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Constitutional Law--Right to Sequester Property of Absconding Husband (Corn Exchange Bank v. Coler, 280 U.S. 218 (1930))

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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of the check the bank guaranteed that it had sufficient funds to pay the check and agreed that those funds would not be withdrawn to the prejudice of the holder of the check;[1] it became responsible unconditionally for the payment thereof.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 Law[2] and was, therefore, value within the meaning of that law[3] 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 Law[7] 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

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[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).

appellant bank and to make return to the County Court. After service and demand the bank refused to pay. The Commissioner then sought to reduce the fund to his possession. The bank moved for judgment contending that the statute,[1] upon which the warrant was granted, was unconstitutional, violating the due process clause of the 14th Amendment to the United States Constitution and Article 1, Section 6, of the New York State Constitution, in that it failed to provide for notice, either actual or constructive, to the absconder. *Held,* the statute is constitutional even though there is no provision for notice, as the absconder may set aside the entire adjudication if the necessary jurisdictional facts do not exist. Corn Exchange Bank v. Coler, 280 U. S. 218, 50 Sup. Ct. Rep. 94 (1930), *aff'g* 250 N. Y. 136, 164 N. E. 882 (1929).

In 1718, the English Parliament, recognizing the fact that abandonment by husbands and fathers of their wives and children might cause them to become public charges, enacted a statute [2] which gave the church warden and overseer of the poor the power to seize such property and assets of the absconder as would be necessary for the support and maintenance of the wife and children. This statute was subsequently enacted in substantially the same form by the Colonial Legislature of New York. After the separation from England, the state legislature passed a similar statute,[3] which was later re-enacted,[4] and then brought down, and broadened in scope, in the Code of Criminal Procedure.[5] Justice McReynolds, writing for the Supreme Court, bases his decision principally on the antiquity of the statute and the fact that heretofore it has been unchallenged. The Court quoted from Owenby v. Morgan [6] that "however desirable it is that the old forms of procedure be improved with the progress of time, it cannot rightly be said that the Fourteenth Amendment furnishes a universal and self-executing remedy. Its function is negative, not affirmative and it carries no mandate for particular measures of reform. * * * Neither does it, as we think, require a state to relieve the hardship of an ancient and familiar method of procedure by dis-

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[1] Code of Crim. Proc., Secs. 921–925. These sections provide, in substance, that the Commissioner of Public Welfare may apply to the Magistrate's Court for a warrant to seize the property of an absconding husband or parent leaving a wife or child likely to become public charges and that upon the proper jurisdictional facts being found, the warrant be issued. Provision is further made for the means of seizure, confirmation by the County Court and supervision of the application of the proceeds. It is also provided that in the event the party against whom the warrant issued should return, he may, upon proper application, set aside the entire proceeding if he can prove the failure of jurisdictional facts.

[2] 5 George I, Ch. 8 (1718).

[3] Act of April 17, 1784.

[4] Laws 1788, Ch. 62.

[5] Act of April 8, 1813, R. L., Ch. 78, Sec. 22; 1 R. S., Ch. 20, Title 1, Secs. 8, 9 (1829).

[6] 256 U. S. 94, 112, 415 Sup. Ct. Rep. 433–438 (1921).

pensing with the exaction of special security from an appearing defendant in a foreign attachment." Referring to the bank's position, the Supreme Court said that although the bank may be called upon to pay twice, it is no reason for declaring the statute unconstitutional, as when it contracted with the depositor, it was cognizant of the statute and its effect, and it voluntarily accepted the consequent responsibility. The Court indicates that though the statute is constitutional, it is, nevertheless, a harsh measure. We fail to appreciate the alleged hardship. As pointed out by the Court of Appeals,[7] the husband having chosen New York State as his domicile, he is deemed to submit and acquiesce in any law of the state affecting his property, which is or may be in force. If he subsequently abandons his wife and child in this state and they are so destitute that they may become public charges, the state, in furtherance of the welfare of the community and under a proper exercise of its police power, may sequester his property and use the same for the support and maintenance of his wife and family. The basic facts upon which such relief may be granted are: (a) The marital relationship and domicile within the state; (b) the abandonment by husband or parent and his absence from the state; (c) the necessary property or *res* within the state. In this type of proceeding the absconder is represented by the bank which may set up such defenses as would be available to him. He is not divested of his right, upon his return, to nullify the entire proceeding if he can prove the absence of the necessary jurisdictional facts. What the legislature intended was to provide for the case where a husband had property within the state and was concealing himself or had disappeared, leaving a wife and family without means and a possibility of becoming public charges, despite the fact that the property may be sufficient to properly provide for them. Under such circumstances, to render the property inaccessible to them, would severely tax one's sense of fairness and justice. Lack of remedy in such a case would mark the law as impotent.

E. H. L.

CORPORATIONS—RIGHT OF CORPORATION TO PURCHASE ITS OWN STOCK.—Upon the authority of a resolution of its board of directors, a corporation contracted with one of its stockholders to purchase his holdings at a specified sum. At the date of the execution of the contract, the corporation's surplus was in excess of the price agreed upon. Plaintiff delivered his stock to the corporation and received part of the stipulated payments. The corporation thereafter became financially embarrassed and its assets were turned over to a creditors' committee which took over the management and control of the corporation and sold its assets. Included in the assets sold were the shares formerly owned by plaintiff. At the time of the assignment it was agreed

[7] 250 N. Y. 136, 164 N. E. 882 (1929), opinion by Cardozo, *Ch. J.*