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Article 29

# Mazur v. Imperial Investment Corporation Limited. [1963] S.C.R. 281

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*Mazur v. Imperial Investment Corporation Limited,* [1963] S.C.R. 281.

The issue with which the Supreme Court of Canada was faced in this case had not been previously dealt with by a Canadian court. The Court split three to two in affirming the decision of the Appellate Division of the Supreme Court of Alberta and the trial judge Riley J. in finding for the plaintiff.

K wishing to raise money on a truck he owned, went to S, the manager of a car sales agency. S made arrangements to have money advanced by the plaintiff company to the defendant M, a friend of K's, on a purported conditional sale. The transaction was as follows: S was to transfer K's truck to M; M would sign a promissory note and a conditional sale contract. The contract would be assigned to the plaintiff company and the note discounted with the plaintiff company by S. The proceeds thereof were to be paid by S to K and K was to make all the periodic payments. In fact, K never transferred the truck to S and the whole scheme was merely a device to raise money. The net amout to be raised was discussed and understood to be $10,000.

M. signed the conditional sale contract and the promissory note in blank and transferred them to S who in turn negotiated them to the plaintiff company for value. The plaintiff in fact filled in the

[9] *Supra* footnote 1 at p. 205.
[10] (1830) 6 Bing. 754; 8 L.J. O.S.C.P. 234.

blanks in the promissory note in the amount of $14,326.96 which amount included $12,000 to S and finance and handling charges. S fraudulently withheld the money paid, from K and M, and the plaintiff now sues M on the promissory note, only three payments having been made.

The majority opinion in the Supreme Court of Canada, written by Judson J. and concurred in by Fauteux and Martland J.J. held that it was not open for the court to draw inferences of a conditional delivery and failure to fill in a document in accordance with authority given in the circumstances of this case. The minority on the other hand, Cartwright and Hall J.J. found that on the facts, M had signed the note in blank subject to certain conditions which were not fulfilled and that therefore the note became unenforceable within section 32 of the Bills of Exchange Act.

In the majority decision it was pointed out that M knew, three weeks after signing the note, that it had been filled out in an amount which would produce $12,000 and had raised no objection at that time. The trial judge had found as a fact that the defendant M had not given instructions to S as to what should be done with the note. The majority concluded from these facts that the plaintiff fell within section 31 of the Bills of Exchange Act and had prima facie authority to fill the bill out in any amount he desired and as was pointed out no inference of any condition attached by M on the filling out of the note in order to bring the case within section 32 would be drawn.

Cartwright and Hall J.J. both dissented primarily because of the fact that it was understood that the note was to be used in order to raise an amount of $10,000 and not $12,000; hence, the note as it was filled out was unenforceable within section 32. Cartwright J. suggested other conditions attached to M's execution of the note which were not complied with but did not seriously press this attack in his judgment.

It is clear that the result of the case turned on whether or not the plaintiff company had filled out the defendant's note in accordance with the authority given by the defendant and therefore whether any limitations were attached by the defendant to his signature so as to make it unenforceable within section 32.

Despite the finding of the trial judge, that no express instructions were given by the defendant to S, the minority drew an inference as to the limitations attached to the use of the note. The majority would not do this.

The common law position on this area of law was that once a person executed a negotiable instrument in blank he was estopped from denying its validity when filled in. Section 32 of the Bill of Exchange Act has displaced this rule now requiring that such a note be filled in with authority given in order to be enforceable while conceding that a blank instrument may, prima facie, be filled in for any amount under Section 31. The Supreme Court has held that on the present facts no limitations were put on this prima facie authority. Interpreted broadly, the ratio of this case could be that any limitations on authority which are to render a note unenforceable within Section 32 must be expressed. This view, I submit, is desirable as it would add certainty to commercial transactions, an element much appreciated by the business community. In effect, by this view, a holder of a blank note need fill it in only in accordance with express conditions stated and need not worry that a court would draw inferences of limited authority from surrounding circumstances. D.R.O'C.