BILLS, NOTES, AND CHECKS, PART II. INSTRUCTION PAPER, PP. 67-114

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649316021

Bills, Notes, and Checks, Part II. Instruction Paper, pp. 67-114 by Amasa M. Eaton

Edited by Trieste Publishing Pty Ltd.
Cover @ 2017

www.triestepublishing.com

AMASA M. EATON

BILLS, NOTES, AND CHECKS, PART II. INSTRUCTION PAPER, PP. 67-114

Trieste

BILLS, NOTES, AND CHECKS

PART II

INSTRUCTION PAPER

PREPARED BY

AMASA M. EATON, A.M., LL.B.

CHAIRMAN OF THE RHODE ISLAND BOARD OF COMMISSIONERS ON UNIFORMITY OF STATE LEGISLATION. PAST PRESIDENT, NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORMITY OF STATE LEGISLATION

AMERICAN SCHOOL OF CORRESPONDENCE

CHICAGO ILLINOIS

U.S.A.

LAW OF BILLS, NOTES, AND CHECKS

PART II

CHAPTER VI

CONSIDERATION

§ 49. **Value or Valuable Consideration.** Under N. I. L. § 2 they mean the same thing. This is one of those terms of the common law that unfortunately were imposed upon the law merchant by the courts of England at a time when English lawyers were ignorant of the law merchant and were full of the mistaken notion that the common law was the perfection of reason and contained everything; therefore, the duty of the courts was not to make law but to find out what was already contained in the law if it could only be found. As Bigelow says in the "Laws of Bills, Notes and Cheques", page 5:

"The michief lies in the mistaken notion implied, that the law merchant is a sort of poor relation of the common law, or rather that it is a dependent of the common law, subject to it wherever its own language is not plain. Such instances, in other words, overlook the fact that the law merchant is an independent, parallel system of law, like equity or admiralty. The law merchant is not even a modification of the common law; it occupies a field over which the common law does not and never did extend."

It is further defined in § 51 as "any consideration sufficient to support a simple contract." It consists—

"In some legal right, by way of interest, profit or bene-

fit, accruing to the one party, or some loss of legal right, by way of forbearance, damage or detriment suffered by the other. It is not necessary that there should be *quid pro quo* or benefit of any kind, to make one a holder for value; detriment (in respect of legal right) is enough" (Bigelow, p. 242).

And he says further on the same page,

"The consideration must be valuable; it is not enough that it is merely 'valid', 'good', or 'meritorious' so as to confirm the title, as in the case of gift. All the authorities agree in that proposition. It may be, indeed, that one to whom a negotiable instrument has been given may recover upon it, and not because the present owner is himself a holder for value".

§ 50. Common-Law Consideration. It is most unfortunate that in treating of this subject we must, whether we wish to or not, be led off into what constitutes common-law consideration, because decisions of the courts for centuries compel us to do so. But the student is earnestly asked to bear always in mind that upon principle the true question always is, in bills and notes: What is the custom of merchants? "No rule touching the law merchant can permanently hold place which fetters or is opposed to custom; for it must rest upon essentially unsound theory".[1] In the further consideration of this important and difficult part of our subject let us follow the course taken by Dean Ames in his Index Digest to his "Cases on Bills and Notes".

Value is Either Money or Money's Worth. The surrendering of negotiable securities is the giving of value.[2] One who gives his own signature to a negotiable instrument, gives value.[3]

So one gives value who extinguishes a debt by making it

[1] Bigelow, p. 247.

[2] Bk. of Salina v. Woodcock, 21 Wend. (N. Y.) 499; 1839; Mohawk Bk. v. Corey, 1 Hill (N. Y.) 513, 1841; Ayrault v. McQueen, 32 Barb. (N. Y.) 305, 1860; Outhvite v. Porter, 13 Mich. 533, 1865.

[3] Williams v. Smith, 2 Hill (N. Y.) 301, 1842; Humphrey v. Vertuer, Green Ch. (Miss.), 251, 1842; Stotto v. Byers, 18 Iowa 303, 1864; Wells v. Chapman, 81 Ill. 137, 1876.

in the instrument taken for it. Bk. of Sandusky v. Scoville, 24 Wend. (N. Y.) 115, 1840; Bk. of St. Albans v. Gilliland, 23 Wend. (N. Y.) 311, 1840; in which Nelson, C. J. said, "We have frequently held that receiving a note for a *precedent debt* is not receiving it *for value* within mercantile usage, 20 Johns, R. 637; 12 Wendell 487; 14 *id.* s. c. 57; 16 *id.* 659; *see also* 13 East, 135, (n); 9 Barn & Cross, 208; Byles on Bills of Exch. 20; but here was something more. The note was taken *in satisfaction of the indebtedness, without recourse, and the debt discharged,* importing that it was received at the risk of the holder, and that unless available in his hands, he loses the demand. He has, therefore, trusted to the credit of the papers as effectually as if he had parted with the securities of third persons at the time, having discharged the personal responsibility of the original debtors.[4]

An agreement to forbear suit has also been held to be "value," it being the surrender of a right, and, therefore, a "detriment" in the legal sense of the word. See Oates v. Nat. Bk. 100 U. S. 239, 1879; where it was held that a creditor who, before its maturity, accepts a negotiable note, so indorsed that he becomes a party thereto, as collateral security for a pre-existing debt, in consideration of an extension of time granted to the debtor, is, according to the law merchant, a holder for value, and his rights as such are not effected by equities between antecedent parties, of which he had no notice.

The Supreme Court took occasion in this decision to affirm the doctrine already established in that court in Swift v. Tyson, 16 Peters 1, 1842; Carpenter v. Prov. Ins. Co. do. 495, 1842; and Watson v. Tarpley, 18 How. 517, 1855, that is, that while the Federal courts must regard the laws of the several States and their construction by the State courts (except when the constitution, treaties, or statutes of the United States otherwise provide) as rules of decision in trials at common law in the courts of the United States,

[4] See also Brown v. Leavitt, 31 N. Y. 113, 1865; and the cases cited in note 7 to this case, 1 Ames' Cases on Bills and Notes, 668.

in cases where applicable, they are not bound by the decision of those courts upon questions of general commercial law. Here is recognition by the highest court of the land that the law merchant so far as applicable in cases involving bills and notes, is no part of the common law of the States. In reality it is a part of international law, the custom of merchants not being limited exclusively to England and the United States.

Further, a negotiable instrument taken in conditional payment of a debt is "value," because the creditor's right to sue upon the debt is suspended.[5] The opposite view may be found in a host of cases given by Dean Ames, 1 Cases on Bills and Notes, 667, 668, u. 1.

And if a negotiable instrument is taken merely as collateral security for a debt, it is taken for value. The cases to this effect may be found in 1 Ames, Cases on Bills and Notes, 650, note. The leading case to the contrary is Bay v. Codington, 5 Johns Ch. (N. Y.) 54, 1821, which is still followed in New York, although it is not in accord with the customs of merchants nor with § 51 of the N. I. L.

"Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes value; and is deemed such whether the instrument is payable on demand or at a future time."

This would seem to be explicit enough, yet nearly fifty cases under this section have already arisen in the States that have adopted this law. The courts of New York have manifested a remarkable disposition to adhere to the doctrine of Bay v. Coddington, even since the adoption in that State of the N. I. L. and to pay no attention to the decisions to the contrary under this law in the courts of the States that have also adopted this same law. An examination of these decisions may be found in the annual address of the President of the Nineteenth Annual Conference of the Commissioners on Uniform State Laws for 1909, published in the

[5] Swift v. Tyson, 16 Peters 1, 1842; Poirier v. Morris, 1 W. R. 349, 1853; Currie v. Misa, L. R., 10 Ex. 153, 1875.

Proceedings for that year of the American Bar Association and also published in the Proceedings of that Conference for 1909 to which the student is referred. It is submitted that the real meaning of N. I. L. § 51 is as if written thus:

"Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes value and is deemed such, whether the instrument is payable on demand or at a future time, and without regard to whether the antecedent or pre-existing debt is canceled, in whole or in part, or is extended or continued, in whole or in part, whether for a definite or an indefinite period of time, either explicitly or implicitly".

Two of the latest cases under this section are Campbell v. Fourth Nat. Bk. of Cin. 126 S. W. 114 (Ohio), 1910; and Lovelace v. Lovelace, 124 S. W. 400 (Ky.), 1910; and in both of these cases the plainly expressed purpose of the section was followed.