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Bills and Notes—Innocent Purchaser—Fraud

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note of a statement that certain stock had been deposited with payee as security did not change the effect of the note, and consequently was not a material alteration, while the detachment of a contemporaneous agreement for the extension of maturity on the payment of certain installments was a material alteration. The only conclusion that can be drawn from these cases seems to be that each case must be decided on its own facts.

F. W. F.

Elkhart State Bank of Elkhart, Kan., v. Bristol Broom Co., 129 S. E. 371 (Va., 1925).

BILLS AND NOTES—INNOCENT PURCHASER—FRAUD
 —Bristol Broom Co. contracted for the purchase of broom corn warranted to be of a certain quality. A draft was drawn on the Broom Co., payable to the Elkhart State Bank, and was deposited by the Weymer Warehouse Co., which furnished the broom corn, with the bank, which credited the amount of the draft to the Warehouse Co., with the right to check on it. After the payment of the draft by the Broom Co., it discovered that the broom corn was worthless, and brought this action to recover the proceeds of the draft. The bank claimed the fund as an innocent purchaser for value, but it appeared that the Warehouse Co. had assumed or guaranteed payment of the draft to the bank, and was furnishing the counsel who contested the case in the bank's name. *Held*, though, as a general rule, a bona fide holder in due course of a negotiable instrument which originated in fraud takes it discharged of the defect, and can pass a good title even to one with notice of the fraud, there is this exception: the payee of a negotiable instrument, selling it to an innocent third party and repurchasing it, acquires no better title against the maker than he possessed in the first instance; (citing *Aragon Coffee Co. v. Rogers*, 105 Va. 51, 52 S. E. 843). The bank was the mere nominal holder, and the suit was in effect by the Warehouse Co. as a purchaser from the bank, and at the same time the original payee, though, in fact, its name did not appear on the instrument either as payee or indorser. The action to recover the proceeds of the draft stood on the same footing as an action on the draft itself. Judgment for the Broom Co.

The following cases support the proposition that the payee of a negotiable instrument cannot acquire a better title by selling to an innocent purchaser and repurchasing the instrument: *Andrews v. Robertson* (Wis.), 87 N. W. 190, 54 L. R. A. 673, 87 A. S. R. 870;

Hoye v. Kalashian, 22 R. I. 101, 46 A. 271; *Kost v. Bender*, 25 Mich. 515; *Davis Mercantile Co. v. Gillett*, 82 Fla. 340, 90 So. 189; *Peltier v. McPerson*, 67 Colo. 505, 186 P. 524; *Casner v. Schwartz*, 198 Mo. App. 236, 201 S. W. 592; *Miller v. Chinn* (Mo. App), 203 S. W. 212; *Adair v. Bank of Hickory Flat*, 115 Miss. 297, 75 So. 758; *Bute v. Williams* (Tex. C. A.), 162 S. W. 989; *Dollarhide v. Hopkins*, 72 Ill. App. 509; *Sawyer v. Wiswell*, 9 Allen 39. The following, though not negotiable instrument cases, are to the same effect: *Church v. Ruland*, 64 Pa. 432; *Ely v. Wilcox*, 26 Wis. 91; *Elwell v. Tatum*, 6 Tex. Civ. App. 397, 25 S. W. 434. In *Miller v. Chinn*, *supra*, plaintiff was not the original payee with notice of the fraud, but his agent. But the instant case is the only one in which the suit was not only brought in the name of one not a party to the original fraud, but was brought on an instrument whose payee was not the party to the fraud, but an ostensibly innocent holder.

F. W. F.

CRIMINAL LAW.

Smith v. Command, Supreme Court of Michigan, June 18, 1925.

Prohibition against cruel and unusual punishment is not applicable to sterilization of feeble-minded persons.

Willie Smith, a boy of 16, was duly adjudged to be feeble-minded by the Probate Court of Wayne County. His father, with the consent of the mother, filed a petition to have him sterilized under Act. 285, Public Acts of 1923. This Act, among other things, provided that the Court may order for treatment or operation to render the defective incapable of procreation whenever it shall be found "that (a) the said defective manifests sexual inclinations which make it probable that he will procreate children unless he be closely confined or be rendered incapable of procreation, (b) that children procreated by such adjudged defective will have an inherited tendency to mental defectiveness, and (c) that there is no probability that the condition of said person will improve so that his or her children will not have the inherited tendency aforesaid." The proceedings resulted in an order by the Court appointing a competent physician to treat the plaintiff by X-ray or by vasectomy in order to render him incapable of procreation. To secure a reversal of this order, the plaintiff brings certiorari.

Held: The Constitution of the State of Michigan, Article 2, Section 15, prohibiting cruel and unusual punishments, applies only to pun-