

Traditional Knowledge in Explanation Object of Declaration of Intention on Commercial Paper and Reflection

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Abstract

Unitary constructivism theory in the traditional act on commercial paper is based on non-causative nature of act on commercial paper, which believes that the right of commercial paper is established by declaration of intention on the commercial paper, and the content of declaration of intention can only be confirmed by recording of the commercial paper and declaration of intention on the commercial paper only regards the literary content recorded on the commercial paper as the explanation object. However, as a result of the relative non-causative nature of the act on commercial paper, we should not lump under one head that explanation of declaration of intention on the commercial paper only has the object of literary recording on the commercial paper and at least the situation of relationship of causes between direct parties involved can only constitute content of declaration of intention.

Key words: Declaration of intention on the bill; Explanation object; Relative non-causative nature; Two-phase theory

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INTRODUCTION

“Explanation of declaration of intention has to firstly make clear to whom the explanation is made, namely, the object of explanation of declaration of intention.” (Tong, 2002, p.178). However, “the object of explanation can only declare” (Larenz, 2003, p.463), and “the fact (explanation data) that declares the upper efficiency intention of declaration of intention is all that constitutes the content of declaration of intention.” (Shi, 2000, p.461). Sometimes, language and words which declare a behavior have to be defined in meaning with the surrounding environment as the background. In light of that, confirmation of the explanation object in declaration of intention on the commercial paper has to make clear the scope of facts that may constitute the content of declaration of intention. If the content of declaration of intention on the commercial paper is only constituted by the literary words on the commercial paper, then only the literary words can be regarded as the object of explanation. Nevertheless, if declaration of intention on the commercial paper is not merely constituted by literary words on the commercial paper, but is as in the case of declaration of a general intention in civil law where the specific situations of parties involved also constitute the content of declaration of intention, then it is also necessary to regard these situations as the object of explanation (Kazuyuki Nagai, 2000, p.30).

1. THE TRADITIONAL KNOWLEDGE IN EXPLANATION OBJECT OF DECLARATION OF INTENTION ON THE COMMERCIAL PAPER

Unitary constructivism theory in the traditional act on commercial paper is based on non-causative nature of act on commercial paper, which believes that the

establishment of act on commercial paper is independent of the debtor creditor relationship with a relationship of cause and is to express the non-causative right that is generated independent of causative debtor and creditor on the commercial paper. Thus, we can only hold the view that the right of commercial paper is established by declaration of intention on the commercial paper, so the content of declaration of intention can only be determined by recording of the commercial paper. In this way, under the unitary constructivism theory of commercial paper, declaration of intention on the commercial paper only has the explanation object of recorded literary words on the commercial paper.

However, there are some scholars who hold the opinion that the viewpoint that prescribes a limit to explanation object of declaration of intention on the commercial paper to the commercial paper itself and recording of the commercial paper may be established from the stand of the theory of creation, but is not agreed from the stand of the theory of contract. Although recording of the commercial paper is necessary for establishment of debt and credit of the commercial paper, it is not sufficient. Therefore, it is obvious insufficient to regard recording on the commercial paper as the unique explanation object of declaration of intention on the commercial paper (Hiroyuki, p.138). As has been mentioned previously, the theory of contract advocates that the legal relationship on the commercial paper is determined by the contract of payment agreed by the debtor and creditor of the commercial paper (the direct parties involved in acceptance of the commercial paper), and the commercial paper itself is a contract, so there is no need to set up another contract to prove its existence. According to the opinion that emphasizes “declaration of intention on the commercial paper is faced by the direct counterpart of delivery contract” and “debt and credit of commercial paper is established based on delivery contract”, Joost, a Germany scholar, believes that “what should be explained is not the security of the commercial paper, but the entirety of the delivery contract” (Hiroyuki, p.650) That is to say, the explanation object of declaration of intention on the commercial paper should be “delivery contract” instead of the written commercial paper at a preparatory stage or its recording of the literary words. Even the result is that the entirety of delivery contract is regarded as the explanation object and the debt and credit of commercial paper is not established or a debt and credit of commercial paper that is consistent with the recording of the commercial paper is not established, the third assignee can also obtain protection according to the theory of appearance of rights and there is no need to prescribe a limit to explanation object of declaration of intention on the commercial paper to the security of commercial paper as a result of worrying about the circulation of the commercial paper (Hiroyuki, p.138). According to the theory of Joost, through explanation that is limited to

“objective”, while this is only limited to direct parties involved or there are some cases in which the assignee of the commercial paper is already known which are regarded as the exception of the explanation principle, this is the discussion of reversal of objectiveness and subjectiveness. In one word, Joost holds the view that establishment of debt and credit of commercial paper and its content should be based on the “delivery contract” and its explanation should follow the general principle of explanation of declaration of intention.

As for the above theory by Joost, the Germany scholar Pflug holds an opposed attitude and he holds the view that the viewpoint by Joost ignores “distinction between declaration of security on the commercial paper and the delivery contract of the commercial paper”. He emphasizes that whatever kind of commercial paper theory is taken, both “declaration of security” and “completion of security” can become important factors for establishment of debt and credit of commercial paper. He also advocates that at the time when recording of security is regarded as the explanation object, we should also acknowledge existence of “delivery contract” between the direct parties involved in acceptance of the commercial paper —explaining based on the explanation principle of the general legal behavior (Hiroyuki, p.652). In general, at the time when Pflug emphasizes the importance of completion of the commercial paper on one hand, he also emphasizes declaration of commercial paper is also faced by the third party on the other hand. That is to say, completion of the commercial paper has the legal significance of being individually independent of the delivery contract and is an appearance reliability factor that is different from the contract liability. It emphasizes the significance of being independent of the third party, and focuses on “declaration of security”. Explanation that takes its independence into consideration is the most appropriate. And explanation based on “the typical significance” of declaration ought to be most supported considering the entirety of the law of negotiable instrument (Hiroyuki, p.653).

2. REFLECTION ON THE TRADITIONAL KNOWLEDGE IN EXPLANATION OBJECT OF DECLARATION OF INTENTION ON THE COMMERCIAL PAPER: BASED ON THE THEORY OF RELATIVE NON-CAUSATIVE NATURE OF ACT ON COMMERCIAL PAPER

Divergence on the explanation object of declaration of intention on the commercial paper, in the final analysis, is due to the relative non-causative nature of the act on commercial paper. The so-called non-causative nature of the commercial paper does not mean that occurrence

of the act on commercial paper has no relationship of cause, but mean that it is “a requirement proposed to the commercial paper based on the social economic life and is specially endowed by the law, namely, law of negotiable instrument”, and is not intrinsic by act on commercial paper” (Zhao, 2007, p.43). As a matter of fact, acceptance of a commercial paper must have its reason and the commercial paper is, actually, “an instrument of cause”, which determines that the non-causative nature of the commercial paper should not be absolute non-causative, but has its limit of application. This kind of connection between the cause relationship and relationship of commercial paper is reflected in consistency of the party involved in the cause relationship with the one involved in the relationship of commercial paper. That is to say, the direct parties involved can still make a counterplea with an excuse in terms of cause relationship (Zhao, 2002, p.44). In other words, even in an occasion of commercial paper where the degree of abstract of the cause relationship is extremely high, the cause relationship is directly reflected on the legal relationship of the commercial paper with the method of executing the right of counterplea. However, even in this situation, “consideration of the cause relationship” is absolutely necessary as for explanation of declaration of intention on the commercial paper. In light of that, we should not generally summarize that explanation of declaration of intention on the commercial paper merely has the object of literary recording on the commercial paper and at least the situation of the cause relationship between the direct parties involved also constitutes the content of declaration of intention.

In addition, the function of non-causative nature of act on commercial paper is manifested as counterplea restriction system in law (Zhao, 1999, p.38) because if the act on commercial paper is affected by the cause relationship of acceptance of commercial paper, then existence of debt and credit of commercial paper is also denied in the occasion where the cause relationship does not exist or the efficiency is denied, it is unable to explain the stipulation in the first Item of the 13th Article in *Law of Negotiable Instrument of Republic of China*. It is stipulated in the first Item of the 13th Article in “Law of Negotiable Instrument of Republic of China” that, “Debtor of the commercial paper should not confront the bearer of the commercial paper with the excuse of counterplea between the debtor and the remote holder of the drawer or the bearer of the commercial paper. Nevertheless, the situation is an exception in which the bearer of the commercial paper obtains the commercial paper even if he knows there exists origin of counterplea.” Thus, it can be seen that, counterplea restrict often occurs in the process of negotiable endorsement of the commercial paper and exists between the debtor of the commercial paper and the bearer of commercial paper who assigns the commercial paper according to the endorsement. That is to say, it exists between the direct parties involved in acceptance

of the commercial paper and acknowledges existence of the counterplea origin to the bearer of commercial paper with malevolence. Thus, there is no occasion where this system is applicable. In other words, declaration of intention on the commercial paper that is only limited to the one of act on commercial paper and the third assignee of the commercial paper is totally independent of the cause relationship and exerts its efficiency. However, efficiency of declaration of intention on the commercial paper between the direct parties involved in acceptance of the commercial paper and between the one of act on commercial paper and the bearer of the commercial paper with malevolence is still affected by the cause relationship and we should not take into consideration of factors for the cause relationship when we judge its efficiency.

3. RE-CONSTRUCTION OF THE THEORY OF EXPLANATION OF DECLARATION OF INTENTION ON COMMERCIAL PAPER: BASED ON THE TWO-PHASE THEORY OF ACT ON COMMERCIAL PAPER

Under the two-phase theory of act on commercial paper, in order for the person of act on commercial paper to have the relationship of commercial paper with others, he has to make two declarations of intention, namely, declaration of intention of debt burden and declaration of intention of right transfer. These two declarations of intention not only have mutually different properties, but also have independent legal efficiency. Thus, explanation of declaration of intention on the commercial paper based on the two-phase stage also has the necessity to distinguish the two declarations of intention and be made respectively. What explanation of declaration of intention of debt burden on the commercial paper is intended to confirm is the intention content that a particular debtor burdens the debt of the commercial paper, whereas what explanation of declaration of intention of right transfer on the commercial paper is intended to confirm is the intention content that a particular person who accepts the commercial paper right.

3.1 Explanation Object of Declaration of Intention of Debt Burden

Under the two-phase theory of act on commercial paper, declaration of intention of debt burden has its non-causative nature. Thus, it should contain any fact outside the cause relationship of the commercial paper. According to the non-causative nature of declaration of intention of debt burden, a person of act on commercial paper works out the commercial paper but establishes the commercial paper debt that is different from the cause debt. In other words, commercial paper debt is established according to the declaration of intention expressed by the person

of act on the commercial paper on the writing of the commercial paper. Hence, the content of declaration of intention is merely constituted by the literary words on the commercial paper and explanation of the declaration of this intention merely has the explanation object of writing of the commercial paper. Furthermore, considering the circulation of the commercial paper, it is also necessary to limit the explanation object of declaration of intention of debt burden to the security of commercial paper. That is because any fact outside the commercial paper is unlikely to be known by the third party who obtains the commercial paper in its circulation who can only judge the content of declaration of intention of the person of act on the commercial paper.

As has been mentioned above, declaration of intention of debt burden is only constituted by the literary words on the commercial paper, so the explanation object of declaration of intention of debt burden can only be the recorded literary words on the commercial paper. If declaration of intention of debt burden is not merely constituted by the literary words on the commercial paper, and, instead, the particular matters between direct parties involved also constitute its content just as declaration of intention in the case of civil law, then, we have to regard all these situations as the explanation object, which obviously violates the legislation purpose of the law of negotiable instrument which is aimed to facilitate circulation of the commercial paper. Therefore, when we make explanation of the declaration of intention of debt burden, we should merely regard the recorded literary words on the commercial paper as the object.

3.2 Explanation Object of Declaration of Intention of Right Transfer

Declaration of intention of right transfer on the commercial paper is made based on the delivery of the commercial paper. Thus, the explanation object of its declaration of intention is the “delivery act”. This delivery act is implemented by means of transferring occupancy of the commercial paper. Therefore, writing of security of commercial paper also constitutes the content of the delivery act and it is also necessary to make explanation on the recorded literary words on the commercial paper. However, even explanation of the same item may also have meanings to different people as a result of the different declarations of intentions it constitutes and the different people it is aimed at.

Under the two-phase theory, declaration of intention of right transfer on the commercial paper is declaration of intention for a particular counterpart. Therefore, in addition to the recorded literary words on the commercial paper, the specific situations of the parties involved also constitute the content of declaration of intention. It is necessary to regard these facts as the explanation object, which also corresponds with the causative feature of declaration of intention of right transfer. Occurrence of the efficiency of declaration of intention of right transfer on the commercial paper is affected by the cause relationship between the direct parties involved in delivery of the commercial paper. In this way, explanation that differs from declaration of intention of debt burden should widely observe the facts and evidence outside the commercial paper when explanation is made to declaration of intention of right transfer. Of course, reference to these facts needs to have a scale and a scope.

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