

Section 1120

The Commission of Codification having agreed, for several and chiefly local considerations, to give up the system of rights under forged bills as it stood in section 1120 of the draft 1919, and to substitute it by the English system (Bills of Exchange Act 1882, section 24), the following drafting is submitted:

"When a signature on a bill is forged, no rights can be exercised against any party thereto through or under that signature by a person who required it or became a party to it."

"Illustration (after Chalmer's). - A bill is to the order of A; it is stolen and the signature of A is forged by the thief who indorses it to B, holder in good faith and due course. B acquires no title to the bill; he cannot enforce payment against any party thereto, and should any party pay him, the payment is void."

But, when drafting the above, the attention of the Committee of Redaction has been called upon another point closely connected with this new section.

Section 24 of the English Act, which embodies the above system, begins by these words: "Subject to the provisions of this Act....."

It was necessary to see which provisions were referred to. A foot-note in the Chalmer's book enumerates a number of sections, one of which is in order to protect bankers paying demand draft, namely section 60.

The position is as follows. In the above illustration, the drawer is a private person and the drawee also; this means that the drawee has only to pay, when the bill shall be presented to him; the drawee has really no rights to claim under or through the bill, since to give money is only what is claimed from him. - But the question is quite different if we suppose that the drawee, instead of being a private person, is a banker. Then the course is the following: A in Bangkok requests the Chartered Bank to draw a bill on their correspondent the National Bank in Dublin for £100 to be paid to B in Dublin; this is a bill to order, on demand, drawn on a banker. The Chartered Bank is the drawer, the National Bank the drawee; as to the private persons, A is the payer who gives funds to the drawer, and B is the payee who shall receive £100. Supposing the bill is stolen, and the thief indorses it with the false signature of the payee or otherwise, and gets money from the drawee (National Bank). When the drawee was a private person, he had nothing else to do after having given his money; but as the drawee is a banker, the banker has still to debit in his book the

drawer (Chartered Bank) for the sum paid: in other words, when the drawee is a banker, he needs to acquire rights under the bill, so that he may debit the drawer under it. But section 24 says the drawee, having acquired the bill under a forged signature, has no rights. Then section 60, in order to protect the banker, comes and says that, when the drawee is a Bank, this Bank shall be deemed to have paid in due course, so that it can debit the account of the drawer (the corresponding Bank).

Section 60, as says Chalmer, is an exception to section 24 in order to protect bankers. It can be taken also as a complement of our section 1053 (which payments are made in due course) and in the English law it lies in the part of "discharges" which is corresponding to our part of "payments".

The exception being useful, it seems that the system of section 1120 (modified) ought to be completed by a second paragraph embodying the rule of section 60 English law, as follows:

"Provided that if a bill payable to order on demand is drawn on a banker and such banker pays the bill in good faith, he is deemed to have paid it in due course although the indorsement of the payee or any other subsequent indorsement has been forged."

31st. October 1922.

adopté en séance du 2 Novembre 1922