If we have permissive-type legislation, such as S. 316, I do not think that they will do it. I think it will have a better chance of going through.

Senator TYDINGS. I expect you are right

Mr. BRYLAWSKI. Now, on the holder-in-due-course concept, I really think there is too much emphasis being placed on this. First of all, unless I am mistaken, as a merchant I assign my contracts to some lending institution. He takes that contract subject to the defenses that the other contracting party has.

Senator TYDINGS. What is that?

Mr. BRYLAWSKI. If I sign a contract——

Senator TYDINGS. You mean, if you sell your contract?

Mr. BRYLAWSKI. Yes.

Senator TYDINGS. Right.

Mr. BRYLAWSKI. Now, I think, and I am subject to correction, that if I sell that contract, the buyer of that contract——

Senator TYDINGS. To a bank, or a savings and loan association?

Mr. BRYLAWSKI. To anybody. They will have to take it subject to the defenses.

Senator TYDINGS. That is the whole point. If he took it subject to the defenses, we would not be concerned. The whole thing is that the minute you sell that paper, under the commercial code, it protects the purchaser of that paper, even if you sold goods fraudulently and defectively where the goods were no good.

Mr. BRYLAWSKI. Are you not thinking of a note rather than a contract? You are speaking of a negotiable instrument.

Senator TYDINGS. When the installment boys go to work, they sign everything—everything that is put in front of the customer, including the contract of sale—including almost anything. Are you talking about the ordinary retail installment sales contract?

Mr. BRYLAWSKI. I am saying to you, and I may be wrong, and I wish that some other lawyer present would tell me that I am wrong, if I am, but if you sign a contract, as such, the assignee takes it subject to the defenses.

Senator TYDINGS. You mean an installment sales contract?

Mr. BRYLAWSKI. Yes, sir. I am distinguishing that from——

Senator TYDINGS. Not unless you yourself, the seller, as is frequently the case here, agrees that the bank or the financial institution that purchases it does it with recourse against you. Most banks require that. But that does not do the poor consumer any good. That protects the bank and the banking institution where they can go against you, but it does not help the poor consumer who has the piece of merchandise which is faulty and no good, and who was defrauded at the time of the initial purchase of the goods. It is fine for the banking institutions but no good for the consumer.

Mr. BRYLAWSKI. Let me ask you this, Mr. Chairman: Suppose that I buy for cash and suppose I give a check which is another promise to pay, and then I find that the merchandise is defective. Who do I go against?

Senator TYDINGS. You go against the seller.

Mr. BRYLAWSKI. Why should anyone else have any better?

Senator TYDINGS. If you have enough money to pay cash, you are not going to be gypped. The people who get gypped are the poor, the