COMMENTS ON RECENT DECISIONS

BILLS AND NOTES.

Crane v. Guaranty Finance Corporation, 105 So. 485 (Miss., 1925).

BILLS AND NOTES — ALTERATION — NOTICE — Three trade acceptances, payable at 30-day intervals, were drawn by the Lawrence Phonograph Co. on defendant, and accepted by defendant. The three acceptances were on one sheet of paper, together with a contract containing stipulations to be performed by the drawer, which if written in the face of the acceptances would have made them non-negotiable. There were no perforated lines between the three acceptances or between them and the contract, but they were so printed as to be separable by clipping into distinct units. The acceptances were clipped by the drawer and delivered to plaintiff before maturity for value without notice. *Held,* plaintiff was not charged with notice that the instruments were originally non-negotiable merely by the fact that the margins indicated clipping from another paper. The clipping was not such a material alterations as to render the acceptances void, because it must have been intended by the parties that the acceptances in the usual way. (Citing *Conqueror Trust Co. v. Simmon,* 62 Okl. 252, 162 P. 1098, which held that merely detaching a negotiable promissory note from a contract to which it is attached by perforations for the purpose of being detached, when such detachment does not alter the effect of the instrument, is not a material alteration.)

In the following cases the appearance of the instrument was held not to put a purchaser for value on inquiry in regard to possible defenses: *Lan v. Wm. E. Huston Drug Co.* (Tex., 1916), 190 S. W. 534, in which the edge of the notes showed perforations (but there was evidence that the understanding of the parties was that the notes were to be negotiable); *Hudson Boiler Manufacturing Co. v. Cardillo,* 174 N. Y. S. 638, in which there were small red ink marks upon a check near the signature. The following cases held that the detachment of promissory notes from other documents to which they were attached was not a material alteration: *Commercial Credit Co. v. Giles* (Tex., 1918), 207 S. W. 596; *Iowa City State Bank v. Milford* (Tex., 1917), 200 S. W. 883; *Harrison v. Hunter* (Tex., 1914), 168 S. W. 1036; but in each of these cases such detachment was expressly authorized by the contract. In *Mater v. Amer. Nat. Bank of Denver,*

8 Colo. App. 325, 46 P. 221, the validity of a note payable four months after date was held not affected by the payee's detaching after delivery a memorandum at the bottom reciting that the maker might have an extension of time, where there was in fact no demand for such extension of time. Where a note referred to a contract and was made part of it, its detachment was held not a material aleration such as would destroy the holder's right, in *Robertson v. Kochtitzky* (Mo. App., 1919), 217 S. W. 543. In *Southern Sand and Material Co. v. People's Savings Bank and Trust Co.*, 101 Ark. 266, 142 S. W. 178, it was held not a material alteration to detach from a check a letter pinned to it protesting that the check was obtained by duress. The case of *Vandervoort v. Rockford Insurance Co.*, 49 Ill. App. 457, decided that the detachment of a note from an application for insurance was not a material alteration; but exactly the opposite conclusion was reached in *Rockford v. McGee*, 16 S. D. 606, 94 N. W. 695, 61 L. R. A. 335, 102 A. S. R 719 (in which, however, the transaction originated in fraud). A large number of cases have held detachment of part of an instrument to be a material alteration, under states of facts; e. g. *Stevens v. Venema*, 202 Mich. 232, 168 N. W. 531 (note detached from conditional order for merchandise); *Wait v. Pomeroy* (note detached from memorandum qualifying obligation); *Law v. Crawford*, 67 Mo. App. 150 (note detached from another instrument affecting liability of maker); *Stephens v. Davis*, 85 Tenn. 271, 2 S. W. 382 (note detached from stub containing a condition intended to be part of note): *Spencer v. Tripplett* (note detached from conditional contract of sale, to which it was attached without line or perforation); *Commercial Security Co. v. Hull* (Tex., 1919), 212 S. W. 986 (note detached from contract providing that the note should not become binding until the performance of the contract); *Scofield v. Ford*, 56 Iowa 370, 9 N. W. 309 (note detached from contract qualifying terms of note); *London v. Halcomb* (Tex., 1916), 184 S. W. 1098 (in which it was understood that the note was not to be detached); *Bothwell v. Schweitzer*, 84 Neb. 271, 120 N. W. 1129, 22 L. R. A. (N. S.) 263, 133 A. S. R. 623 (detachment of agreement modifying terms of accepted bill of exchange, securely glued thereto; innocent holder might recover according to the import of the entire contract); *Stevens v. Barnes*, 43 N. D. 483, 175 N. W. 709 (transaction fraudulent in its inception); *First National Bank v. Carter*, 138 Mich. 421, 101 N. W. 585 (not negotiable instrument). In the case of *Heldman v. Grinell*, 201 Ill. App. 172, it was held that the detachment from a promissory

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;