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Negotiable Instruments Law--Bona Fide Purchaser--Negligence (Graham v. White-Phillips Co., Inc., 296 U.S. 27 (1935))

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producer absolute civil responsibility of insurer where every reasonable means designed to guarantee the safety of the food for normal use had been employed.[8]

G. F. J.

NEGOTIABLE INSTRUMENTS LAW—BONA FIDE PURCHASER—NEGLIGENCE.—Negotiable bonds, stolen from the petitioner, were eventually purchased by the respondent, a dealer, who claims title as a holder in due course, having paid value before it noticed that the bonds were stolen property. The petitioner shows that at some time prior to the purchase, the respondent had received a memorandum describing the stolen bonds, and had been negligent in failing to make proper provisions for noting the contents of this notice of the theft. It is claimed that had the respondent used due diligence with regard to this notice, it would have known, before it paid value, that the bonds were stolen property, and would thus have been placed upon notice. Prior to this case the Illinois Supreme Court [1] had denied an application for certiorari to review a decision of the Illinois Appellate Court, which had held that receipt of notice of theft was conclusive evidence of bad faith.[2] The petitioner urges that since federal courts must accept a definite construction of a state's Negotiable Instruments Law by that state's highest court,[3] this court is bound by the decision in *Northwestern National Bank* v. *Madison & Kedzie State Bank*,[4] to declare that the respondent is not a *bona fide* holder in due course. On appeal, *held*, affirmed for the respondent. One may purchase stolen negotiable bonds and acquire valid title as a holder in due course, although before the purchase, notice of the theft had come to him—provided he acts in good faith and does not wilfully avoid knowledge of its contents. *Graham* v. *White-Phillips Co., Inc.*, 296 U. S. 27, 56 Sup. Ct. 21 (1935).[5]

In construing the Negotiable Instruments Law, only the decisions of the highest courts of the states are binding upon federal

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[8] Cheli v. Cudahy Brothers Co., 267 Mich. 690, 255 N. W. 414 (1934).

[1] The highest court of the state of Illinois.

[2] Northwestern Nat. Bank v. Madison & Kedzie State Bank, 242 Ill. App. 22.

[3] Burns Mortgage Co. v. Fried, 292 U. S. 487, 54 Sup. Ct. 813 (1934); Farmers' Nat. Bank v. Sutton Mfg. Co., 22 Fed. 191 (C. C. A. 6th, 1892); Koblyn v. Hoffman, 229 Fed. 486 (C. C. A. 8th, 1916); United Divers Supply Co. v. Commercial Credit Co., 289 Fed. 316 (C. C. A. 5th, 1923); Gutelius v. Stanbon, 39 F. (2d) 621 (D. C. Mass. 1930).

[4] *Supra* note 2.

[5] *Affirming* White-Phillips Co., Inc. v. Graham, 74 F. (2d) 417 (C. C. A. 7th, 1934).

courts.[6] A mere denial of certiorari by a state's highest court, whereby it refuses to review a decision, is not considered an approval of the construction of a statute by a state's intermediate appellate court, and is not binding upon the federal courts.[7] In the absence of a construction by the highest state court, it becomes the duty of the federal courts to decide questions of negotiability in the light of the decisions of the courts of other states, with respect to similar sections of the Negotiable Instruments Law.[8] The statute involved here is the Illinois Negotiable Instruments Act, Sections 52 and 56. These sections provide in substance, that a holder in due course must have had no notice of any infirmity in the instrument when he took it, and that a holder is deemed to have notice of an infirmity if he takes the instrument with *actual knowledge* of the infirmity, or with *knowledge* of such circumstances, that his action in taking the instrument amounts to bad faith.[9] The case at bar, then, turns upon the matter of the holder's knowledge, *i. e.,* whether the receipt of the notice, coupled with the holder's negligence, was sufficient to charge it with actual knowledge of the infirmity, or at least with knowledge of such circumstances, that its action in taking the instrument amounted to bad faith. Bad faith is imputed only from *knowledge* of defenses, and a purchaser of a negotiable instrument need not generally make inquiries as to the purpose for which the instrument was given, or as to the existence of possible defenses.[10] But if the purchaser does in fact suspect, or is placed upon inquiry, and fails to make investigation lest it disclose a defense, then he is not a purchaser in good faith.[11] Whether a holder has knowledge, and whether he acts in

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[6] Hudson v. Maryland Casualty Co., 22 F. (2d) 791 (C. C. A. 8th, 1927); cases cited *supra* note 3.

[7] Denial of certiorari does not import approval of the reasons assigned by the lower court. Minneapolis, St. P. & S. S. M. Ry. v. Rock, 279 U. S. 410, 49 Sup. Ct. 363 (1929); People *ex rel.* v. Grant, 283 Ill. 391, 119 N. E. 344 (1918).

[8] Burns Mortgage Co. v. Fried, 292 U. S. 487, 54 Sup. Ct. 813 (1934).

[9] Similar to §§ 91 and 95 of the N. Y. NEGOTIABLE INSTRUMENTS LAW. The question of good faith involved here merely reiterates a rule of the common law. Arnd v. Aylesworth, 145 Iowa 185, 123 N. W. 1000 (1909); Citizens State Bank v. Johnson County, 182 Ky. 531, 207 S. W. 8 (1918); Morris v. Muir, 111 Misc. 739, 181 N. Y. Supp. 913 (1920), *aff'd in memo,* 191 App. Div. 947, 181 N. Y. Supp. 945 (1st Dept. 1920); Patterson v. Orangeburg Fertilizer Co., 117 S. C. 140, 108 S. E. 401 (1921).

[10] American Nat. Bank v. Lundy, 21 N. D. 167, 129 N. W. 99 (1910).

[11] Iowa Nat. Bank v. Carter, 144 Iowa 715, 123 N. W. 237 (1909); Walters v. Rock, 181 N. D. 45, 115 N. W. 511 (1908). In Matter of Hopper-Morgan Co., 156 Fed. 525 (D. C. N. D. N. Y. 1907), the court said: "Circumstances may be such as to impose an active duty of inquiry and investigation, and if such duty is not performed, it may be conclusive evidence of bad faith." Wilson v. Metropolitan El. Ry., 120 N. Y. 145, 24 N. E. 384 (1890): "* * * one who receives from an officer of a corporation the notes or securities of such corporation, in payment of, or as security for, a personal debt of such officer, does so at his own peril. *Prima facie* the act is unlawful, and unless actually authorized, the purchaser will be deemed to have taken them with notice of the rights of the corporation." Gerard v. McCormick, 130 N. Y. 261, 29 N. E. 115 (1891);

bad faith, is a question of fact to be determined from the evidence.[12] Gross negligence does not of itself constitute bad faith as a matter of law, but it is evidence from which bad faith may be inferred.[13] In order to promote the free circulation of negotiable paper, a holder's right must generally be judged by the simple test of honesty and good faith, and not by speculative issues as to diligence or negligence.[14] Merely suspicious circumstances sufficient to put a prudent man on inquiry, or even gross negligence on the part of the holder, at the time of acquiring the instrument, are not sufficient of them-

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Bank of New York v. Am. Dock & T. Co., 143 N. Y. 559, 38 N. E. 713 (1894); Cheever v. Pittsburgh, *etc.* R. R., 150 N. Y. 59, 44 N. E. 701 (1896); Dike v. Drexel, 11 App. Div. 77, 42 N. Y. Supp. 979 (2d Dept. 1896), *aff'd without opinion* in 155 N. Y. 637, 49 N. E. 1106 (1898); Ward v. City Trust Co., 117 App. Div. 130, 102 N. Y. Supp. 50 (1st Dept. 1907), *aff'd,* 192 N. Y. 61, 84 N. E. 585 (1908).

[12] Winter v. Hutchins, 20 Idaho 749, 119 Pac. 883 (1911); Van Slyke v. Rocks, 181 Mich. 88, 147 N. W. 579 (1914).

[13] Morris v. Muir, 11 Misc. 739, 181 N. Y. Supp. 913 (1920), *aff'd in memo,* 191 App. Div. 947, 181 N. Y. Supp. 945 (1st Dept. 1920); Kipp v. Smith, 147 Wis. 234, 118 N. W. 848 (1908); BRANNAN, NEGOTIABLE INSTRUMENTS LAW (4th ed. 1926) p. 450, § 56: "The existence of suspicious circumstances does not necessarily spell bad faith. Negligence is not a synonym for bad faith, and failure to make inquiries does not compel a finding of bad faith; yet as the question is one of honesty and good faith, it is competent to show these facts, and it then becomes the province of the jury to say whether the person taking the instrument was guilty of bad faith." In Hotchkiss v. Nat. Bank, 88 U. S. 354 (1874), the court said: "The law is well settled that a party who takes negotiable paper before due for a valuable consideration, without knowledge of any defect of title, in good faith, can hold it against all the world. A suspicion that there is a defect of title in the holder, or a knowledge of circumstances that might excite such suspicion in the mind of a cautious person, or even gross negligence at the time, will not defeat the title of the purchaser. That result can only be produced by bad faith, which implies guilty knowledge or wilful ignorance, and the burden of the proof lies on the assailant of the title." Cheever v. Pittsburgh, *etc.* R. R., 150 N. Y. 59, 44 N. E. 70 (1896); Second Nat. Bank v. Weston, 161 N. Y. 520, 55 N. E. 1080 (1900); Rochester & Charlotte Turnpike Road Co. v. Paviour, 164 N. Y. 281, 58 N. E. 114 (1900). Note that a holder in due course is not bound to be on the watch for facts which would put a very cautious man on his guard, so long as he acts in good faith.

[14] Merchants' Nat. Bank v. Detroit Trust Co., 258 Mich. 526, 242 N. W. 739 (1932), expressly repudiates the doctrine laid down in the case of Northwestern Nat. Bank v. Madison Kedzie State Bank, *supra* notes 2 and 4, relied upon by the petitioner in the instant case, and says: "* * * though one has received actual notice, if by forgetfulness or negligence he does not have it in mind when he acquires the bonds, he may still be a good faith purchaser." First Nat. Bank v. Pond, 39 Idaho 770, 230 Pac. 344 (1924); City Nat. Bank v. Mason, 192 Iowa 1048, 186 N. W. 30 (1922). In Schintz v. American Trust & Savings Bank, 152 Ill. App. 76, we find the court saying: "* * * good faith implies honest intent. It is consistent with negligence, even gross negligence. A blundering fool may therefore be found to have acted in good faith, though under like circumstances a shrewd business man might be deemed to have acted in bad faith."

selves to prevent recovery, unless in addition the jury find from the evidence that the holder acted in bad faith.[15]

L. H. R.

PARENT AND CHILD—LIABILITY OF PARENT FOR CHILD'S TORT-NEGLIGENCE.—Plaintiff's dog, while straying about defendant's premises, was shot and killed by defendant Kenneth Colburn, an infant over the age of 14 years. The evidence showed that the gun belonged to the infant's father and was kept hanging on a hook in the residence and was not loaded. The shells were kept in a separate place. The evidence further establishes that defendant Hiram Colburn, the father, had no knowledge concerning the action of his son Kenneth, or of the presence of the dog. The plaintiff recovered $100 on a verdict rendered by a jury. Defendant's motion to set aside the verdict for plaintiff and dismiss the complaint as to defendant first named was denied. On appeal, *held,* motion granted. The father is not liable for the shooting of plaintiff's dog by his son, where the father had no knowledge concerning his son's action, or of the presence of the dog on the premises. *Crellesen* v. *Colburn,* 156 Misc. 254, 281 N. Y. Supp. 471 (Co. Ct. 1935).

Under the Civil Law [1] and by statute [2] a parent is liable for the torts of his child as a consequence of the relationship alone.[3] This non-fault liability has been consistently rejected by the common law courts, which hold that a parent is not liable for the tortious acts of

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[15] Postal Tel.-Cable Co. v. Citizens Nat. Bank, 228 Fed. 601 (C. C. A. 3d, 1916); Fidelity Trust Co. v. Mayhugh, 268 Fed. 712 (C. C. A. 5th, 1920); Murray v. Wagner, 277 Fed. 32 (C. C. A. 2d, 1921); Meyer v. Guardian Trust Co., 296 Fed. 789 (C. C. A. 8th, 1924); Kintyre Farmers Co-op. El. Co. v. Midland Nat. Bank, 2 F. (2d) 348 (C. C. A. 8th, 1924); Cole v. Harrison, 167 App. Div. 336, 153 N. Y. Supp. 200 (1st Dept. 1915); Oliner v. Gronich, 168 App. Div. 874, 154 N. Y. Supp. 612 (1st Dept. 1915); A. E. McBee Co. v. Shoemaker, 174 App. Div. 291, 160 N. Y. Supp. 251 (1st Dept. 1916); Ironbound Trust Co. v. Schmidt-Dauber Co., 102 Misc. 708, 169 N. Y. Supp. 524 (1918).

[1] Takayanagi, *Liability Without Fault in the Modern and Civil Law* (1921) 16 ILL. L. REV. 163, 291.

[2] LA. CIV. CODE (Dart, 1932) arts. 2317, 2318. The reasoning under the Louisiana rule is that "birth gives rise to parental control and authority over a child, and paternal responsibility for torts is the consequence and offspring of paternal authority." A similar rule exists in France, Germany, Holland, Italy, Portugal, Spain, and Switzerland. See Note (1930) 17 CORN. L. Q. 178.

[3] Rush v. Farmerville, 156 La. 857, 101 So. 243 (1924); Kern v. Knight, 13 La. App. 194, 127 So. 133 (1930). But *cf.* Johnson v. Butterworth, 180 La. 586, 157 So. 121 (1934) (court holding that the doctrine of contributory negligence does not apply to a child under four years of age, where the child bit a nurse and parents had no knowledge of dangerous disposition of the child).