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Personal Property

Marshall I. Nuremberg

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than an instrument is discharged "by any other act which discharges a simple contract for the payment of money." The principal obligor's discharge arose from Ohio Revised Code section 1319.07, prohibiting a chattel mortgagee who takes the mortgaged goods out of the possession of the mortgagor and sells or otherwise disposes of them before foreclosure, from pursuing or collecting from the mortgagor any deficiency upon the mortgage or the obligation secured thereby.

The court held that the accommodation maker was not included in Ohio Revised Code section 1319.07, but that the effect of section 1303.34 was to discharge him, because the creditor-mortgagee had divested himself of all his rights against the principal obligor-mortgagor, and thus there were no rights to which the accommodation maker could be subrogated for reimbursement.¹⁸

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18. Unfortunately for the defendant, the court affirmed a judgment for the plaintiff because of the defendant's failure to plead the defense.

PERSONAL PROPERTY

In *Riggs v. Taylor* an action for money was instituted to recover for loss of airplanes and parts stored in defendants' hangar which were destroyed by fire. On submission, the jury found for defendants. By stipulation the value of the loss had been agreed upon. It was also stipulated that demand for return was made and defendants did not make return.

The Supreme Court in affirming the judgment noted that although the stipulations and the pleadings made a prima facie case for plaintiff, there was still the question of defendants' negligence. The defendants had the burden of going forward with the evidence, but having done so, it was for the jury and not the court to determine the issue of defendants' negligence.

MARSHALL I. NUREMBERG

1. 154 N.E.2d 145 (Ohio Sup. Ct. 1958).