

ments; on the record he obviously was a bad credit risk. In fact, the first case was a \$5 scare suit back in the nineteen-thirties over a magazine subscription he had never ordered; the second involved a disagreement over a \$200 lawyer's fee and was later compromised amicably; the third concerned a disputed fee he had charged a client, and this suit he won in court. It took my friend two days of digging to clear his record with the credit bureau.²⁶

It will be necessary for legal experts to consider ways and means of protecting the public from potential injury caused by such mistaken reports in the files of private credit-rating bureaus.

Relationship of Seller, Lender, and Customer. Another aspect of the supply side of the credit market that calls for regulation and improvement pertains to the relationship between the seller of goods, the customer, and the lender of the money used to purchase the goods. Frequently there is a sharp legal separation between financing agency and retailer. The lending agency buys the customer's promissory note from the retailer and becomes a detached "third party" to the transaction. The customer is then in a borrower-lender relationship with the finance company or bank. The latter is a "holder in due course" of the customer's promise to pay certain sums of money independent of the underlying transaction. This principle is sacrosanct in the law in order to protect the negotiability of commercial paper.

This protected status was abused, however, by some financing institutions who allowed their credit, their forms, and their good names to be used by unscrupulous businessmen in soliciting business. Abuses multiplied, particularly in the home-improvement field. Fly-by-night operators absconded with down-payments and never completed the jobs they had contracted for, while the bank or finance agency had the legal power to compel the customer to keep paying installments on loans used to pay for goods or work he had never received.

Massachusetts has pioneered in the move to eliminate the divorce between the sellers of goods and the grantors of credit. Several years ago the legislature passed and the Governor signed a bill abridging the holder-in-due-course privilege for any financing agent who takes a promissory note originating from the purchase of a consumer good. Such a note must explicitly state that it is a "consumer note."²⁷ In such cases, the financing agent is also liable for any defenses that the buyer might have against the original seller. The principle on which this law is based is very simple. Were a bank or finance company to know

²⁶ Packard, Don't Tell It to the Computer, N.Y. Times, Jan. 8, 1967, § 6 (Magazine), p. 44, at 90.

²⁷ Mass. Gen. Laws Ann. ch. 255, § 12C (Supp. 1966).