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MR. AND MRS. AVERAGE CITIZEN (occasional clients) called upon me and requested that I put the finishing touches on a deal which they had made a couple of years ago involving periodical payments now about completed.

To be more specific, they had entered into a contract with "Friend" and "without benefit of clergy" (or lawyer) to purchase from "Friend" a home for themselves, paying therefor in monthly installments. They knew that there was a $3500 encumbrance but had made the payments each month to "Friend" assuming that he would take care of the encumbrance. When they called upon me they had paid the entire gross purchase price with the exception of about $800.

Upon investigation I found that a bank held the encumbrance and that the $3500 note had not $1.00 endorsed thereon. "Friend" had been using in his business $2700 which should have been applied on the note. When I told "Friend" that he had been misusing trust funds, he was much insulted; informed me that he was worth many times the amount involved and that as long as he was in a position to take up the note and trust deed it was inexcusable in me to criticize him or to even intimate that his conduct was not exemplary.

He then employed an attorney who stands well up at the Bar, in the community, and in my estimation. The attorney, of course, agreed that "Friend" should take care of the encumbrance but could not see anything out of the way in "Friend's" having used the $2700 of my client's money in his business until the time arrived for final settlement and he felt that my reference to "Friend's" conduct as a "misuse of trust funds" was unwarranted.

In this case "Friend" raised the money and cleared off the encumbrance. "All's well" (?) and my clients suffered no financial loss except my fee and for this they got advice as to future conduct which (if they will follow it) will be, of itself, "worth the price of admission." Proof is not required. I admit it.

Again. I go to a real estate office to pay the interest on a note secured by a trust deed held by a client of that office. The money is taken and a receipt of the real estate agent is accepted and sometime in the future the cancelled coupon comes along (usually). The real estate agent has used the money in his business until time to make a general remittance to his client and at that time the client turns over the interest coupon and the agent delivers it to me and "all's well." (?)

Again. I buy an automobile (this is the only piece of fiction involved in this article) of the Evader make, giving a mortgage thereon (as well as on my soul) to secure monthly payments. Shortly thereafter the Evader Company advises me that the note and mortgage have been assigned to The X (Note the letter selected) Finance Co. and that I may make payments at that company's office. It being inconvenient to call at that office, I mail thereto my checks for several payments. Then desiring to ascertain just how my record of payments stands and at the same time to make a further payment, I call at the office

of The X Finance Co. to make a payment and ask to see the note and have the payment credited thereon I am informed that the note and mortgage are at the Y Bank and that I may see them there. At the Bank I find my note with no payments endorsed thereon and I am informed that my note and mortgage, along with many others, are pledged as collateral security for one principal note of The X Finance Co., which company makes (or is supposed to make) periodical payments on the principal note, which payments are endorsed on the principal note and are supposed to include all payments received during the said period by The X Finance Co. from the makers of the notes and mortgages held by the Bank as collateral to the principal note. The Bank, however, is never advised as to which makers have made payments nor is the Bank given any information from which it could determine what endorsements should be made on the collateral notes, nor will the Bank permit any such endorsements to be made. I insist that my payments be endorsed on my note as made, whereupon my note is withdrawn and returned to The X Finance Co. and another note substituted as collateral and endorsements are made on my note and "all's well" (?).

There could be recited, almost without number, further and different instances of the carrying on of business with other people's money. A very large and apparently growing percentage of the business of the community is carried on in that way and this is made possible by the laxity, not only of the average citizen but of many lawyers as well, with regard to requiring endorsement of credit on negotiable paper coincident with the making of payment thereon.

It is true that in the large majority of cases, because of the inherent honesty of most people, no loss is suffered. But, is it true that "all's well that ends well"? If so, no damage is done when the teller gambles with the bank's money, provided he wins and pays back the money.

It seems to me that when, without protest, we permit much of the business of the community to be transacted in disregard of the requirement of endorsement of credit on negotiable paper coincident with the making of a payment thereon, we are sitting on a volcano which is apt to erupt at any time. As a matter of fact the volcano has erupted a number of times. Witness the Globe Bank affair.

I have not been directly called into that tangle but a number of cases arising out of the bank failure have been called to my attention and I believe that I am entirely safe in venturing the opinion that a large portion of the damage done by the Globe failure is the result of the making of payments, for application on negotiable paper, without having the same coincidently endorsed thereon.

If those who handled the business of the Globe Bank had been made to realize that there is a real distinction between mine and thine and that when I am handling money that is thine it is a trust fund which is under no circumstances to be mingled with mine, of course the Globe Bank failure would not have occurred. This is perhaps only another way of saying that if the people transacting this business had been strictly honest, the failure would not have occurred; but there is another side to the proposition and that is that if the average citizen had been fully aware of his absolute right to have immediately indorsed on negotiable paper all payments that are to be applied thereon, the Globe Bank situation could never have developed. If the average citizen had been fully aware of this right and had also been

fully aware of his duty to insist upon such endorsement, the officials of the Globe Bank would in all probability have conducted the business of that institution in a very different manner because any attempt to collect payments on negotiable paper which had been pledged to other institutions would have been useless.

These officials knew, however, that the collection of payments on negotiable paper without having the paper present and without making any endorsement thereon, is a very common practice and that, as a matter of fact, a great deal of the business of the community is transacted upon funds that are used in the business of the collector between the date of collection and the time when credit is finally endorsed on the negotiable paper.

The practice as carried on by the Globe Bank was in many respects no different from and no worse than the practice as it is carried on daily in this community in various businesses. The only difference is that the Globe Bank went farther and was more careless and got caught. The principle involved is exactly the same as it is in any of the instances cited at the beginning of this article.

If the average citizen had insisted on immediate endorsement on all negotiable paper on which he made payments at the Globe Bank, no doubt that institution would have conducted its business in a proper manner and very likely would have been at this time a going institution and a credit and benefit to the community instead of a defunct concern which has left to us only a tangle of litigation, untold loss and suffering, and a lasting blot on Denver's financial reputation.

I submit that it is the duty of the members of the Bar to take every opportunity to educate themselves and the businessmen, individually and collectively, to recognize, respect and preserve the line of demarcation between mine and thine and to educate the average citizen, individually and collectively, to a recognition of and insistence upon the individual right and the civic duty of unfailingly requiring endorsement of credit on negotiable paper coincident with the making of payment thereon and to the danger of having to pay the obligation the second time if such endorsement be not made. It is the duty of every member of the Bar to condemn, in no uncertain terms and on every occasion, both the transaction of one's business by means of unauthorized use of funds which are in fact held in trust for another, and laxity and carelessness in the matter of requiring coincident endorsement on negotiable paper of all payments made thereon.

Is it suggested that strict conformity to this principle would upset much of the business of this city? Well, perhaps a good deal of it ought to be upset—at least sufficiently to compel a readjustment conformable to law and honest dealing.

Costly Smartness

A bumptious fellow was giving evidence in a police court. "You say you stood up?" asked the magistrate.

"I said," retorted the conceited one, "that I stood. If one stands one must stand up. There is no other way of standing."

"Pay ten dollars for contempt of court, and—stand down!" remarked the magistrate.—Pittsburg Chronicle.

Attorney: "Did you see the plaintiff strike the defendant?"

Pat: "Oi did that."

Attorney: "And was the assault committed with malice aforethought?"

Pat: "Nossar, with a mallet behoind the ear."