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Negotiable Instruments

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fed by compulsory property tax levies[32] and deductions from the pay of employee-members.[33]

The funds maintained by the City of Lakewood became depleted, so that it became impossible to meet current pension payments. The city council declined to appropriate other municipal funds to make up deficits. In *Lakewood Firemen's Relief and Pension Fund Trustees v. City of Lakewood*,[34] the Cuyahoga County Court of Appeals held that the provisions of the statutes[35] which *require* a tax of 0.3 mill on all real and personal property in the municipality to provide moneys for the funds and which *permit* the appropriation of sufficient money to meet current payments ". . . if at any time the moneys to the credit of the fund are not sufficient to meet current relief and pension payments . . ."[36] are, respectively, mandatory and permissive, and that the appropriation of additional moneys cannot be compelled by the courts.

The decision is obviously correct so far as the law goes. The problem remains, for legislative or other solution, of how superannuated employees are to be cared for without throwing them upon relief or old age pension rolls.

SAMUEL SONENFIELD

NEGOTIABLE INSTRUMENTS

Negotiability: Signature: Carbon Copy

Chrismer v. Chrismer[1] raises an intriguing point. The payee brought an action on a negotiable promissory note, but produced only a carbon copy. The maker had apparently signed his name on the original, and, of course, the signature had gone through the carbon paper and appeared on the carbon copy. The court held that the carbon copy was not a negotiable instrument. A carbon copy of an instrument, which bears a carbon copy of what purports to be the signature of the maker, does not meet the requirements of the Negotiable Instruments Law, in the opinion of the court. The signature is made by imprint of the carbon paper, whereas, decides the court, it must be an original signature in order to be genuine and legal within the meaning of the Negotiable Instruments Law, section 1 of which[2] requires that the instrument be in writing and

[32] OHIO REV. CODE §§ 741.09-.40.
[33] OHIO REV. CODE §§ 741.12-.43.
[34] 144 N.E.2d 128 (Ohio Ct. App. 1957).
[35] *Supra.* note 32.
[36] *Ibid.*

signed by the maker or drawer. The court also considered section 18 of the Negotiable Instruments Law,[3] which provides that no person shall be liable on an instrument whose signature does not appear thereon, and section 184,[4] which defines a negotiable promissory note and includes the requirement that it be signed by the maker.

Having held that the carbon copy was not a negotiable instrument, the court then decided that it was not admissible in evidence without laying the proper foundation to account for the absence of the original.

I must confess that the *ratio decidendi* disturbs me. Inasmuch as a signature may be printed, engraved, lithographed, or photographed, so long as it is adopted as the signature of the particular party,[5] it is difficult to understand why a signature made through a piece of carbon paper does not meet the requirements if the parties so intend. But do they intend the carbon copy to be a negotiable instrument? Is the carbon copy anything more than a record of the transaction? And what about the person who buys the carbon copy from the payee? Is he not on notice that an original may be in existence and consequently is he not precluded from becoming a holder in due course? Unfortunately, limitations of time and space make a complete analysis of the problem impossible. In any event, in the instant case the suit was between the immediate parties, so that negotiability would not seem to be involved.

Liability: Admissibility of Parol Evidence to Show That Person Signed in a Representative Capacity

Section 20 of the Negotiable Instruments Law[6] provides, in substance, that if the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal, he is not liable on the instrument if duly authorized. One of the typical situations is where an officer of a corporation signs his name to a corporate note without indicating any official title. Is he then personally liable or may it be shown that the intention of the parties was not to bind him personally and that in fact he signed only for the corporation? Two recent Ohio cases bear upon this important matter.

In *E. R. Johnstone Machinery Co. v. Owens Screw Products, Inc.*,[7] the notes were signed as follows:

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[1] 103 Ohio App. 23, 144 N.E.2d 494 (1956).

[3] OHIO REV. CODE § 1301.03 (A).

[4] OHIO REV. CODE § 1301.20.

[4] OHIO REV. CODE § 1307.02.

[5] See BRITTON, BILLS AND NOTES 33 (1943).

[6] OHIO REV. CODE § 1301.22. The wording is slightly, but not materially, different.

[7] 76 Ohio L. Abs. 184, 145 N.E.2d 559 (Munic. Ct. 1957).

Owens Screw Products, Inc.
Stanley Heilbronner, Vice Pres.
A. M. Donofrio

Suit was by the payee, and the question concerned Donofrio's liability. The court held that parol evidence was admissible to show that Donofrio intended to sign only as president of the Owens corporation and not as an individual, and to show that the payee likewise intended Donofrio's signature to bind only the corporation and not himself.[8] However, the court also held that the proof must be by clear and convincing evidence and that Donofrio had failed to meet this burden, the evidence having fallen short of showing that the *payee* understood that Donofrio was signing in a representative capacity.[9]

The other recent case bearing on this general question is *Rood v. McCann.*[10] On the lower left-hand side of the printed note there appeared an imprint of the corporation seal of the M. and I. Sanitation Company. On the lower right-hand side, in the place where makers customarily sign, there appeared the following signatures:

Jack M. McCann
Claude M. Morrow

McCann's liability was the issue.

In this instance the plaintiff was a purchaser of the note from the payee. The court held that parol evidence would be admissible to show that McCann signed as secretary of the corporation; that there was no intention that he be personally liable; and that plaintiff so understood.[11] Section 20 of the Negotiable Instruments Law was not referred to.

Liability: Delivery on Condition That Signature of Another Person Be Obtained

In *Public Loan Corporation v. Jacobs*[12] the defendant, Jacobs, signed a note as co-maker and delivered it to the payee with the express understanding that Jacobs was not to be bound unless the signature of one Helen Russell was obtained on the note. Plaintiff turned the note over to James Russell in order that he might get Helen's signature. James returned with a signature purporting to be Helen's. The signature was

[8] See BRITTON, BILLS AND NOTES § 164 (1943) for a splendid discussion of the question.

[9] The court did not refer to the Negotiable Instruments Law.

[10] 103 Ohio App. 55, 144 N.E.2d 263 (1957), *motion to certify overruled* (1957).

[11] The court also indicates that even if plaintiff assumed that McCann signed as an individual rather than on behalf of the corporation, the presence of the corporate seal would put him on notice that this might not be so.

[12] 75 Ohio L. Abs. 572, 144 N.E.2d 505 (Ct. App. 1955).