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Bills and Notes--Serial Notes--Effect of Part Being Due

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depositor. Seemingly, mutual obligations are balanced as of date of insolvency.

In some cases where collateral has been given, the reciprocity rule enunciated in the principal case has been applied to defeat a set-off,[7] it being said that to allow it would grant a preference. In other cases,[8] the courts have failed to make any distinction between situations where collateral has been given and where it has not. The United States Bankruptcy Law recognizes the right of set-off in all cases of mutual debts and mutual credits.[9]

—MELVILLE STEWART.

BILLS AND NOTES—SERIAL NOTES—EFFECT OF PART BEING DUE.—The defendant was the maker of a series of notes maturing on successive dates. They arose out of one transaction and were given for one consideration. The court assumed that such fact was inferable from the face of the notes. They did not contain acceleration provisions. The plaintiff purchased all the notes after the first was overdue. *Held,* under statute,[1] that the plaintiff took all the notes with notice that they had been dishonored and the defense was good as to all the notes. *Beasley Hardware Company v. Stevens.*[2]

On the question involved in the principal case there is a conflict of authority.[3] Several recent cases,[4] including *Morgan v.*

[7] Prudential Realty Company v. Allen, 241 Mass. 277, 135 N. E. 221, 25 A. L. R. 935 (1922). *Contra:* Salladin v. Mitchell, 42 Neb. 859, 61 N. W. 127 (1894).

[8] *Supra,* n. 4.

[9] § 68a—"In all cases of mutual debts or mutual credits between the estate of a bankrupt and a creditor, the account shall be stated and one debt shall be set off against the other, and the balance only shall be allowed or paid." See 2 COLLIER, BANKRUPTCY (13th ed. 1923) 1612.

[1] GA. CODE ANN. (Michie, 1926) § 4294.

[2] 155 S. E. 67 (Ga. 1930); Case Comment (1931) 44 HARV. L. REV. 464.

[3] Harrington v. Claflin & Company, 91 Tex. 294, 42 S. W. 1055 (1897); Ferguson v. Wiede, 46 S. W. 392 (Tex. Civ. App. 1898); Iowa City Bank v. Friar, 167 S. W. 261 (Tex. Civ. App. 1914); National State Bank v. Ricketts, 177 S. W. 528 (Tex. Civ. App. 1915); Huselby v. Allison, 25 S. W. (2d) 1108 (Tex. Civ. App. 1930); Rowe v. Scott, 28 S. Dak. 145, 132 N. W. 695 (1911). *Contra:* Boss v. Hewitt, 15 Wis. 285 (1862); Patterson v. Wright, 64 Wis. 289 (1885); Morgan v. Farmington Coal & Coke Company, 97 W. Va. 83, 124 S. E. 591 (1924); Cable Company v. Bruce, 135 Okla. 170, 274 Pac. 665 (1928); Mountjoy Parts Company v. Bank, 12 S. W. (2d) 609, (Tex. Civ. App. 1928).

Farmington Coal & Coke Company,[5] have reached a different result in this situation. Under the NEGOTIABLE INSTRUMENTS LAW[6] our Supreme Court of Appeals holds[7] that the fact that one of a series of notes, which have arisen out of one transaction, is unpaid, does not of itself constitute actual knowledge of a defect or infirmity in the balance of the notes to a purchaser, nor, in the absence of further facts or circumstances indicating that the maker has or would have refused payment, make the taking one in bad faith. The West Virginia Court said[8] in effect that a purchaser could as reasonably think the default was due to temporary financial embarrassment of the maker as well as to defects or infirmities in the notes. The principal case and decisions in accord therewith may be explained,[9] perhaps, as a failure to distinguish the rule of "constructive notice"[10] properly applicable to ordinary property transfers from the more exacting standard of "bad faith"[11] established by the NEGOTIABLE INSTRUMENTS LAW.[12]

Frequently acceleration provisions are found in serial notes. If the acceleration provisions are construed to give the holder no option,[13] but the notes are treated as matured on default in payment of one, it is clear that a purchaser knowing one note was overdue, should be considered a holder after maturity and subject to defences as to all the notes.[14] A troublesome case would arise where the purchaser knew of the existence of the overdue note, but did not know of the default in its payment, and purchased only the balance of the notes. As to the transferor all the notes would be matured, but on analogy to the protection given to the innocent purchaser of a bill dishonored by non-acceptance, the purchaser should be allowed to rely on the stated maturity dates.[15]

A somewhat different question would be presented if the ac-

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[4] Cable Company v. Bruce, *supra* n. 3; Mountjoy Parts Company v. Bank, *supra* n. 3.

[5] *Supra* n. 3.

[6] W. VA. CODE ANN. (Barnes, 1923) c. 98, § 52; W. VA. REV. CODE (1931) c. 46, art. 4, § 2.

[7] Morgan v. Farmington Coal & Coke Company, *supra* n. 3.

[8] *Ibid.* at 599, 601.

[9] Suggested in Cable Company v. Bruce, *supra* n. 3.

[10] Cain v. Cox, 23 W. Va. 594 (1884); Fishcher v. Lee, 98 Va. 163, 35 S. E. 441 (1900).

[11] Bightmire, *Bad Faith in Negotiable Paper* (1920) 18 MICH. L. REV. 355.

[12] NEGOTIABLE INSTRUMENTS LAW, § 56.

[13] Chafee, *Acceleration Provisions in Time Paper* (1919) 32 Harv. L. Rev. 747, 764.

[14] Stoy v. Bledsoe, 31 Ind. App. 643, 68 N. E. 907 (1903).

[15] Chafee, *loc. cit. supra* n. 13, at 765.

celeration provisions were construed to give the holder an option[16] to declare the maturity of all the notes. Let us suppose after default in the payment of one note, the holder transferred all the notes to a purchaser, who, as in the other cases herein discussed, knew of the default, but had no actual knowledge of a defect or infirmity in the notes. *Quaere*: Should the purchaser be treated as a holder in due course as to the balance of the notes? This action by the transferor would indicate an election not to insist on his cause of action, but to sell the notes. But could not the purchaser still reasonably think such election was caused by the inability of the maker to pay, rendering immediate suit useless, as well as by the existence of a defect or infirmity in the notes? It is submitted that the question raised differs so slightly from the one presented in *Morgan v. Farmington Coal & Coke Company*[17] that under the NEGOTIABLE INSTRUMENTS LAW[18] it should be treated the same.

—DAVID G. LILLY, JR.

CONSTITUTIONAL LAW—LEGISLATIVE REGULATION OF FEES CHARGED BY EMPLOYMENT AGENCIES.—A federal court has recently held a Missouri statute fixing the maximum registration fee that employment agencies may charge for their services to be void and contrary to the Fourteenth Amendment.[1] The court reasons that it is bound by the decision of the Supreme Court of the United States in *Ribnik v. McBride*,[2] in which the Court split, six to three, on legislation also construed to fix fees charged by employment agencies and held the statute invalid.[3] Yet the intimation of the court in *Bradford v. Hargis* is sympathetic to the dissenting view of *Ribnik v. McBride.*

The need for employment agency regulations seems apparent. Many state statutes have attempted it to various extents.[4]

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[16] *Ibid.* 767.
[17] *Supra* n. 3.
[18] NEGOTIABLE INSTRUMENTS LAW, § 56.

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[1] Bradford v. Hargis, 45 F(2d) 223 (D. C., W. D. Mo. 1931).
[2] Ribnik v. McBride, 277 U. S. 350, 48 S. Ct. 545 (1927).
[3] The majority of the Court, composed of Chief Justice Taft and Justices Sanford, Sutherland, McReynolds, VanDevanter and Butler, decided the statute in question was void. The dissenters were Justices Brandeis, Holmes and Stone.
[4] See Hamilton, *The Regulation of Employment Agencies* (1930) 38 YALE L. J. 225, 229. Also see, *Statistics of Unemployment and the Work of the Employment Offices* (U. S. Bureau of Labor 1913) Bull. No. 109, 35-36.