Marquette Law Review

Volume 19
Issue 2 *February 1935*

Article 10

1935

Bills and Notes: Holders Without Notice

Henry G. Schroeder

Wis. Stat. (1933) § 118.61; *Cf. Gifford* v. *Hardell,* 88 Wis. 538, 60 N.W. 1064, 43 Am. St. Rep. 925 (1894). What is a reasonable or an unreasonable time depends on the nature of the instrument, the usage of trade or business, (if any) with respect to such instruments and the facts of the particular case. Wis. Stat. (1933) § 116.01.

Where the payee and the drawee bank are in the same community, in the absence of special circumstances, it is generally held that the payee has until the close of the next business day in which to present the check for payment. *Nat. Plumbing and Heating Supply Co.* v. *Stephenson,* 203 Ill. App. 49 (1918); *Aebi* v. *Bank of Evansville,* 124 Wis. 73, 102 N.W. 329, 109 Am. St. Rep. 925, 68 L.R.A. 964 (1905). The fact that the check was given on a legal holiday does not change the above rule. *Missouri Pacific Ry. Co.* v. *H. M. Brown Coal Co.,* 226 Mo. App. 1038, 48 S.W. (2nd) 86 (1932). Where the check is post dated, it becomes an ordinary check on its date and payable on demand within a reasonable time after date. *Philadelphia Life Ins. Co.* v. *Hayworth,* 296 Fed. 339 (C.C.A. 4th, 1924); (1924) 24 Col. L. Rev. 919. Where the check is received after banking hours, that day is not counted since no deposit on presentment can be made after banking hours. *Bistline* v. *Benting,* 39 Idaho 534, 228 Pac. 309 (1924).

Where the payee and the drawee bank are not in the same community, and in the absence of special circumstances, the check must be forwarded for presentment on the next secular day after it has been received, and the agent to whom it is forwarded must present it for payment on the next secular day after receiving it. *Gifford* v. *Hardell, supra.* The payee is not required to forward the check by the first mail on the next day after receipt but it is sufficient if the check is forwarded by the last mail on the day after receipt. *Lloyd* v. *Osborne,* 92 Wis. 93, 65 N.W. 859 (1896). The fact that the bank on which a check is drawn is not a member of the local clearing house does not change the general rules of law as to the time within which a check must be presented in order to hold the drawer liable thereon. *Lowell Cooperative Bank* v. *T. F. Sheridan Apt.,* (Mass. 1934) 188 N.E. 636. Forwarding a check by a circuitous route may, as a general rule, be said to constitute negligence, except where the check reaches its destination as soon as if sent directly to the bank. *Northern Lumber Co.* v. *Clausen,* 201 Iowa 701, 208 N.W. 72 (1926); *Plover Savings Bank* v. *Moodie,* 135 Iowa 685, 110 N.W. 29, 113 N.W. 476 (1907).

The instant case holds that the payee is not excused from presenting the check within a reasonable time where he sends a check on a circuitous route, although it has been the custom of business houses in the community where the payee does business to present checks through depository banks in different towns; nor can he be excused by showing that it has been accustomed to present the maker's checks through such a depository bank when the maker does not know of such presentation.

WILLIAM F. HURLEY.

BILLS AND NOTES—HOLDERS WITHOUT NOTICE.—The defendant company made and recorded a deed of trust to the trustee to secure the defendant's bonds given in return for a loan. The bonds, bearer instruments, stated on their face that they were secured by a deed of trust "to which * * * reference is hereby made with the same effect as though recited at length herein * * * for the purpose of affecting the rights of the holders of the bonds, and the terms and

conditions upon which said bonds are issued * * *" The trustee in violation of the deed of trust wrongfully pledged the bonds with the pledgee-petitioning-banks as security for its own indebtedness. The trustee defaulted on this obligation and is now bankrupt. The pledgee-petitioning-banks ask permission to sell the bonds free from any restrictions contained in the deed of trust. The circuit court of appeals in affirming the district court [6 F. Supp. 638 (E.D. Wis. 1934) *aff'd,* 70 F. (2d) 815 (C.C.A. 7th, 1934)] held that the pledgee banks were bound by the restrictions contained in the deed of trust and could not qualify as holders without notice. The Supreme Court of Wisconsin had previously decided, in a similar case on identical facts, that parties situated as the pledgees in this case *were* holders without notice. *Pollard* v. *Tobin,* 211 Wis. 405, 247 N.W. 453 (1933). On appeal to the United States Supreme Court, *Held,* where the state's highest court has construed the law in a case like the instant case, the federal courts are bound thereby. *Marine Nat. Exchange Bank of Milw. Wis. et al* v. *Kalt-Zimmers Mfg. Co. et al,* 55 Sup. Ct. 226 (1934).

The federal question involved was whether the federal courts were bound to follow the state court's interpretation of the statute pertaining to notice. Wis. Stats. (1933) § 116.61. Holding that the federal courts must follow the state court's ruling (*Burns Mortgage Co.* v. *Fried,* 292 U.S. 487, 54 Sup. Ct. 813, 78 L.Ed. 1380, 92 A.L.R. 1198 [1934]), the Supreme Court did not pass on the validity of the state court's interpretation. The validity of the state court's interpretation is the question for discussion in this recent case.

What constitutes notice of conditions attached to negotiable paper is often difficult to ascertain. It may arise under the situation where the notice is given by the terms of the instrument itself. *Kreisel* v. *Balcock,* 55 Okla. 487, 154 Pac. 1194 (1915) (a memorandum on note was held sufficient to put indorsee on inquiry); *Hughes and Co.* v. *Flint,* 61 Wash. 460, 112 Pac. 633 (1911) ("on contract" marked on checks made by a builder to a contractor was held to be sufficient notice to the indorsee-materialman as to require him to apply such payment against the accounts for materials furnished on the builder's job). Notice may sometimes be given from a collateral agreement although the note itself is absolute in form. *Todd* v. *State Bank,* 182 Iowa 276, 165 N.W. 593 (1917) (the contract contemporaneously executed with the negotiable notes and assigned with them placed the holders on inquiry as to the terms of the contract; see *Thomas* v. *Page,* 23 Fed. Cases 963 (C. Ct. Ind. 1843); *Security Finance Co.* v. *Jensen Auto Co.,* 48 Idaho 376, 282 Pac. 88 (1929). *Contra: National Bank of Watervliet* v. *Martin,* 203 App. Div. 390, 196 N.Y.Supp. 714 (1923) *aff'd.* on other grounds, 235 N.Y. 611, 139 N.E. 755 (1923), criticized in 8 Corn. L.Q. 243 (1923). Notice may be imputed if the extrinsic facts disclose an element of bad faith. *Security Finance Co.* v. *Jensen Auto Co.,* 48 Idaho 376, 282 Pac. 88 (1929) (previous dealings under similar circumstances); *King Cattle Co.* v. *Joseph,* 158 Minn. 481, 199 N.W. 437 (1924); *Monk* v. *23d Ward Bank,* 165 N.Y.Supp. 1055 (1917) (suspicious explanation). *Cf. Klotz Throwing Co.* v. *Mfg'rs. Commercial Co.,* 179 Fed. 813 (C.C.A. 2nd, 1910).

If there is no actual knowledge of an infirmity in the instrument, to constitute notice of an infirmity, knowledge of such facts that the taking of the instrument amounts to bad faith must be shown. Wis. Stats. (1933) § 116.61. Actual knowledge of the existence of a trust deed is not actual knowledge that the trustee under the deed is also trustee of the bonds accompanying it where such fact does not appear on the bond. *Pollard* v. *Tobin,* 211 Wis. 405, 247 N.W. 453 (1933). The mere knowledge of the existence of the deed does not constitute such a fact that the taking of the bonds (in pledge for a private loan with-

out looking to see whether the trust is thereby violated) amounts to bad faith. *Pollard* v. *Tobin, supra.* The latter holding does not seem justifiable when it is considered that the bonds themselves stated that the deed affected the rights of the holders and the terms and conditions of issuance. This seems more than mere knowledge of the existence of the deed. It is a warning sufficient to put the prospective holder on inquiry. *Marine National Exchange Bank et al.* v. *Kalt-Zimmers Mfg. Co. et al.,* 702 F. (2d) 815 (C.C.A. 7th, 1934) (emphasizing fact that reference on bond states a named trustee); *King Cattle Co.* v. *Joseph, supra* (the Minnesota court, confronted with a similar set of facts and involving the construction of an identical statute [Mason's Minn. Stats, (1927) § 7099], as in the Pollard case, decided that a prospective holder was put on inquiry and that failure so to do constituted bad faith).

HENRY G. SCHROEDER.

BUILDING AND LOAN ASSOCIATIONS—POWER TO CONVERT TO FEDERAL CHARTER. —Pursuant to the provisions of the Home Owner's Loan Act, 48 Stat. 645, § § 5, 6, 12 U.S.C.A. § 1464 (i), three state building and loan associations made application to the Federal Home Loan Bank for conversion into federal savings and loan associations. An attempt by the Banking Commission, to prevent these conversions, was enjoined. One of the associations was accepted, was granted a charter, and has since operated as a federal association. The other two have not yet converted. The Banking Commission brings this original action for construction of its powers, seeks to have the conversion of the one association declared void, and asks for an injunction preventing the proposed conversions of the other two. The issue being identical, all cases were tried together. *Held,* such conversions, without authority of charter or state consent, are void; and the relief sought by the plaintiff was granted. *Cleary, State ex rel.* v. *Hopkins St. Building & Loan Ass'n.* (Wis. 1934) 257 N.W. 684.

The charter of a corporation may not be revised or repealed by the creating state if such act withdraws or violates the obligations of the charter. *Dartmouth College* v. *Woodward,* 4 Wheaton 518, 4 L.Ed. 629 (1819). The states evaded the rule of the Dartmouth College case by inserting in their constitutions a clause reserving full power and control over corporations created under their laws. Wis. Const. art. XI, § 1; see *West Wisconsin Ry. Co.* v. *Board of Supervisors of Trempealeau County,* 35 Wis. 257, 270 (1874); *Attorney General* v. *Railroad Companies,* 35 Wis. 425, 574 (1874). This power to control and regulate domestic corporations has been recognized by federal and state courts. *Sherman* v. *Smith,* 1 Black 587, 17 L.Ed. 163 (1862); *Pennsylvania College Cases,* 13 Wallace 190, 20 L.Ed. 550 (1871); see *Attorney General* v. *Railroad Companies, supra.* This power, not to be abused, must be exercised only in the protection of state, corporate, and individual rights. See *Union Pacific R. Co.* v. *United States,* 99 U.S. 700, 719, 25 L.Ed. 496, 498 (1878); *Miller* v. *State,* 15 Wallace 478, 498, 21 L.Ed. 98, 104 (1872). By virtue of the charter a contractual relationship arises between the state, the corporation, and the stockholders; such relationship imposing upon the state a duty to protect the rights of stockholders. See *Martin Orchard Co.* v. *Fruit Growers' C. Co.,* 203 Wis. 97, 102, 233 N.W. 603, 607 (1930). A fundamental or radical change in the purpose of a corporation cannot be accomplished over the dissent of a single stockholder. *Huber* v. *Martin,* 127 Wis. 412, 105 N.W. 1031 (1906) (a conversion by a mutual insurance company into a stock company was held invalid). Could a federal act give state building and loan associations