SAXON *v.* MCGILL.

Opinion delivered April 29, 1929.

1. BILLS AND NOTES—AUTHORITY OF HOLDER TO FILL BLANKS.—The rule of the law merchant that, where a party signs his name to a blank note and delivers it to another, he thereby makes the holder his agent with authority to fill up the note in any manner not inconsistent with the character of the paper, and a private agreement between the parties will not affect one who takes it without notice of the agreement, *held* not changed by the Negotiable Instruments Act (Crawford & Moses' Dig., §§ 7780, 7817, 7818).
2. BILLS AND NOTES—EFFECT OF ALTERATION.—Where, in a note originally providing for payment of interest from maturity, the word "maturity" was stricken out and the word "date" substituted, a purchaser without notice would have a right to assume that the substitution or alteration was made before the note was signed or that it was done with consent of the makers by the person to whom they intrusted the note for negotiation.
3. BILLS AND NOTES—EFFECT OF ALTERATION.—The fact that a promissory note on a blank form beginning "Promise to pay to the order of—" and signed by several makers, was altered by inserting before the word "promise" the words, "I, we, or either of us", did not invalidate the note in the hands of an innocent purchaser.
4. BILLS AND NOTES—SUBSTITUTED PAYEE.—The substituted payee purchasing a note for value could recover thereon though the name of a bank appearing in the printed form of the note had been erased, since the legal effect of the note had not been changed.

Appeal from Pulaski Circuit Court, Third Division; *Marvin Harris,* Judge; reversed.

STATEMENT OF FACTS.

This is an action by R. L. Saxon against J. J. Beavers, Jr., I. W. McGill and Dr. George Mason, to recover

the principal and interest of a promissory note which reads as follows:

"$300 Little Rock, Ark., Oct. 28, 1927.

"Ninety days after date, I, we, or either of us, promise to pay to the order of.....three hundred & no/100 dollars. For value received, negotiable and payable without defalcation or discount, at Central Bank, in Little Rock, Arkansas, with interest at 10 per cent. per annum from date until paid. We, the makers and indorsers, hereby severally waive presentment for payment, notice of nonpayment and protest of this note and all defense on the grounds of extension of time of its payment."

The record shows that the defendant, together with Lee V. Casey, desiring to borrow $300 with which to conduct a business of buying and selling used Ford cars, procured a blank printed form of note of the Central Bank of Little Rock, Arkansas. Casey wrote in the blank form of note the amount to be borrowed and turned it over to Beavers to procure the signatures of McGill and Mason. When McGill and Mason signed the note, the printed form showed the following: "promise to pay to the order of Central Bank," and also contained the following: "with interest at ten per cent. per annum from maturity until paid."

It was first the intention of the parties that the money should be procured from the bank, and the interest would be deducted at the time. After Beavers had procured McGill and Mason to sign the note, he returned with it to Casey for his signature. Casey declined to sign the note, and then Beavers went to R. L. Saxon for the purpose of negotiating the note to him. The word "maturity" was marked out, and "date" substituted for it. The words "Central Bank" were scratched out, and left the following: "promise to pay to the order of ....." Before the word "promise" was written "I, we, or either of us." R. L. Saxon paid Beavers $300 for the note on the day of its date. Before

purchasing the note from Beavers, Saxon called Dr. Mason over the telephone and asked him if he had signed a note with Beavers and McGill for $300, and Mason replied that he had. Saxon told him that he was contemplating buying the note. Saxon then called McGill, but failed to reach him. Saxon then consulted a lawyer about the blank in the note not having a payee. He was told that this didn't make any difference. The words "Central Bank" were marked out of the printed form of the note before Saxon purchased it, and the word "maturity," as it appeared in the printed form of the note, was marked out by Beavers before he presented the note to Dr. Saxon for sale to him. These words were in the note at the time they were signed by McGill and Mason. Saxon did not have any notice that these words had been marked out after the note was signed by McGill and Mason. He saw that the words "Central Bank" had been marked out, and that no payee had been substituted, and that the word "maturity," as it appeared in the printed form, had been marked out, and "date" substituted for it; but he did not know that this had been done after the note had been signed by McGill and Mason.

The court directed a verdict in favor of the defendants; and from the judgment rendered on the verdict the plaintiff has prosecuted an appeal to this court.

Barber & Henry, Troy W. Lewis and *Clayton Freeman,* for appellant.

Osborne W. Garvin and *Charles Q. Kelley,* for appellee.

HART, C. J., (after stating the facts). The court erred in directing a verdict for the defendants. Under the facts stated, before the enactment of our Negotiable Instruments Act, the plaintiff, as payee, could be a *bona fide* holder for value without notice, and was entitled to recover.

In *White-Wilson-Drew Co.* v. *Eglehoff,* 96 Ark. 105, 131 S. W. 208, it was held that one who signs as surety

a note, blank as to the amount, under an agreement with the maker that it should be filled in for an amount not to exceed a specified sum, and the maker filled in the blank in an amount greatly in excess of the agreed sum, was liable to a payee who took without notice of the violation of the agreement as to the amount. The court said that in such cases the payee was a *bona fide* holder, even though he knew that the note was signed in blank. The reasoning of the court was that the signing in blank authorized the filling of the blank by the person to whom the signers delivered it, although the specific directions might not have been followed. The court said that the signatures of the sureties operated as a general letter of credit, which authorized the party to whom it was delivered to fill it up in any manner not inconsistent with the character of the paper; and an agreement between the signers and the person to whom the paper was delivered that it was to be filled up for a certain amount or in a particular way did not affect one who takes the paper without notice of the agreement. Under such circumstances, if the payee receives it for value, without knowledge of the fact that the agent had exceeded his authority, he is protected from any infirmities in the paper.

This brings us to a consideration as to whether the rule has been changed by the Negotiable Instruments Act. Section 7780 of Crawford & Moses' Digest reads as follows:

"Where the instrument is wanting in any material particular, the person in possession thereof has a *prima facie* authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature, in order that the paper may be converted into a negotiable instrument, operates as a *prima facie* authority to fill up for any amount. In order, however, that any such instrument, when completed, may be enforced against any person who becomes a party thereto prior to its completion, it must be filled

up strictly in accordance with the authority given and within a reasonable time. But if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time."

Section 7817 provides that the holder of a negotiable instrument may sue thereon in his own name, and payment to him in due course discharges the instrument.

Section 7818 defines holder in due course. He is one who takes the instrument under the following conditions: (1) that it is complete and regular on its face; (2) that he became the holder of it before it was overdue and without notice that it had been previously dishonored, if such was a fact; (3) that he took it in good faith and for value; (4) that, at the time it was negotiated to him, he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

Keeping in mind the provisions of these sections of the Negotiable Instruments Act, we conclude that the rule of the law merchant has not been changed, and that where a party signs his name to a blank note and delivers it to another he thereby makes the holder his agent, with authority to fill up the note in any manner not inconsistent with the character of the paper, and private agreements between the parties will not affect one who takes it without notice of the agreement. *Liberty Trust Co.* v. *Tilton,* 217 Mass. 462, 105 N. E. 605, L. R. A. 1915B, p. 144; and *Ex parte Goldberg,* 191 Ala. 356, 67 So. 839, L. R. A. 1915F, p. 1157.

Under such circumstances the signers are bound, if the party received the note for value, before maturity, without knowledge of the fact that the agent had exceeded his authority. It would seem that the reason for inserting the word "maturity" in the printed form of notes prepared by banks is that it is the custom of

banks to take out the interest before delivering the money to the makers of the note. In any event the mere fact that the word "date" was substituted for the word "maturity," as it appeared on the printed form of the note, would not give the payee of the note any notice that the substitution or alteration had been made without the knowledge of the persons who signed the note as sureties. He would have a right to assume that the substitution or alteration was made before they signed the note, or that it was done with their consent by the person to whom they intrusted the note for negotiation.

The addition of the words "I, we, or either of us" did not in any manner affect the liability of the parties. The legal effect of the note sued on was in no way changed.

Neither was the legal effect of the note changed by striking out the words "Central Bank" as they appeared in the printed form of note as payee. Any one would think that a printed form of note of this bank had been used by the parties, and that the words "Central Bank" had been struck out when the makers and sureties of the note desired to procure the money from another person. The record shows that Saxon was so advised by an attorney whom he consulted, and the mere fact that he consulted an attorney in this regard did not put him upon notice that Beavers, the holder of the note, had substituted the word "date" for "maturity" after McGill and Mason had signed it and before it had been presented to Saxon.

The result of our views is that the court erred in directing a verdict for the defendants, and should have directed a verdict for the plaintiff. Inasmuch as the case seems to have been fully developed, the judgment will be reversed, and judgment will be entered here for the full amount of the note, together with the accrued interest. It is so ordered.