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Bills and Notes--Discharge--Reacquisition before Maturity by Accommodation Makers

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person against the day of an anticipated bankruptcy. While the principal case is probably sound on its facts and in its result, it nevertheless suggests the possibility of a transfer in fraud of creditors by immediate destruction of cancelled checks when they are the only available record in cases where production of other more formal records is not required of the bankrupt.

M. S. K.

BILLS AND NOTES — DISCHARGE — REACQUISITION BEFORE MATURITY BY ACCOMMODATION MAKER. — *D*, comaker with *P*, of a note for the latter's benefit, purchased it before maturity from the holder, and after maturity, exercised the confession of judgment provision in the note to obtain an Ohio judgment against *P*. *D* now brings action against *P* in West Virginia on the judgment, and *P* seeks to enjoin the prosecution of the action. *Held*, that a state is required to give full faith and credit to judgments recovered in a sister state only if such judgment is valid; and that a judgment rendered by a court of a sister state is not valid unless the court had jurisdiction; and that a judgment note confers jurisdiction of the person on the court only so long as the note remains a legal and subsisting obligation; and that the possession of a note by the accommodation maker at maturity in his own right was a discharge of the note, and so the note conferred no jurisdiction on the Ohio court. *Perkins v. Hall*.¹

Under the Negotiable Instruments Law, "A negotiable instrument is discharged: . . . (5) When the principal debtor becomes the holder of the instrument at or after maturity in his own right."² Two problems immediately present themselves in the instant case. Is an accommodation maker a principal debtor under the act?³ Did this accommodation maker become the holder of the instrument at or after maturity? The term principal debtor is not defined by the act, though the person primarily liable is defined as the one who is by the terms of the instrument absolutely required to pay

¹ 17 S. E. (2d) 795 (W. Va. 1941).

² NEGOTIABLE INSTRUMENTS LAW § 119; OHIO GEN. CODE (Page, 1938) §8224; as amended, W. VA. REV. CODE (Michie, 1937) c. 46, art. 8, § 1.

³ West Virginia has eliminated this question by substituting the term "person primarily liable" for "principal debtor". An accommodation maker is absolutely required to pay a note, and is clearly a primary party as defined by the act. W. VA. REV. CODE (Michie, 1937) c. 46, art. 8, § 1. *Accord*: Marshall County Bank v. Fonner, 113 W. Va. 451, 168 S. E. 375 (1933); Rouse v. Wooten, 140 N. C. 557, 53 S. E. 430 (1906).

the same.⁴ The weight of authority is that payment by an accommodation maker at or after maturity discharges the instrument,⁵ therefore by implication, the accommodation maker is the principal debtor under the act.⁶ However, several cases have permitted an accommodation maker to sue on the instrument itself when forced to pay after maturity,⁷ one case flatly stating that the accommodation comaker was only a secondary party.⁸

In the instant case, the accommodation maker became the holder of the instrument before maturity, and so was not within the letter of the section on discharge. Although, under the majority view, a maker who reacquires a note before maturity may reissue it before maturity as a valid obligation,⁹ if it is held beyond maturity, the instrument is discharged.¹⁰ The court here applied the principle to an accommodation maker, saying that, although he could have reissued the note as a valid obligation, when he did not, it was discharged at maturity. The effect is to interpret the phrase "becomes the holder of the instrument at or after maturity . . ." as meaning "is the holder of the instrument at or after maturity. . ." The act denies the accommodation maker the right of subrogation when he takes up the note at or after maturity, and this case says the same rule applies when he is holder of the note at maturity. The accommodation maker or surety is left to his right of reimbursement.

D. C. H.

⁴ NEGOTIABLE INSTRUMENTS LAW § 192; OHIO GEN. CODE (Page, 1938) § 8296; W. VA. REV. CODE (Michie, 1937) c. 46, art. 17, § 2.

⁵ Harris v. King, 113 Cal. App. 357, 298 Pac. 100 (1931); Proctor v. Pyle, 33 Cal. App. (2d) 121, 91 P. (2d) 187 (1939); Gillham v. Troeckler, 304 Ill. App. 596, 26 N. E. (2d) 413 (1940); Kage v. Oates, 208 S. W. 126 (Mo. App. 1919); Kelley v. Briggs, 290 S. W. 105 (Mo. App. 1927); Dillenbeck v. Dygert, 97 N. Y. 303 (1884).

⁶ *In re* Nashville Laundry Co., 240 Fed. 795 (M. D. Tenn. 1917); Roberson-Ruffin Co. v. Spain, 173 N. C. 23, 91 S. E. 361 (1917).

⁷ O'Neal v. Stuart, 281 Fed. 715 (C. C. A. 6th, 1922); Fox v. Kroeger, 119 Tex. 511, 35 S. W. (2d) 679, 77 A. L. R. 663 (1931). See Chaffee, *Reacquisition of a Negotiable Instrument by a Prior Party* (1921) 21 COL. L. REV. 538, in which he favors the allowance of suits on the instrument by a comaker who is only an accommodation party and who is required to pay the instrument.

⁸ Pease v. Syler, 78 Wash. 24, 138 Pac. 310 (1914).

⁹ Peltier v. McFerson, 67 Colo. 505, 186 Pac. 524 (1920); Chicago Title & Trust Co. v. Biddermen, 275 Ill. App. 457 (1934); Horn v. Nicholas, 139 Tenn. 453, 201 S. W. 756, 1918E L. R. A. 157 (1918). See exhaustive note in 1918E L. R. A. 170. *Contra*: Stevens v. Hannan, 86 Mich. 305, 48 N. W. 951 (1891).

¹⁰ Gordon v. Wansey, 21 Cal. 77 (1862); Peltier v. McFerson, 67 Colo. 505, 186 Pac. 524 (1920); Walton v. Young, 26 La. Ann. 164 (1874); Harmer v. Steele, 4 Exch. 1, 154 Eng. Rep. R. 1100 (1851).