Case No. 4,534.

EX PARTE ESTABROOK.
IN RE WOOD & LIGHT MACH. CO.

[2 Lowell, 547; 15 Alb. Law J. 271; 24 Pittsb. Leg. J. 152.][1]

District Court, D. Massachusetts. Feb. 1877.

CORPORATIONS—POWER OF TREASURER TO GIVE NEGOTIABLE NOTES—ACCOMMODATION OF THIRD PERSONS—BONA FIDE PURCHASER.

1. The treasurer or manager of a manufacturing corporation, established by the laws of Massachusetts, has authority, by virtue of his office, to give negotiable notes in the prosecution of the business of the company, but not for the accommodation of third persons. If such an officer gives a note without authority, it is valid in the hands of an innocent purchaser for value before maturity.

[Disapproved in National Park Bank v. German-American Mut. Warehousing, etc., Co., 116 N. Y. 293, 22 N. E. 567.]

2. A bona fide puchaser is not bound to inquire into the character of a note which on its face is valid.

3. Circumstances that would put a prudent man on inquiry will not affect the title of the purchaser of a note before maturity, if he did not in fact know of any defect in the title.

Estabrook & Smith, bankers or brokers, of Worcester, offered for proof against the estate of the Wood & Light Machine Company five notes, signed by Richardson, Meriam, & Co. and indorsed by the bankrupt company, by their treasurer, and duly protested for non-payment. The corporation was a manufacturing company, organized under the general law of Massachusetts, and consisted of four persons, who had formerly composed a firm. There was evidence tending to show that the notes were indorsed by the corporation for the accommodation of Richardson, Meriam, & Co.; that all the members of the company were aware of the, course of dealing with that firm, and one of them objected or advised against it, because he thought it unsafe; that there was a by-law of the company forbidding any officer or member from using the name of the corporation for any other than the legitimate business of the corporation. There was evidence that the petitioners bought the notes of the promisors for value, before they were due, but at a considerable discount; that statements were made at some time by the promisors, though not, perhaps, with reference to these particular notes; that the parties had close business relations with each other.

G. F. Verry, for proving creditors, cited Monument Nat. Bank v. Globe Works, 101 Mass. 57.

T. L. Nelson, for assignee, cited Torrey v. Dustin Monument Ass'n, 5 Allen, 327; Eastman v. Cooper, 15 Pick. 276; Shaw v. Spencer, 100 Mass. 382; Williams v. Cheney, 8 Gray, 206; Smith v. Livingston, 111 Mass. 342.

LOWELL, District Judge. It is admitted by both parties that the treasurer or manager of a trading corporation may, by the law of Massachusetts, bind the company to the pay-

ment of promissory notes made in pursuance of the business of the company; and that he has no such authority in respect to notes given for the accommodation of third persons. If, however, a note of the latter kind is held by an indorsee, who took it for value before it was due, and without notice, his title is good. Monument Nat. Bank v. Globe Works, 101 Mass. 57.

So much being granted, the decisions of the supreme court of the United States have established two rules which must govern this case.

1. The first is thus stated by Mr. Justice Clifford, for the court: "The repeated decisions of this court have established the rule, that, when a corporation has power under any circumstances to issue negotiable securities, the bona fide holder has a right to presume that they were issued under the circumstances which give the requisite authority, and that they are no more liable to be impeached for any infirmity in the hands of such a holder than any other negotiable paper." Lexington v. Butler, 14 Wall. {81 U. S.} 282, 296, citing Gelpecke v. Dubuque, 1 Wall. {68 U. S.} 203; Knox Co. v. Aspinwall, 21 How. {62 U. S.} 539; Supervisors v. Schenck, 5 Wall. {72 U. S.} 784; Bissell v. Jeffersonville, 24 How. {65 U. S.} 287.

2. It is argued, and there is some evidence tending to prove, that the fact that a note is offered for sale or discount by the promisor has a tendency to excite the suspicion that it is indorsed for his accommodation, and to put the buyer on inquiry. Granting that this is true, and, for the purposes of this case, that the conversations testified to do not prove a sufficient inquiry to satisfy an inquisitive mind, yet here, again, the decisions of the highest court are, that a failure to inquire, or negligence of any degree, will not invalidate the title of the holder, unless they convict him of actual knowledge, or of a wilful negligence amounting to fraud. Goodman v. Simonds, 20 How. {61 U. S.} 343; Murray v. Lardner, 2 Wall. {69 U. S.} 110; Michigan Bank v. Eldred, 9 Wall. {76 U. S.} 544; Hotchkiss v. National Banks, 21 Wall. {88 U. S.} 354.

These authorities are decisive, unless I should be satisfied of knowledge or fraud in fact, which I am not, and which was not seriously imputed to these creditors in argument.

Debt admitted to proof.

[1] {Reported by Hon. John Lowell, LL. D., District Judge, and here reprinted by permission. 15 Alb. Law J. 271. and 24 Pittsb. Leg. J. 152, contain only partial reports.}