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Negotiable Instruments

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the insurer (those of accidents while a car is being driven by another than the named insured, whether it is driven for ten blocks or ten miles) and the intentions of the named insured. It does, however, present much more serious problems of application than either of the other rules. Where the line is to be drawn between a material and an immaterial deviation is sure to plague the courts in years to come. See the excellent discussions of the problem in notes, 72 A.L.R. 1375 (1931) and 6 A.L.R. 2d 600 (1949).

NEGOTIABLE INSTRUMENTS

Bills and Notes—Corporate Endorsement. In the case of *Glaser v. Connell*,[1] plaintiff sued on a promissory note claiming to be a holder in due course, alleging that the payee had endorsed the note. The defendant was the maker of the note and denied that the note was validly endorsed and alleged that the payee had secured the note by fraudulent means. The note in question was made payable to the order of the "Holdorf Oyster Corporation." The inscription on the back of the instrument, which the plaintiff alleged constituted the endorsement of the payee, was as follows:

"Pres. Dwight Holdorf"
"Sec. Opal Holdorf"

The trial court found that the payee had not endorsed the note and that the plaintiff had no standing to sue thereon, and the action was dismissed. On appeal the judgment was affirmed. The supreme court held that since the name of the payee did not appear on the back of the instrument the purported endorsement was defective and the plaintiff could not possibly be a holder in due course.

The vital issue in the case was whether or not the note was endorsed by the payee. In the pleadings, the plaintiff had alleged that he was a holder in due course, thus to recover he had to prove that the note was endorsed by the payee.[2]

There are a number of older cases, decided prior to the enactment of the N.I.L., holding that the payee's name need not appear in the endorsement.[3] The rule of these older cases is succinctly stated in 8 C.J., *Bills & Notes* § 312 as follows: "Bills and notes may be transferred by an agent of the owner by an endorsement in his individual name

[1] 147 Wash. Dec. 559, 289 P.2d 364 (1955).
[2] Willett v. Central Yakima Ranches Co., 126 Wash. 587, 219 Pac. 20 (1923).
[3] McIntire v. Preston, 10 Ill. 48 (1848) (note payable to "Ocean Insurance Company" and inscribed on the back "Without recourse, Joel Scott, Sec'y." was held to be validly endorsed); Merchants' Bank v. McCall, 19 N.Y. Super. 473 (1860) (note payable to order of "Globe Insurance Company" and inscribed on the back "L. Gregory, Pres't., Jas. W. Elwell & Co." was held to be validly endorsed); Clark v. Titcomb, 42 Barb (N.Y.) 122 (1864) (note payable to order of "Commercial Mutual Maine Insurance Company of Massachusetts" and inscribed on the back "George H. Folger, President" was held to be validly endorsed).

followed by a suffix, indicating his representative capacity. . . ." If this rule were to be followed it would necessitate finding that the note in question was endorsed by the payee.

Do the provisions of the Uniform Negotiable Instrument Act require that a contrary result be reached? There are no express provisions in the N.I.L. that require that the endorsement take any special form or that the payee's name be included in the endorsement of an instrument negotiated by an agent. The older cases which hold that it is not necessary that the payee's name be included in the endorsement have not been overruled, but the case law that has been reported since the general adoption of the N.I.L. has allowed only slight variations between the name of the payee and the name appearing as an endorsement.[4]

The *Glaser* case illustrates the court's thinking upon this matter and places Washington among those jurisdictions requiring a substantial similarity between the name of the payee as it appears in the instrument and the signature appearing on the reverse side of the instrument before it will be held that the instrument is endorsed so as to enable the transferee to claim as a holder in due course.

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PRACTICE AND PROCEDURE

Default Judgment—Failure of Complaint to State Facts Sufficient to Constitute Cause of Action—Waiver of Right to Attack Complaint. In *Moody v. Moody*,[1] the wife obtained a divorce by default judgment on a complaint which alleged, "That for some time last past, through incompatability [*sic*] of temperment [*sic*], plaintiff has been the victim of mental cruelty inflicted on her by the defendant, which has made her home-life [*sic*] and wellbeing [*sic*] burdensome, to the point it has become impossible for her to live and cohabit with the defendant; that all of said acts were without just cause or provocation on the part of the plaintiff." That this complaint was ambiguous in the least is apparent, for the question immediately presents itself, "What

[4] First Nat. Bank of Shenandoah v. Kelgard, 91 Neb. 178, 135 N.W. 548 (1912) (note payable to "Wonder Stock Powder Company" and endorsed, "James J. Doty, Prop." was held to be defectively endorsed); Nokomis Nat. Bank v. Hendricks, 205 Ill. App. 54 (1917) (note payable to "Centeral Rate and Routing Agency" and endorsed "Centeral Route and Rating Agency" was held to be defectively endorsed); Young v. Henbree, 181 Okla. 202, 73 P.2d 393 (1937) (check payable to "Horn & Faulkner Oil Trust" and endorsed "Horn & Faulkner, by L. H. Horn" was held to be defectively endorsed).

[1] 147 Wash. Dec. 355, 288 P.2d 229 (1955).