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Contracts

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commerce clause case comes to the state courts. The Ohio Supreme Court in *Thomas Foods Incorporated v. Pennsylvania Railroad*³⁹ refused to recognize any state authority over an action by a consignee against a railroad to collect damages for frozen food which had thawed en route from California to Ohio. A uniform straight bill of lading under the Interstate Commerce Act placed any action under federal law. No state authority existed.

OLIVER SCHROEDER, JR.

CONTRACTS

JOINT AND SURVIVORSHIP ACCOUNT — FORM OF ACCOUNT NOT CONCLUSIVE

*Fecteau v. Cleveland Trust Company*¹ serves as a reminder that even though a bank account (savings or checking) is carried in the names of two persons jointly, with the right of survivorship, the form of the deposit is not necessarily conclusive, and where a controversy as to the ownership of the account arises, evidence is admissible in a proper case to show the true situation.²

ACCORD AND SATISFACTION

*Hudak v. Nationwide Mutual Insurance Company*³ is an example of how not to plead a case involving the doctrine of accord and satisfaction. In this case, which involved an unliquidated claim by the plaintiff to recover on a medical expense policy issued by the defendant insurance company, defendant (apparently by mail) tendered a check to plaintiff for \$83.28 in settlement of plaintiff's claim. Plaintiff retained the check, uncashed, and brought suit against defendant for \$416.72, which represents the difference between the amount of the check and the limit of the policy for medical expenses of a single person. Plaintiff's petition alleged that she accepted the \$83.28 check as *partial* payment. As its first separate defense, defendant's answer set up the affirmative defense of accord and satisfaction in the acceptance of the check by the plaintiff.

In holding the plaintiff's claim discharged by accord and satisfaction, the court stated:

The plaintiff by her petition alleges that she accepted the check "as partial payment." This acceptance of the check is also made clear by the fact that the amount prayed for is "the balance of the sum due". . . . The defendant pleads . . . an accord and satisfaction in the acceptance

39. 168 N.E.2d 612 (Ohio Ct. App. 1960).

of the check. . . . No reply having been filed, this affirmative defense must be deemed as admitted by the pleadings.⁴

The decision appears sound. Indeed, it is difficult to understand how any other result could have been reached.

Historically, whether an obligation was discharged where the obligee accepted something in satisfaction of his claim from one other than the obligor caused the courts great difficulty. Today, however, most courts recognize that an accord and satisfaction by a third person is effective and discharges the debtor's duty in accordance with the terms upon which the third person offered it.⁵ The first Ohio case to hold the debtor discharged was *Leavitt v. Morrow*,⁶ decided in 1856. *Swartz v. Carmen*⁷ is the latest.

RELEASE

In *O'Donnel v. Langdon*⁸ the plaintiff alleged that he was severely injured as a result of an intersectional collision between his motorcycle and the defendant's automobile, and that some two and one half weeks later he signed "a full release of all claims, demands and causes of action on account of such injuries," for which the defendants paid him the sum of \$59.60. Plaintiff further alleged that neither he nor the defendant had intended to say, as was written in the release, that the release was for "all" claims, etc; rather, that it was for the claim for property damage only. Plaintiff then asked that the release be cancelled. Defendant demurred, which demurrer was sustained by the trial court and the action was dismissed. On appeal on questions of law, the court of appeals reversed and remanded the action.

In reversing the judgment of the court of appeals the supreme court stated:

In the absence of fraud, misrepresentation, duress or superior knowledge on the part of a releasee, or incapacity of the releasor to read and comprehend the language of a release, such releasor may not be relieved of the effect of a "full release of all claims, demands and causes of action on account of . . . injuries" resulting from a collision of motor vehicles, such request for relief being predicated on the ground that the release was intended to be limited to property damage alone.⁹

ROBERT C. BENSING

1. 171 Ohio St. 121, 167 N.E.2d 890 (1960). See also discussion in *Wills and Decedents' Estates* section, p. 589 *infra*.

2. See Close, *Joint Bank Accounts in Ohio*, 11 WEST. RES. L. REV. 511 (1960).

3. 167 N.E.2d 666 (Ohio Ct. App. 1960).

4. *Id.* at 668.

5. See King, *Accord and Satisfaction By a Third Person*, 25 MO. L. REV. 115 (1960).

6. 6 Ohio St. 72 (1856).

7. 167 N.E.2d 505 (Ohio Ct. App. 1959).

8. 170 Ohio St. 528, 166 N.E.2d 756 (1960).

9. *Ibid.*