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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 contempora-
neous agreement for the extension of maturity on the payment of cer-
tain 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 war-
ranted 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 re-
purchasing it, acquires no better title against the maker than he pos-
sessed 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 foot-
ing 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;
COMMENTS ON RECENT DECISIONS

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. McFerson, 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 certiori.

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