

Volume 11 | Issue 3

1960

Negotiable Instruments

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Recommended Citation

Fletcher R. Andrews, *Negotiable Instruments*, 11 *Wes. Res. L. Rev.* 411 (1960)
Available at: <https://scholarlycommons.law.case.edu/caselrev/vol11/iss3/21>

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infamous. Presentment or indictment by a grand jury is necessary. Thus, prosecution in any other manner is unauthorized, a nullity, and a court purporting to entertain it is without jurisdiction over the offense. Any ordinance on the subject which is in conflict with the statute is invalid.

The court had difficulty in distinguishing the earlier case of *Village of Struthers v. Sokol*,³⁴ but concluded that the test therein set forth for determining conflict, that an ordinance is invalid which "permits or licenses that which the statute forbids and prohibits, and vice versa,"³⁵ is not exclusive.

SAMUEL SONENFIELD

NEGOTIABLE INSTRUMENTS

PROMISE MUST BE UNCONDITIONAL

Ohio Revised Code section 1301.03 (B)¹ requires that an instrument, to be negotiable, must contain an unconditional promise or order to pay a sum certain in money. Ohio Revised Code section 2309.32 permits the so-called "short form of pleading" in an action upon an instrument for the unconditional payment of money only.

In *Smith v. Shoemaker*,² involving the above "short form of pleading" statute, the court held that an instrument designated by the parties as a note, but providing for "payments only when possible," was not an instrument for the unconditional payment of money.³ The opinion is especially valuable because of the discussion and the citation of authorities.

Obviously, if the above words make the promise conditional under the pleading statute, it is likewise conditional under the Negotiable Instruments Law, and thus the instrument is not negotiable.

DISCHARGE: PRINCIPAL DEBTOR BECOMES HOLDER

Ohio Revised Code section 1303.34 (E)⁴ provides that an instrument is discharged when the principal debtor becomes the holder of the instrument at or after maturity in his own right.

*Gibbons v. Sommers*⁵ is an example of how this statute operates. Sommers, a co-maker of a note, paid off the note, whereupon the payee indorsed it to him. Sommers then took a judgment by confession on the note under a warrant-of-attorney clause. The court held that under the above section the note was discharged, and that there

34. 108 Ohio St. 263, 140 N.E. 519 (1923).

35. *Id.* at syllabus 2. It is still possible to distinguish the two cases, since in the *Sokol* case the statutory penalty, although less than the municipal one, was not a felony penalty.