Comment on Recent Decisions

BILLS AND NOTES—ACCOMMODATION MAKER UNDER NEGOTIABLE INSTRUMENTS LAW—EXTENSION OF TIME.—F. Holland borrowed $1700 from plaintiff bank and gave to the bank a note signed by himself and W. Holland, the defendant, whom plaintiff then knew to be an accommodation maker. The original note was renewed by a subsequent note to which defendant's co-signature was forged. Plaintiff on learning of this procured the original note and was successful in a suit thereon below. On appeal it was *held,* that defendant as an accommodation maker was liable on the note as a maker, and was not discharged by an extension of time granted by the payee through the acceptance of the renewal notes. *Rosendale State Bank v. Holland,* 217 N. W. 645. (Wis., 1928.)

The theory of this case was that by Sec. 11601 of Wisconsin Statutes (Uniform N. I. L., Sec. 192) defendant was primarily and absolutely liable on the note and was not a surety who will be discharged by a time extension. This is undoubtedly in accord with the great weight of authority in this country. *Richards v. Market Exchange Bank,* 81 Ohio St. 348, 90 N. E. 1000, 26 L. R. A. N. S. 99; *Vanderford v. Farmers Bank,* 105 Md. 164, 66 Atl. 67, 10 L. R. A. N. S. 129; *Union Trust Co. v. McGinty,* 212 Mass. 205, 98 N. E. 679, Am. Cas. 1913C, 525; *Bradley Eng. Co. v. Heyburn,* 56 Wash. 628, 106 P. 170, 134 Am. St. R. 1127; *Wolstenholme v. Smith,* 34 Utah 300, 97 P. 329; *Vernon Center State Bank v. Mangelsen,* 166 Minn. 472, 208 N. W. 186, 48 A. L. R. 710. The following sweeping statement in 48 A. L. R. at p. 716 shows the extent to which this line of reasoning is adhered to: "Except in Iowa, Missouri and Texas, it has been held uniformly in the jurisdictions which have passed upon the question that an accommodation maker of, or surety on, a negotiable instrument, is not, under the Negotiable Instruments Law discharged by an extension of time granted to the principal maker such as would have discharged the surety or accommodation party prior to that law, although the holder has knowledge of the real character of such accommodation party or surety." The exhaustive and excellent annotation then cites many cases from numerous jurisdictions in support of its statement, which it is not necessary to list here. The minority rule as adhered to in the three states mentioned is treated fully in a note entitled "Suretyship Defenses by Co-Makers in Missouri since the Negotiable Instruments Law," 13 St. Louis L. Rev. 69, which recognizes that the reasoning of the Missouri Courts is out of line with that of most tribunals. R. L. A., '28.

BILLS AND NOTES—COMBINED NOTE AND CHATTEL MORTGAGE, WHETHER NEGOTIABLE.—This was a suit on a promissory note by the assignee of the payee. The defendant alleged a defense of fraud which would be valid against the payee, and the issue therefore was the negotiability of the instrument, which was headed "Combined Note and Chattel Mortgage With Power of Sale." The first part of it was a note in the usual form, providing for the payment of the total amount in specified monthly installments. Immediately below the note appeared a mortgage on the automobile for which the note was given, which contained the following clause: "If default be made in the payment of the above debt, or any part thereof, or if at any time the said mortgagee, or holder thereof deems himself insecure, . . . said mortgagee may without demand or performance take into possession and sell such chattels at public or private sale. . . ." *Held,* that each portion of the instrument is to be construed a