Bills and Notes: Negotiability: Reference to Other Instrument

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Repository Citation

Francis Ackerman, Bills and Notes: Negotiability: Reference to Other Instrument, 14 Marq. L. Rev. 232 (1930).
Available at: http://scholarship.law.marquette.edu/mulr/vol14/iss4/8

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so by the mandate of the court in order to purge himself of contempt and to escape confinement in jail.

The only thing that reflects upon Mr. Rubin is that this statement discloses that he had accepted information as sufficient basis for his charge of conspiracy without making investigation to determine whether the information upon which he relied and acted was in fact true. But this is not ground for disbarment. If all lawyers were disbarred who have started actions relying upon information that was subsequently found to be unreliable, the number of the members of the bar would be greatly reduced.

The third charge is also founded upon the affidavit. It was very lengthy, and, as Mr. Rubin admitted, carried much offensive matter that should have been omitted. One of his motives in making it was the hope of it being published. Mr. Rubin had the right of questioning the jurisdiction (Rubin v. State, 194 Wis., 207). So he can't be censured for questioning the power of the court to proceed with the investigation.

"The only question that is open is whether he is subject to censure because of the means adopted by him to present that question. Had he responded to the request that he appear at the investigation and meet the proof offered that tended to show that he had been guilty of unprofessional conduct, as he met and explained it upon this trial,—instead of sending the curt response that those conducting the investigation could go to hell,—he would have played the part of a high-minded member of our profession." If he had remained passive, nothing would have come of it, but his aggressive opposition was considered as being unprofessional conduct. One may have the right to question the power of a governmental agency, but he may not do so by casting aside all orderly procedure and seek to control such agency by interrupting its proceedings, discrediting it, and intimidating its officers as did Mr. Rubin. The case upholds Mr. Rubin for his stand but not for his conduct. Justice Crownhart in his dissenting opinion in State v. Cannon, supra, said, "If attorneys may be subjected to such inquisitions and ruthless charges in the future, we may expect a weak and spineless bar—one that will be afraid to fight the battles of the poor and humble as they ought to be fought to secure justice."

Cosmas B. Young

Bills and Notes: Negotiability: Reference to Other Instrument.

"A mere reference in a note to another instrument or mere statement of the transaction out of which the note arose does not destroy its negotiability; but if in a note there is a reference to another agree-
ment, and it appears from the context that the purpose of the reference was to burden the note with conditions of the agreement, or if the referee subjects the note to the terms of the agreement, then the negotiability of the note is destroyed."

The above rule was laid down in *Ferring v. Verwey*, Wis., 229 N.W. 46. This was a case of mortgage foreclosure. The notes in question were in the hands of a purchaser for value in due course. They were secured by a mortgage on land, which provided as usual in these cases for insurance to be taken out by the mortgagor for the benefit of the mortgagee, payment of taxes, and that in case of default of payment on any of the notes, the principal would fall due immediately, "collectible by suit of law or by foreclosure of the mortgage." The defendant attempted to set up a recoupment on the ground of the payee's alleged failure to perform certain conditions of the mortgage. Evidence tending to prove such failure, however, was rejected by the lower court, which declared that the notes were negotiable and that the defendant had no defense against a purchaser for value in due course. The Supreme Court affirmed this decision citing *Thorp v. Mindeman*, 123 Wisconsin 149.

The question hinged on the proposition of whether or not reference in a note to a collateral agreement destroys its negotiability. By the overwhelming authority throughout the country where such reference merely refers to a statement out of which the transaction arose or in a mortgage to preservation of the security, it does not.

In *Thorp v. Mindeman*, the leading case in Wisconsin on this point, it was held that a note which referred to a mortgage as security for its payment was negotiable; and whereby the agreement the note fell due in default of payment, this was not a condition which rendered the time of payment so uncertain as to destroy the negotiability of the note. And provisions in the mortgage providing that the mortgagor take insurance for the benefit of the mortgagee, payment of taxes, and providing for in case of failure to comply with the provisions a penalty in the form of an added lien were all held to be solely a part of the mortgage and not incorporated into the note as the defendants contended. The court maintained that these provisions were inserted to preserve the security and does not render the sum promised in the note so uncertain as to destroy its negotiability. They cited the rule laid down in *Garnet v. Myers*, 65 Neb. 280, "If the terms and conditions of the mortgage are limited to the proper province of the mortgage—that is, to provide security for the indebtedness—its provisions relating solely to the security will not affect the negotiability of the note."

FRANCIS ACKERMAN

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1 *Utah Lake Qrr. Co. v. Allen*, 64 Utah 511, 231 P. 818; *Treat v. Cooper*, (1842)