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Bills and Notes--Implied Warranty of a Transferor Without Recourse of a Promissory Note

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credit given for a check on another branch has been allowed to be charged back as if the branches were independent.[4] This case goes a step further and says that the branch is separate for the purpose of acquiring the check. In effect the drawee is held to be a holder in due course since suit can only be brought in the name of the parent bank.[5]

How are the courts to regard branch banks? Are they to be strictly principal and agent or are the ordinary risks of loss in such transactions through an agent to be limited by construing the laws of agency and negotiable instruments to fit this class of cases? It must be admitted that such a holding seems to do violence to the theory of bills of exchange. Ordinarily the bill is extinguished when the drawee pays it. It is conceivable that the drawee could be a holder in due course before the instrument is presented for payment or is due but not after. How far separate are they to be regarded? Whenever it is for their benefit? Or shall the courts say that whenever a bank seeks the enlarged operations and profits possible it shall also assume all the risks incident to such a procedure under the usual rules of agency and negotiable instruments? Unfortunately the cases are few and the matter is largely one for future settlement dependent for its ultimate decision on the social desirability of branch banking and protecting such banks from the possibilities of loss in the peculiar nature of their business.[6]

—Robert E. Stealey.

Bills and Notes—Implied Warranty of a Transferor Without Recourse of a Promissory Note.—The payee of a note, secured by a vendor's lien on land, assigned it without recourse for valuable consideration to another party, who, the court found, looked to the lien as security. Later, the assignor made a release of the lien, reciting that this note had been paid. Failing in suits against the parties primarily liable, the assignee brought suit against the assignor. The court held that a transferor without recourse for valuable consideration of a promissory note, whether past due or not, impliedly warrants, among other things, that he

[4] Chrzanowski v. Corn Exch. Bank, 159 N. Y. Supp. 385 (1916).
[5] Accord: London P. & S. Bank v. Buszard, 25 Times L. R. 142 (1918). Contra: Petrie v. Garfield Savings Bank, 8 Ohio Opp. 266 (1917). See also McNeil v. Wyatt, 3 Humph. 125 (Tenn. 1842); Bank of Old Dominion v. McVeigh, 20 Grat. 785 (Va. 1875).
[6] Branch Banking is forbidden in West Virginia by W. Va. Rev. Code (1930), c. 31, art. 4, § 9.

has done nothing and will do nothing to prevent the collection thereof.[1]

To the four things which an assignor without recourse of a negotiable instrument warrants to the assignee,[2] our court has thus added an implied warranty. Seemingly, there have been no like holdings since the passage of the Uniform Negotiable Instruments Act, but the court cites several cases which were decided before that time,[3] stating that "the holding goes to a basic principle of fair dealing not supplanted by the negotiable instruments statute." There is also a possible inference that in some respects a negotiable instrument is a chattel and the same warranty might be implied as in the case of the sale of chattels.[4] The court further states "that it is only common sense that the law should raise and impose an implied warranty, attendant upon any assignment, that the assignor will not undermine or destroy that which he has assigned."

The result reached here seems to be justified by the facts of this particular case. As to whether the court will raise an implied warranty in all cases of this nature or will extend the application of this principle to all cases of the transfer of negotiable instruments is problematic and can only be determined by future decisions.

—MELVILLE STEWART.

CONSTITUTIONAL LAW—POWER TO TAX CHAIN STORES.—In North Carolina two statutes were passed by the legislature imposing license taxation upon chain stores. The tax was purely for revenue under both statutes, and involved no question of public regulation of chain stores. The first,[1] which was held unconstitutional, provided for a license tax upon each store in the state of a firm operating six or more therein. It was held to violate the

[1] Hoge v. Ward, 155 S. E. 644 (W. Va. 1930).

[2] W. VA. REV. CODE (1931), c. 46, art. 5, § 6.

[3] Watson v. Chesire, 18 Iowa 202, 87 Am. Dec. 382 (1865); Eaton v. Mellus, 73 Mass. (7 Gray) 566 (1856); Findley v. Smith, 42 W. Va. 299, 26 S. E. 370 (1896), (applying the principle to assignment of a judgment).

[4] Quoting from the opinion, "In Brannon's Negotiable Instruments Law, p. 609, in this statement: 'However, even without this linking of the two sections (meaning secs. 65 and 66 of Uniform Negotiable Instruments Law), sec. 65 should be construed to harmonize with the commercial law as to implied warranties in sales of chattels, since this section relates to the obligation of a seller of a negotiable instrument, which is in some respects a chattel.' "

[1] Public Laws of North Carolina 1927, c. 80, § 162.