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Bills and Notes -- Purchaser in Good Faith and Without Notice Under the Negotiable Instruments Law and the New Uniform Commercial Code

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last few years most courts have chosen to follow the opposite view.[31] This position would appear to be consistent with the purpose of the Bankruptcy Act,[32] and in line with the policy of the Supreme Court in upholding state "financial responsibility" statutes. These statutes suspend a defendant's driver's license when a judgment obtained against him in an automobile accident case remains unpaid, notwithstanding the fact that the judgment debtor has obtained a discharge in bankruptcy.[33]

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Bills and Notes—Purchaser in Good Faith and Without Notice Under the Negotiable Instruments Law and the New Uniform Commercial Code

In a recent federal court case,[1] the court applied to an alleged bona fide purchaser of stolen bearer bonds a rule taken from a New York case:[2] "Even if his [holder's] actual good faith is not questioned, if the facts known to him should have led him to inquire, and by inquiry he would have discovered the real situation, in a commercial sense he acted in bad faith. . . . One who suspects [that there are infirmities or defects in the instrument], *or ought to suspect* [italics added], is bound to inquire and the law presumes that he knows whatever proper inquiry would disclose." The purchaser was ruled not a holder in due course.[3] The instruments in question were four bearer bonds issued by United States corporations.[4] They were taken from four Netherland

[31] See notes 5 and 9 *supra*.

[32] To discharge "the honest debtor and not the malicious wrongdoer." Tinker v. Colwell, 193 U. S. 473 (1904).

[33] All but three states have some form of financial or safety responsibility legislation. PRESIDENT'S HIGHWAY SAFETY CONFERENCE, COMMITTEE LAWS AND ORDINANCE REPORT (1949). See, *e.g.*, N. C. GEN. STAT. §§20-224 through 279 (1947). The North Carolina Act expressly provides that a discharge in bankruptcy of the judgment debtor is not to be treated as equivalent to payment of the debt for purposes of the act. N. C. GEN. STAT. §20-244 (1947).

Thus under an act of this type the judgment creditor is either compelled to waive the benefit accorded him by the discharge or accept the alternative of being deprived of the privilege of operation of a motor vehicle. It was argued in the case of Reitz v. Mealey, 314 U. S. 33 (1941), that this pressure brought about by the financial responsibility law was repugnant to the purposes of the Bankruptcy Act and hence unconstitutional. This argument was rejected by the Supreme Court of the United States in a 5-4 decision.

[1] State of Netherlands v. Federal Reserve Bank of New York, 99 F. Supp. 655, 667 (S. D. N. Y. 1951).

[2] Rochester and C. T. R. Co. v. Paviour, 164 N. Y. 281, 284, 58 N. E. 114, 115 (1900).

[3] It will be presumed throughout this note that the purchaser seeks recovery from the drawer or maker of a negotiable instrument who has a valid defense of fraud, duress, false representation, breach of warranty, etc., making it necessary for the purchaser to prove he took the instrument in good faith and without notice in order to be a holder in due course.

[4] The instruments in this case being bearer bonds, the same case arising under the new Uniform Commercial Code would probably be decided under Article 8,

domiciliaries during the German occupation in 1941 and later sold by a German agent in the Paris black market. Subsequently, a Swiss firm acquired them and sold them to the purchaser. The judgment seems justifiable,[5] but there is reason to doubt the court's use of an objective test[6] in respect to the purchaser as an application of the New York law.[7]

Investment Securities, instead of Article 3, Commercial Paper. See UNIFORM COMMERCIAL CODE §§1-201(25), 8-102, 8-302 (1951). A purchaser of investment paper under these sections would likely be subject to an objective standard of care. This note is concerned with Article 3 only. See note 28 *infra.*

[5] Interpleaded defendant purchased the bonds in 1947 at a discount and was guaranteed a 14% profit on the United States market; the bonds had back interest coupons from 1940 and 1941; he purchased them from a firm unknown to him; he would not allow the firm in Switzerland to mail them to him but went to Europe and arranged the mailing himself; and he violated a federal law by failing to get authorization from the Secretary of the Treasury before his purchase of securities outside the U. S.

[6] The "objective test" within the scope of this note refers to a test which, when applied to a purchaser of a negotiable instrument, would allow a court or jury to say that he was put on notice and therefore not a holder in due course because of suspicious factors which were present at the time of purchase when *actually* he had no suspicion.

The "actual good faith test" (or its negative aspect, the "actual bad faith test") herein means that a court or jury will hold a purchaser to be a holder in due course unless they believe he *actually* knew of an infirmity or defect in the instrument or suspected such by other factors and wilfully shut his eyes to these facts.

[7] N. Y. NEG. INST. §§91 and 95; comparable to Negotiable Instrument Law §§52 and 56 (see page 397). In the case cited as the New York rule, Rochester and C. T. R. Co. v. Paviour, 164 N. Y. 291, 58 N. E. 114 (1900), the question of bad faith arose concerning the *payee.* The check was taken for the payment of what the court called a personal debt. There was no issue concerning a bona fide purchaser as a potential holder in due course. The check was drawn by the debtor as treasurer of the plaintiff company. New York did not have the N. I. L. at the time. The New York courts have generally applied this rule where such a fiduciary relationship was present, as in Reef v. Equitable Life Assurance Society, 268 N. Y. 269, 197 N. E. 276 (1935). But applied as in the principal case to a non-fiduciary situation: Morris v. Muir, 111 Misc. 739, 181 N. Y. Supp. 913 (N. Y. Munic. Ct. 1920).

Generally, where the issue of good or bad faith is applied to an alleged holder in due course, the New York courts have used an "actual good faith test." See Manufacturers and Traders Trust Co. v. Sopowitch, 296 N. Y. 226, 229, 72 N. E. 2d 166, 168 (1947), where the court said: "The requirement of the statute is good faith, and bad faith is not mere carelessness. It is nothing less than guilty knowledge or wilful ignorance. . . . One who purchases commercial paper for full value before maturity, without notice of any equities between the original parties, or of any defect of title, is to be deemed a bona fide holder. He is not bound at his peril to be upon the alert for circumstances which might possibly excite the suspicions of wary vigilance. He does not owe to the party who puts negotiable paper afloat the duty of active inquiry to avert the imputation of bad faith. The rights of the holder are to be determined by the simple test of honesty and good faith, and not by speculations in regard to the purchaser's diligence or negligence." *Accord:* Kelso and Company v. Ellis, 224 N. Y. 250, 64 N. E. 945 (1902); Second National Bank of Elmira v. Weston, 161 N. Y. 520, 55 N. E. 1080 (1900) (decided same year as *Rochester case*); Cheever v. Pittsburgh, S. & L. E. Ry., 150 N. Y. 191, 25 N. E. 402 (1896); Canajoharie National Bank v. Drefendorf, 123 N. Y. 191, 25 N. E. 402 (1890); Seybel v. National Currency Bank, 54 N. Y. 288 (1873). The last two opinions review the English and American common law on the matter. With the recent decision in the *Manufacturers and Traders Trust Co.* case, *supra,* these cases would seem to indicate that New York courts would follow the "actual good faith test."

In 1824, the English court in *Gill v. Cubit*[8] applied an objective, prudent-man test[9] in charging the jury[10] in an action by a purchaser who took a bill of exchange under suspicious circumstances. Ten years later in a similar case,[11] the English court rejected this standard and stated: "There must be gross negligence at least . . .to deprive a party of his right to recover on a bill of exchange." In 1836, the case of *Goodman v. Harvey*[12] went a step further by holding that the question for the jury was the good faith of the purchaser and while gross negligence may be evidence of *mala fides*, it is not equivalent to it. The leading American common law case on the subject, *Goodman v. Simonds*,[13] repudiated *Gill v. Cubit* and approved *Goodman v. Harvey.*

Since the adoption of the Negotiable Instruments Law,[14] the crux of the problem is found in the application of two sections:

> Section 52. A holder in due course is a holder who has taken the instrument under the following conditions:
>
> (3) That he took it in good faith . . . ;
>
> (4) That at the time it was negotiated to him he had no notice of any infirmity, or defect in the title of the person negotiating it.
>
> Section 56. To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith.

[8] 3 B. and C. 466 (K. B. 1824). [9] See note 6 *supra.*

[10] The question of bad faith of the purchaser is for the jury. "As heretofore stated, when fraud is proved [by the defendant], or there is evidence tending to establish it, the burden of proof is on the plaintiff to show he is bona fide purchaser for value. . . . If, when all the facts attendant upon the transaction are shown, there is no fair or reasonable inference to the contrary permissible, the judge could charge the jury, if they believed the evidence to find for the plaintiff. But the issue itself and the credibility of material evidence relevant to the inquiry is for the jury and it constitutes reversible error for the court to decide the question and withdraw its consideration from the jury." American National Bank v. Fountain, 148 N. C. 590, 595, 62 S. E. 738, 740 (1908). See First National Bank of Shenandoah v. Hall, 31 Idaho 167, 169 Pac. 936 (1918) where the court cites and discusses many cases of other jurisdictions. As to burden of proof see Note, 57 A. L. R. 1083 (1928).

[11] Crook v. Jadis, 5 B. and A. 909, 910 (K. B. 1834).

[12] 4 A. and E. 870 (K. B. 1836). For a thorough discussion of these and other English cases, see Goodman v. Simonds, 20 How. 343 (U. S. 1857); Rightmire, *Bad Faith in Negotiable Paper,* 18 MICH. L. REV. 355 (1920); Note, 81 U. OF PA. L. REV. 617 (1933).

[13] 20 How. 343, 367 (U. S. 1857): "While he is not obliged to make inquiries, he must not willfully shut his eyes to the means of knowledge which he knows are at hand. . . . Mere want of care and caution . . . falls below the true standard required by law, which is knowledge of the facts and circumstances that impeach the title. . . ."

[14] The N. I. L. was adopted by the National Conference of Commissioners on Uniform State Laws in 1896. All states subsequently adopted it. BRANNAN, NEGOTIABLE INSTRUMENTS LAW 79 (7th ed. 1948).

There is no dispute that section 52(3) calls for the "actual good faith test." But the question of good faith usually arises in connection with "notice" under section 56 with respect to the purchaser's knowledge of certain facts which might or might not amount to bad faith. Here the courts must decide whether to interpret the phrase "knowledge of such facts . . . [as] . . . amounted to bad faith" merely as a negative aspect of the "actual good faith test"[15] or whether to construe it as requiring the "objective test."[16]

The "actual good faith test" is the majority rule under N. I. L. section 56,[17] and would seem to be the correct one. This conclusion is based on a gross simplification: The term "bad faith" means *bad faith.* However, more than mere semantics is involved. Can a person's actions in taking an instrument amount to "bad faith" when he has no suspicions? "Bad faith" requires dishonest action. When one is held to have had notice although he had no suspicion of an infirmity or defect, he is not judged so on *his* own "bad faith" but is regarded as having had notice because under the same circumstances *someone else*—the

[15] See note 17 *infra.*
In Schintz v. American Trust and Savings Bank, 152 Ill. App. 76, 78 (1900), the court made a statement referred to as the "blundering fool doctrine": "A mere lack of notice or knowledge is not sufficient; good faith implies honest intent. A blundering fool may therefore be found to have acted in good faith, though under like circumstances a shrewd business man might be deemed to have acted in bad faith. . . ."

[16] Such a test was applied in Boxell v. Bright Nat. Bank of Flora, 184 Ind. 631, 112 N. E. 3 (1916). Prior to the N. I. L. in Georgia, GA. CIV. CODE §4291 (1910) explicitly stated that any notice was sufficient which would put a prudent man upon his guard. See Bank of Commerce of Summerville v. Knowles, 32 Ga. App. 800, 124 S. E. 910 (1924). In 1924 the N. I. L. including section 56 was adopted. GA. CODE ANN. §14-506 (Cum. Supp. 1947). South Georgia Trust Co. v. Crandall, 47 Ga. App. 328, 170 S. E. 333 (1933) indicates the rule of the old statute still prevails.

[17] The proposition as stated by these courts: Merely suspicious circumstances sufficient to put a prudent man on inquiry, or even gross negligence on the part of the purchaser at the time of acquiring the note, are not sufficient by themselves to prevent recovery unless the jury find from the evidence that the purchaser acted in bad faith. The jury may consider such circumstances as evidence to weigh against the veracity of the purchaser's testimony. See Christian v. California Bank, 30 Cal. 2d 821, 182 P. 2d 554 (1947); Fabrizo v. Anderson, 62 A. 2d 314 (D. C. Munic. Ct. App. 1948); Chicago Dist. Electric Generating Corp. v. Evans, 117 Ind. App. 280, 69 N. E. 2d 627 (1946); Gramatan Nat. Bank and Trust v. Moody, 326 Mass. 367, 94 N. E. 2d 771 (1950); Driscoll, Governor, *et. al.* v. Burlington-Bristol Bridges Co., 86 A. 2d 201 (N. J. 1952); Holleman v. Harnett County Trust Co., 185 N. C. 49, 115 S. E. 825 (1923); Smothers v. Toxaway Hotel Co., 162 N. C. 346, 78 S. E. 224 (1913); Bank of Fort Mill v. Robbins, 217 S. C. 464, 61 S. E. 2d 41 (1950); Continental Nat. Bank of Fort Worth v. Conner, 147 Tex. 218, 214 S. W. 2d 928 (1948). See BRANNAN, NEGOTIABLE INSTRUMENTS LAW §56 (7th ed. 1948); BRITTON, BILLS AND NOTES §100 (1943); OGDEN, NEGOTIABLE INSTRUMENTS §164 (5th ed. 1947).
In favor of the "actual good faith test" and reasons therefor, see Note, 81 U. OF PA. L. REV. 617 (1933). For the objective application and reasons therefor see Comment, 9 TULANE L. REV. 128 (1934).
For minority rule see note 16 *supra.*

reasonable man, a reasonably prudent business man—would have suspected.

Regardless of the rule to be applied in respect to "notice" under section 56, two distinct situations arise in the cases although no such distinction is made in the act: (1) Where the fact which might be notice to the purchaser is apparent on the instrument; (2) where the fact is outside the instrument. As to (1), the courts have in some instances taken a positive position by saying such a purchaser is put on notice;[18] in other instances certain factors taken alone are not enough to charge a person with notice.[19] However, when the fact is *dehors* the instrument, the courts rarely hold the fact equivalent to notice, but instead say that certain individually known factors do not per se amount to notice, but may be considered by the jury as evidence of bad faith if there are other factors present.[20] No one is put on notice by the opera-

[18] Where there are obvious alterations on the instrument. Mechanics National Bank v. Helmbacker, 199 Mo. App. 173, 201 S. W. 383 (1918). Where an installment instrument shows that an installment is unpaid at the time of the purchase. Archebald Hardward Co. v. Gifford, 44 Ga. App. 837, 163 S. E. 254 (1932). Where an officer of a corporation paid a personal debt with the corporation's note. Fehr v. Campbell, 288 Pa. 549, 137 Atl. 113 (1927). Where certificates of deposit were made payable to a person as trustee. Ford v. Brown, 114 Tenn. 476, 88 S. W. 1036 (1905).

[19] Knowledge of unpaid interest thereon does not amount to notice. City of New Port Richey v. Fidelity and Deposit Co., 105 F. 2d 348 (5th Cir. 1939). Batson v. Peters, 89 S. W. 2d 46 (Mo. Sup. 1935). Note payable to maker is not notice. Ochsenreiter v. Block, 42 S. D. 151, 173 N. W. 734 (1919). Instrument payable to payee as agent for another is not enough to put a purchaser on notice of rights of maker against the principal or agent. Baird v. Lorenz, 57 N. D. 804, 224 N. W. 206 (1929). But see Ford v. Brown, 114 Tenn. 476, 88 S. W. 1036 (1905) (trustee as payee). Drafts drawn by treasurer as officer of corporation payable to treasurer does not put bank on notice when deposited to his personal account. Quanah, A. and P. Ry. Co. v. Wichita State Bank and Trust Co., 127 Tex. 407, 93 S. W. 2d 701 (1936). *Cf.* Fehr v. Campbell, 288 Pa. 549, 137 Atl. 113 (1927). In connection with this see UNIFORM FIDUCIARIES ACT §§4, 5, and 6 (1922). Neither the fact that the transaction is set out on the face of the instrument nor the fact that the endorsement is "without recourse" put a purchaser on notice. Sampson v. Hatcher, 151 N. C. 359, 66 S. E. 308 (1909).

[20] (1) Purchasing an instrument for an amount much less than its face value. Credit Adjustment Co. v. McCormick, 198 Okla. 348, 178 P. 2d 610 (1947); Moore v. Potomac Savings Bank of Washington, 160 Va. 597, 169 S. E. 922 (1933).

(2) Knowledge by the purchaser of an executory agreement between the payee and maker or drawer. Coral Gables v. Heirn, 120 Conn. 419, 181 A. 613 (1935); Hangstler v. Huguley-Scott Cueto Co., 39 Ga. App. 287, 146 S. E. 645 (1949) (knowledge that consideration due); Rubio Savings Bank v. Acme Farm Products Co., 240 Iowa 547, 37 N. W. 2d 16 (1949) (knowledge that goods warranted); White System of New Orleans v. Hall, 219 La. 440, 53 So. 2d 277 (1951) (warranty); Pricher v. Ballard, 180 N. C. 111, 104 S. E. 134 (1920) (warranty) *semble*.

(3) Fact that the instrument was to be paid at purchaser's office. Eastern Acceptance Corp. v. Henry, 62 A. 2d 309 (D. C. Munic. Ct. of App. 1948).

(4) Knowledge by purchaser that payee-vendor had been charged with crookedness in business transactions. Setzer v. Deal, 135 N. C. 428, 47 S. E. 466 (1904). The court also said the mere fact that purchaser did business next door to the payee had no connection in the matter.

(5) Knowledge by the purchaser that the seller of the instrument had previously been a gambler. Manufacturers and Traders Trust Co. v. Sopowitch, 296 N. Y. 226, 72 N. E. 2d 166 (1947).

tion of *lis pendens*[21] or record notice,[22] but under the common law and the N. I. L., one taking a negotiable instrument is chargeable with his agent's knowledge of any defects in the title of such instruments.[23]

In spite of the attempt by the majority to state an "actual good faith test" in applying N. I. L. section 56, individual courts confuse their own rules with contradictory statements which appear to adhere to the "objective test."[24]

Prior to the N. I. L., the general state of the law of bills and notes was one of complete confusion.[25] The primary reason for its adoption was the desirability for uniformity in the law.[26] But the passage of this law by all the states did not produce the desired result.[27] This motivated the drafting of the new Uniform Commercial Code, hereafter called U. C. C.[28]

[21] Lytle v. Lansing, 147 U. S. 59 (1892).

[22] Foster v. Augustanna College, 92 Okla. 96, 218 Pac. 335 (1923). *Cf.* Bank of Clinton v. Goldsboro Savings and Trust Co., 199 N. C. 285, 155 S. E. 261 (1930), which was criticized in Note, 9 N. C. L. REV. 304 (1931).

[23] Louisa Nat. Bank v. Burr, 198 Iowa 4, 199 N. W. 359 (1924); Le Duc v. Moore, 111 N. C. 516, 15 S. E. 888 (1892) (common law). *Cf.* Graham v. White-Phillips Co., 296 U. S. 27 (1935). However, an exception to this is where the agent's interest in the transaction is adverse to that of the principal. Federal Reserve Bank of Richmond v. Duffy, 210 N. C. 598, 188 S. E. 82 (1936); Commercial Bank of Danville v. Burgwyn, 110 N. C. 267, 14 S. E. 623 (1892). First Nat. Bank of Le Suevr v. Bailey, 54 N. D. 534, 210 N. W. 26 (1926).

[24] Walch v. Bank of Moundsville, 26 Ala. App. 602, 164 So. 391, *reversed on other grounds*, 231 Ala. 194, 164 So. 394 (1935) (ordinary prudent business man); Bishop v. Morrow, 12 Cal. App. 720, 55 P. 2d 1216 (1936) (notice sufficient to put prudent person upon inquiry), [*Contra:* Bliss v. California Co-op Producers, 30 Cal. 240, 181 P. 2d 369 (1947)]; Clark v. Laurel Park Estates, 196 N. C. 624, 135 S. E. 626 (1930) (Court needlessly injects into case a statement that purchaser in the exercise of the due care *ought to have known*), [*Cf.* Smathers v. Toxaway Hotel Co., 162 N. C. 356, 78 S. E. 244 (1913)]; Cohen v. Superior Oil Corp., 198 Okla. 348, 178 P. 2d 610 (1947) (Court spells out an "actual good faith test" and then includes a statement concerning an honest and reasonably prudent business man); Fehr v. Campbell, 288 Pa. 549, 137 Atl. 113 (1927) (Contradiction as to what constitutes bad faith); Hughes v. Belman, 239 S. W. 2d 717 (Tex. Ct. Civ. App. 1951) (ordinary prudent man), [*Contra:* Continental Nat. Bank of Fort Worth v. Conner, 147 Tex. 218, 214 S. W. 2d 928 (1948)]; Chase National Bank v. Healy, 103 Vt. 495, 156 Atl. 396 (1931); Rosenberg v. Gibson, 259 Wis. 434, 49 N. W. 2d 417 (1951) (uses "actual good faith test" and then throws in phrase concerning actual or *constructive* notice.

[25] BRANNAN, NEGOTIABLE INSTRUMENTS LAW 72 (7th ed. 1946).

[26] REPORT, MARYLAND BAR ASSOCIATION 224 (1949). BRANNAN, NEGOTIABLE INSTRUMENTS LAW 73 (7th ed. 1946).

[27] Beutal, *Problems of Interpretation Under the Negotiable Instruments Law*, 27 NEB. L. REV. 485, 494 (1948). BRITTON, BILLS AND NOTES 14, 19 (1943).

[28] Finally approved by the American Law Institute and the National Conference of Commissioners on Uniform State Laws on September 15, 1951. The House of Delegates of the American Bar Association voted approval September 20, 1951. Foreword, UNIFORM COMMERCIAL CODE (v) (Final Text Ed. 1951).

The U. C. C. has been recommended to several of the state bar associations for their approval. See Merrill, *The New Uniform Commercial Code*, 22 OKLA. B. A. J. 2022 (1951); Bunn, *Status of the Uniform Commercial Code*, 24 WIS. B. BULL. 24 (Aug. 1951).

The U. C. C. is divided into eight articles codifying the following branches of commercial law: Sales; Commercial Paper; Bank Deposits and Collections; Documentary Letters of Credit; Bulk Transfers; Warehouse Receipts, Bills of Lading

The U. C. C. would replace N. I. L. section 52 and 56 (quoted *supra*) with the following:

Section 1-201. General Definitions.
(19) "Good faith" means honesty in fact in the conduct or transaction concerned.
(25) A person has "notice" of a fact when
(a) he has actual knowledge of it; or
(b) he has received a notice or notification of it; or
(c) from all the facts and circumstances known to him at the time in question he *has reason to know* [italics added] that it exists.

Section 3-302. Holder in Due Course.
(1) A holder in due course is a holder who takes the instrument
(b) in good faith including observance of the reasonable commercial standards of any business in which the holder may be engaged; and
(c) without notice that it is overdue or has been dishonored or of any defense against or claim to it on the part of any person.

The definition of "good faith" according to U. C. C. section 1-201(19) would retain the "actual good faith" aspect. Section 3-302, however, has something new to offer—the inclusion of the "reasonable commercial standard" of any business in which a purchaser may be engaged. This would create a statutory objective test when applied to business men. A possible rationale is that business men in many commercial fields would make certain inquiries even though there were no suspicious factors present.

It is readily seen that nowhere in the above sections is the term "bad faith" used. The drafters of the U. C. C. knew the confusion N. I. L. section 56 was causing the courts.[29] Believing that the "ob-

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and Other Documents of Title; Investment Securities; and Secured Transactions—Sales of Accounts, Contract Rights and Chattel Paper. See Godfrey, *Preview of the Uniform Commercial Code*, 16 ALBANY L. REV. 22 (1952); Palmer, *Negotiable Instruments Under the Uniform Commercial Code*, 48 MICH. L. REV. 225. For a critical analysis of the U. C. C. see Beutel, *The Proposed Uniform Commercial Code As a Problem in Codification*, 16 LAW AND CONTEMP. PROB. 141 (1951).

Hereafter where U. C. C. is used, it will be done so only with Article 3, Commercial Paper, in mind. The negotiable instruments covered by this article are "drafts," "checks," "certificates of deposit," and "notes." UNIFORM COMMERCIAL CODE §3-104 (Final Text Ed. 1951). For scope of Article 3 see Re, *Negotiable Instruments*, 26 ST. JOHN'S L. REV. 26, 27 (1951).

[29] Comment, UNIFORM COMMERCIAL CODE 162 (Commercial Paper, Tentative Draft No. 1, 1946): "However, the definition in terms of 'bad faith' has been troublesome. Since good faith is required as an affirmative element, the definition of notice in the negative form has puzzled many courts. Furthermore, good faith is a subjective matter, while it is evident that an objective standard must be applied to notice and that the purchaser who has notice of a defense will not be heard to say he did in fact buy in 'good faith.'"

jective test" must be applied to "notice," they embodied such a definition into U. C. C. section 1-201(25)(c) in connection with section 3-302(1)(c). The result: "Good faith" and "notice" were entirely separated. But as pointed out earlier, most cases arise on the question of "notice" with regard to certain known facts and circumstances which surround the transaction. Thus, under the U. C. C., the final determination of cases would hinge, not on "good faith," but on "notice." In those states which adopt the U. C. C. as it now stands, there will be no "blundering fool doctrine"[30] but rather many blundering fools.

U. C. C. section 3-304, "Notice to Purchaser" (not set out above), is also new. It states as a matter of law certain situations where a purchaser has actual notice, situations where he has notice if he has reasonable grounds to believe certain facts exist, and situations where knowledge of certain facts does not of itself give the purchaser notice. It is mainly a codification of many of the existing rules promulgated by the courts.[31]

There is reason to doubt that the majority use of the "actual good faith" test in respect to "notice" under N. I. L. section 56 should be changed, at least in respect to persons not engaged in commercial affairs. Why should a "commercially inexperienced" person who takes endorsed paper in "good faith" in payment for debts, labor, or property, be denied the position of a holder in due course merely because there were certain facts present which did not actually arouse his suspicions? United States Circuit Judge Herbert F. Goodrich thinks that the U. C. C. is "in accordance with present day tendencies in growth and that this code is set up to read upon the business transactions of today's commerce, not of 150 years ago."[32]

It is common knowledge that the commercial world of today is far removed from the one that existed prior to the N. I. L., yet the old precedents are still followed in respect to business men. Business now being conducted in a highly commercialized world, there seems to be no reason why a person in a particular business should not be required to live up to the reasonable standards generally practiced by his competitors.[33]

It is submitted that, conceding the separation of "good faith" and "notice," section 1-201(25)(c) might be better if changed to read as follows: "from all the facts and circumstances known to him at the

[30] See note 15 *supra.*
[31] Compare U. C. C. §3-304 with the cases in notes 18-23 *supra.*
[32] Foreword, UNIFORM COMMERCIAL CODE (v) (Final Test Ed. 1951).
[33] Comment, UNIFORM COMMERCIAL CODE §1-201 (18) (Proposed Final Draft, 1950): "Reasonable commercial standards does not mean the lax standards sometimes permitted to grow up but is intended to permit the court to inquire as to whether a particular commercial standard is in fact reasonable."

time in question *he actually suspects a defense against the instrument* or he has reason to know that it exists *by the observance of the reasonable commercial standards in any business in which he may be engaged*."[34] This would give the terms "good faith" and "notice" an "actual good faith test" when applied to laymen, but an "objective test" would be used when applied to business men.[35]

Prospectively, it may be many years before all the states will adopt the U. C. C. and the sections in point.[36] One thing is certain. If it is adopted by the states, the primary objective of developing uniformity in the law of bills and notes will have a better chance for accomplishment in respect to purchasers of negotiable paper than under the N. I. L. as nearly every purchaser would be held to an objective standard of care.

CHARLES E. NICHOLS.

Constitutional Law—Deprivation of Due Process—Captive Audience

The Public Utilities Commission of the District of Columbia dismissed its investigation[1] concerning the use of radios in the vehicles of Capital Transit Company,[2] and petitions of appeal were denied by the district court on the ground that no legal right of petitioning passengers had been impaired. In reversing,[3] the court of appeals held that forced listening[4] to radio commercials resulted from government action[5] and deprived a "captive audience" of liberty without due process

[34] The "objective test" as to business men under the U. C. C. and the submitted language above would result in a different application for each business field. The courts would probably find trouble in determining (or in framing questions for the jury) what activities are necessary to constitute being in business, whether a certain person is engaged in such a business, and what are the reasonable commercial standards in this particular type business. Those drafting the U. C. C. evidently thought the beneficial result would outweigh the difficulty.

[35] See note 29 *supra*.

[36] It took some 28 years for all the states to adopt the N. I. L. The U. C. C. was introduced in the New York Legislature in 1952 but no action was taken except to have it printed and circulated for the information of the bar and other interested parties. The code will be introduced there again next year.

[1] Capital Transit Co., 81 P. U. R. (N. S.) 122 (1950).

[2] "If they can hear—they can hear your commercial!" (from brochure by Transit Radio, Inc., 1949).

[3] Pollak *et al.* v. Public Utilities Comm'n of D. C., 191 F. 2d 450 (D. C. Cir.), *cert. granted*, 72 Sup. Ct. 77 (1951).

[4] Forced *hearing* would seem to be more accurate.

[5] The Fifth Amendment "relates only to governmental action, federal in character, not to action by private persons." National Fed. Rwy. Workers v. National Med. Bd., 110 F. 2d 529, 537 (D. C. Cir.), *cert. denied*, 310 U. S. 628 (1940). "But power is never without responsibility. And when authority derives in part from Government's thumb on the scales, the exercise of that power by private persons becomes closely akin, in some respects, to its exercise by Government itself." American Communications Ass'n., C.I.O. v. Douds, 339 U. S. 382, 401