABLE INSTRUMENTS LAW § 14; OHIO GEN. CODE § 8157, NEGOTIABLE INSTRUMENTS LAW § 52.

⁶ Compare OHIO GEN. CODE § 8170, NEGOTIABLE INSTRUMENTS LAW § 65, with OHIO GEN. CODE § 8171, NEGOTIABLE INSTRUMENTS LAW § 66.

⁷ 91 Ohio App. 385, 108 N.E.2d 324 (1952).

⁸ The court so assumed for the purpose of the opinion, but remanded the case to the trial court in order that the jury might decide whether or not the employee had authority to negotiate the checks.

⁹ The court noted that the Negotiable Instruments Law does not of itself provide for such an action.

¹⁰ OHIO GEN. CODE § 8128, NEGOTIABLE INSTRUMENTS LAW § 23. The court disagreed with *Pyper v. Climer*, 29 Ohio App. 486, 163 N.E. 640 (1928), which reached a contrary result.

¹¹ OHIO GEN. CODE § 8227, NEGOTIABLE INSTRUMENTS LAW § 122.

¹² 91 Ohio App. 535, 109 N.E.2d 24 (1952).