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Bills and Notes--Liability for Forged Check (International Aircraft Trading Co. v. Manufacturers Trust Co., 297 N.Y. 285 (1948))

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RECENT DECISIONS

BILLS AND NOTES—LIABILITY FOR FORGED CHECK.—Plaintiff entered into negotiations to purchase certain goods from the L. Corporation, through three men who purported to be agents of said corporation, though in reality the corporation did not exist. Upon reaching an agreement, the fraudulent agents signed a contract and a performance bond in the name of the non-existent corporation. Thereafter, plaintiff gave the purported officers a check payable to the L. Corporation which was drawn upon the defendant-bank. The agents had the check cashed at a depository bank, and the check was finally paid in due course by the defendant-drawee. After the plaintiff learned that the L. Corporation was non-existent and not having received the goods contracted for, he brought this action against the defendant-bank to have recredited the amount charged to his account for this check. The lower courts gave judgment to the defendant on the ground that the plaintiff intended the check to be payable to the persons he had dealt with in this face to face transaction. *Held,* judgment reversed because the plaintiff did not intend to give title to the check to the fraudulent agents, but only to the non-existent corporation. Hence, since the defendant paid the check to one other than the designated and intended payee, the drawee is liable to the drawer for the unauthorized disposition of its funds. *International Aircraft Trading Co. v. Manufacturers Trust Co.,* 297 N. Y. 285, — N. E. — (1948).

The basic premise underlying such cases as the instant one is that the drawee-bank may charge the drawer's account only when it does so in accordance with the drawer's instructions.[1] Whether such a charge against the drawer is valid is determined by the question whether or not title passed to the fraudulent party who professed to be the payee or rightful holder. The answer depends mainly on the intent of the drawer.[2] In a number of cases it has been held that where the drawer deals face to face with one who fraudulently represents that he is another person that title to the instrument passes to such imposter and, hence, the drawee-bank may lawfully debit the drawer's account.[3] In such a situation the courts sometimes say that

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[1] Shipman v. Bank of State of New York, 126 N. Y. 318, 27 N. E. 371 (1891); Crawford v. West Side Bank, 100 N. Y. 50, 2 N. E. 881 (1885).

[2] Cohen v. Lincoln Savings Bank of Brooklyn, 275 N. Y. 399, 10 N. E. 2d 457 (1937); Halsey v. Bank of New York and Trust Co., 270 N. Y. 134, 200 N. E. 671 (1936).

[3] Ryan v. Bank of Italy Nat. Trust and Sav. Ass'n, 106 Cal. App. 690, 289 Pac. 863 (1930); Cornith Bank and Trust Co. v. Security Nat. Bank, 148 Tenn. 136, 252 S. W. 1001 (1923); McHenry v. Old Citizens Nat. Bank, 85 Ohio St. 203, 97 N. E. 395 (1911).

the drawer has a double intent: to make the instrument payable to the person before him; and to make it payable to the person whom he believes the impersonator to be. The courts then conclude that the dominant intent is to transfer title to the person standing before the drawer.[4]

The problem then arises as to how to ascertain the intent of a drawer in the type of situation presented in the instant case, that is, where the fraudulent imposter represents that he is an agent for a named principal. In such a case the courts almost unanimously hold that title does not pass to the person standing before the drawer because he intends to transfer title only to the supposed agent's principal.[5] This rule is so whether the principal is an existent or non-existent person, for the mere fact that there was no such person as the purported principal does not change the drawer's intent.[6]

In the New York cases which have arisen upon similar fact situations it has also been held that title does not pass to the bogus agent; the result being that neither a holder in due course nor a drawee-bank acquires any rights in the instrument.[7]

The instant case, therefore, is in accord with the authorities both in other jurisdictions and in New York. The facts clearly showed that the plaintiff intended to deal with the non-existent corporation, and not with the purported agents. For this reason the conclusion in the case was correct, for, as we have seen, the basic test in this type of case is the drawer's intent.

J. M. N.

CONSTITUTIONAL LAW—FREEDOM OF PRESS—RESTRICTION BY STATUTE.—A criminal complaint charged the defendant with unlawfully publishing and causing to be published in a newspaper the identity of a certain female who had been raped. A Wisconsin statute forbade the divulging of such identification.[1] The lower court, up-

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[4] Cohen v. Lincoln Savings Bank of Brooklyn, 275 N. Y. 399, 10 N. E. 2d 457 (1937); Montgomery Garage Co. v. Manufacturers' Liability Ins. Co., 94 N. J. L. 152, 109 Atl. 296 (1920).

[5] Bennett v. First Nat. Bank, 47 Cal. App. 450, 190 Pac. 831 (1920); Moore v. Moultrie Banking Co., 39 Ga. App. 687, 148 S. E. 311 (1929); Dana v. Old Colony Trust Co., 245 Mass. 347, 139 N. E. 541 (1923).

[6] Strang v. Westchester County Nat. Bank, 235 N. Y. 68, 138 N. E. 739 (1923).

[7] Strang v. Westchester, *supra* note 6; United Stores Co. v. American Raw Silk Co., 184 App. Div. 217, 171 N. Y. Supp. 480 (1st Dep't 1918), *aff'd*, 229 N. Y. 532, 129 N. E. 904 (1920).

[1] Wis. Stats. § 348.412 (1945) which provides: "Any person who shall publish or cause to be published in any newspaper, magazine, periodical or circular, except as the same may be necessary in the institution or prosecution of any civil or criminal court proceeding, or in the compilation of the records pertaining thereto, the identity of a female who may have been raped or subjected to any similar criminal assault, shall be punished by imprisonment in the