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BILLS AND NOTES — ALTERATION — ADDITIONAL MAKER AS A MATERIAL ALTERATION — Defendant *A* made and delivered the note in question in 1921, payable in two years. In 1931 after the death of the payee, the note was duly assigned to plaintiff. When plaintiff received the note, the signature of defendant *B* appeared below that of *A*. The court found that *B's* signature had been added by someone unknown claiming a benefit under the note after delivery and for the purpose of giving a greater security to the note and that neither defendant authorized or had any knowledge of the addition of *B's* name. The plaintiff sued both defendants as co-makers of the note. *Held*, that the plaintiff by her pleading had elected to treat the forged signature as that of a genuine maker and that the addition of a maker is a material alteration within the meaning of the Uniform Negotiable Instruments Act so that it is

avoided by the maker as to one not a holder in due course. *Stacey v. Fritzler*, (Ore. 1938) 84 P. (2d) 97, 499.

Prior to the enactment of the Uniform Negotiable Instruments Act, a material alteration of the instrument avoided it, except as to one who made, authorized or assented to the alteration, even in the hands of a bona fide holder.[1] That act excepts holders in due course, who may enforce it according to its original tenor.[2] However, since plaintiff in the principal case was not a holder in due course,[3] she could not take advantage of the exception. Material alterations include a change in the number or relation of the parties, or any other change or addition which alters the effect of the "instrument" in any respect.[4] Generally, alterations which offer a defense to the maker are confined to the body of the instrument, so that marginal notations and changes in endorsements are considered collateral to the instrument and do not effect a defense for the maker.[5] So also when the added signature is that of a guarantor or surety the maker is not released, since his obligation is not affected.[6] But an alteration of the instrument by adding another maker will avoid the instrument as to the original maker.[7] The reason given is that the "relation of the parties" is changed because the obligation of the original maker is altered from a single one to a joint or joint and several obligation.[8] The rule is unaffected by the fact that the change may be beneficial to the original maker.[9] But the rules governing altera-

[1] Citizens Nat. Bank of Baltimore v. Williams, 174 Pa. 66, 34 A. 303 (1896); Bank of Herington v. Wangerin, 65 Kan. 423, 70 P. 330 (1902); Erickson v. First Nat. Bank of Oakland, 44 Neb. 622, 62 N. W. 1078 (1895).

[2] N. I. L., § 124; Broadway Nat. Bank of Chelsea v. Hefferman, 220 Mass. 247, 107 N. E. 921 (1915); Public Bank of New York City v. Burchard, 135 Minn. 171, 160 N. W. 667 (1916).

[3] N. I. L., § 52 (2); Pensacola State Bank v. Melton, (D. C. Ky. 1913) 210 F. 57.

[4] N. I. L., § 125.

[5] See 36 YALE L. J. 140 (1926); Ensign v. Fogg, 177 Mich. 317, 143 N. W. 82 (1913); Bank of Cedar Bluffs v. Beck, (Neb. 1935) 258 N. W. 528; Woods v. Spann, 190 Ark. 1085, 82 S. W. (2d) 850 (1935); 3 C. J. S., § 29, p. 936 (1936).

[6] Kiefer v. Tolbert, 128 Minn. 519, 151 N. W. 529 (1915); Bank of Moberly v. Meals, 316 Mo. 1158, 295 S. W. 73 (1927); Mersman v. Werges, 112 U. S. 139, 5 S. Ct. 65 (1884); First Nat. Bank of Butte v. Weidenbeck, (C. C. A. 8th, 1899) 97 F. 896. Contra: Chappell v. Spencer, 23 Barb. (N. Y.) 584 (1857). To the effect that this rule is abrogated by the N. I. L., see Farmers & Merchants Bank v. Parker, 150 Tenn. 184, 263 S. W. 84 (1924).

[7] Schram v. Johnson, 208 Iowa 222, 225 N. W. 369 (1929); Bank of Moberly v. Meals, 316 Mo. 1158, 295 S. W. 73 (1927); Paxon v. Kregal Casket Co., 223 Mo. App. 151, 9 S. W. (2d) 856 (1928); Sheffield v. J. I. Case Threshing Machine Co., (Tex. Civ. App. 1927) 293 S. W. 183; Wallace v. Jewell, 21 Ohio St. 163 (1871); Morrison v. Harmon, 112 W. Va. 280, 164 S. E. 145 (1932). Contra: Union Banking Co. v. Martin's Estate, 113 Mich. 521, 71 N. W. 867 (1897). See also McCaughey v. Smith, 27 N. Y. 39 (1863); Klundby v. Hogden, 202 Wis. 438, 232 N. W. 858 (1930).

[8] N. I. L., § 17 (7) on construction.

[9] Ibid.

tions generally are different when the change is made by a stranger to the instrument. In such a case the change is considered a mere spoilation and does not affect the rights of the parties in any way.[10] Therefore, in the principal case the original maker would remain liable on the note, since the forged signature was apparently added by a stranger to the note. But the election of the plaintiff to treat the forged signature as genuine made its addition a material alteration.[11]

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[10] Cases collected in 3 C. J. S., § 53, p. 969 (1936). See also 8 UNIV. CIN. L. REV. 547 (1934). As noted there, the N. I. L. does not expressly lead to this result but seems to impliedly by the better interpretation.

[11] This part of the argument was brought out on the rehearing in 84 P. (2d) 499.