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Bills and Notes--Liability of Maker to Holder for Value (Freeport Bank of Freeport v. Viemeister, 227 A.D. 457 (2nd Dept. 1929))

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their banks in making purchases of stock on the exchange.² In passing upon questions involving the banking law, courts have taken cognizance of the rapid development of the banking business and the necessity of extending their functions to meet new conditions.³ The Federal banking system of the country has accordingly increased its powers to undertake enterprises heretofore prohibited⁴ and broadened its scope of activity. A narrow and unreasonable construction of the statute would result in unwisely limiting their usefulness in the transaction of business under modern conditions.⁵ In addition, since the statute expressly provides that a bank may receive certificates of stock for safe-keeping and also as collateral on loans, under certain conditions, it may be quite necessary for a bank to replace stock which it has lost or improperly disposed of. To accomplish this, a contract to purchase such stock would be a proper exercise of the "incidental powers" necessary to carry on the business of banking, and would, no doubt, be enforceable. It is important, therefore, that the facts and circumstances giving rise to such a contract be considered before a court can pass upon its legality.

D. J. R.

BILLS AND NOTES—LIABILITY OF MAKER TO HOLDER FOR VALUE.—Defendant delivered his check for \$1,000 to a depositor in the plaintiff bank. Delivery was conditional and defendant subsequently stopped payment thereof on the ground that the condition was not fulfilled. The depositor, in the meantime, had deposited the check in the plaintiff bank, the deposit slip which accompanied it bearing the notation that credits entered in accounts of depositors were conditional and would not become final until the items deposited were collected. Prior to the time when plaintiff bank received notice that payment on the \$1,000 check had been stopped, and at a time when the depositor had \$846 to his credit, exclusive of the \$1,000 check, the plaintiff certified and paid a check for \$1,525, made by the depositor, against his account, despite the notice which appeared on its deposit slip. This action is brought to recover the difference between the depositor's original balance and the amount of the certified check. *Held*, plaintiff was a holder for value to the extent of the amount paid before it had notice as to the defect in its depositor's

² *Central National Bank of City of New York v. White*, 139 N. Y. 631, 34 N. E. 1065 (1893); *Le Marchant v. Moore*, 150 N. Y. 209, 215, 44 N. E. 770 (1896).

³ *American Surety Co. v. Philippine National Bank*, 245 N. Y. 116, 127, 156 N. E. 634 (1927).

⁴ *People ex rel. Pratt v. Goldfogle*, 242 N. Y. 277, 295, 151 N. E. 452 (1926); *State of Minnesota v. First National Bank of St. Paul*, 273 U. S. 561, 47 Sup. Ct. Rep. 468 (1927).

⁵ *Whiting v. Hudson Trust Co.*, 234 N. Y. 394, 406, 138 N. E. 33 (1923).

title as against the defendant, and was entitled to judgment in that amount. *Freeport Bank of Freeport v. Viemeister*, 227 App. Div. 457, 238 N. Y. Supp. 169 (2nd Dept. 1929).

Upon certification of the check the bank guaranteed that it had sufficient funds to pay the check and agreed that those funds would not be withdrawn to the prejudice of the holder of the check;¹ it became responsible unconditionally for the payment thereof. The certification was a sufficient consideration under the Negotiable Instruments Law² and was, therefore, value within the meaning of that law³ to the extent that the depositor's account would be overdrawn except insofar as defendant's check covered such withdrawal. This result came about by a waiver of the restriction by the bank and transforming defendant's check, which was originally subject to collection, into an absolute and unconditional credit to its depositor to the extent necessary to make good the check which it had certified and for payment of which it was responsible.⁴ While a bank cannot pay moneys to a payee after notice of an infirmity in an instrument to constitute itself a holder in due course,⁵ if the proceeds are used to make good the depositor's account, the bank becomes a holder for value.⁶ The bank in the instant case was, therefore, a holder for value within the meaning of the Negotiable Instruments Law⁷ and could recover the amount paid against the defendant's check before notice of dishonor.

J. A. S.

CONSTITUTIONAL LAW—RIGHT TO SEQUESTER PROPERTY OF ABSCONDING HUSBAND.—The Commissioner of Public Welfare made complaint that a certain individual had abandoned his wife and infant child while residing in New York City, and had absconded from the state, leaving them without means and likely to become public charges unless relieved. Upon the wife's supporting affidavit, a warrant was issued by the Magistrate's Court authorizing the seizure of all the absconding husband's right, title and interest in his deposit with

¹ *Cullinan v. Union Surety & Guaranty Co.*, 79 App. Div. 409, 80 N. Y. Supp. 58 (4th Dept. 1903).

² Secs. 51, 112, 323 (L. 1909, Ch. 43).

³ *Ibid.* Sec. 91.

⁴ *Bath Nat. Bank v. Ely N. Sonnenstrahl, Inc.*, 249 N. Y. 391, 164 N. E. 327 (1928); *Heinrich v. First Nat. Bank of Middletown*, 219 N. Y. 1, 113 N. E. 531 (1916); *Merchants' Nat. Bank of St. Paul v. Santa Maria Sugar Co.*, 162 App. Div. 248, 147 N. Y. Supp. 498 (1914); *American Trust & Savings Bank v. Austin*, 25 Misc. 454, 456, 55 N. Y. Supp. 561 (1898).

⁵ *Albany County Bank v. People's Co-operative Ice Co.*, 92 App. Div. 47, 86 N. Y. Supp. 773 (1904).

⁶ *Wallabout Bank v. Peyton*, 123 App. Div. 727, 108 N. Y. Supp. 42 (1908).

⁷ Secs. 93, 96 (L. 1909, Ch. 43).