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BILLS AND NOTES-ALTERATION BY COLLATERAL WRITTEN AGREEMENT

BILLS AND NOTES — ALTERATION BY COLLATERAL WRITTEN AGREEMENT — Defendant was accommodation indorser on two of four notes executed at the same time with different maturity dates. As part of the same transaction, but unknown to the defendant, the maker, two other indorsers, and the payee, plaintiff in the cause, entered into an agreement in writing whereby the maturity of the unpaid notes would be accelerated on default as to any due. *Held*, in an action on the notes, that instruments simultaneously executed and referring to the same subject matter are to be construed together, and the effect of such integration here was to bring about an alteration of the notes the defendant had signed, whereby he was discharged. *Manufacturers' Trust Co. v. Steinhardt*, (N. Y. 1934) 191 N. E. 867.

This case is noteworthy in that it broadens the definition of *alteration* of a negotiable instrument as a physical change upon the instrument [1] to include a change in the legal relationship of the parties to the instrument. There is considerable authority to the effect that detachment of a note appended to a contract

[1] Davis v. Gutheil, 87 Wash. 596, 152 Pac. 14 (1915); Strehlow v. Planinger, 198 Wis. 525, 224 N. W. 742 (1929).

by a perforated line constitutes a material alteration.[2] Such holding, however, preserves the meaning of *alteration* as a physical act upon the instrument itself. Yet even here detachment has been held to constitute no alteration where such detachment was contemplated by the parties.[3] In view of decisions in New York and elsewhere which have preserved the negotiability of notes and bonds not only where other instruments intended as security were simultaneously executed, but despite references in the notes and bonds to such simultaneously executed securities,[4] the instant case is noteworthy in its rigorous application of the rule of integration. Where such collateral agreements in writing are not securities, authority is divided on the question of integration.[5] But the weight of authority denies the admissibility of a contemporaneous oral agreement to vary the terms of a negotiable instrument.[6] The rejection of such oral evidence is not based on a rule of policy which seeks to curb heinous designs of parties liable.[7] It is rather, in Professor Wigmore's terminology, based on the rule that a negotiable instrument embodies "in a single memorial" the transactions of the parties.[8] The rule requiring integration of simultaneously executed written agreements would appear to be a conclusion that in such cases there is no single memorial. The note and security cases referred to show that the rule is not an absolute one.[9] The policy, of preserving negotiability in these cases, is, of course, patent. But a more general policy presses for a rule which would make it impossible for parties to vary the terms of a contract when reduced to the definitive, luggage-free form of a negotiable instrument, even by a simultaneously executed written agreement. The former is intended to go to market; the latter to stay at home. This difference should suffice to justify refusal to apply the rule of integration.[10]

M. W.

[2] Citizens' Nat. Bank of Abilene v. Campbell, (Tex. Civ. App. 1928) 6 S. W. (2d) 799; Wichita Farm Lighting Co. v. Moore, (Tex. Civ. App. 1932) 46 S. W. (2d) 383; Rochford v. McGee, 16 S. D. 606, 94 N. W. 695 (1903). Stevens v. Venema, 202 Mich. 232, 168 N. W. 531 (1918); 29 YALE L. J. 797 (1920); 7 TEXAS L. REV. 177 (1929).

[3] Shawano Finance Corp. v. Julius, 214 Wis. 637, 254 N. W. 355 (1934); Iowa City State Bank v. Milford, (Tex. Civ. App. 1917) 200 S. W. 883.

[4] Enoch v. Brandon, 249 N. Y. 263, 164 N. E. 45 (1928); Paepcke v. Paine, 253 Mich. 636, 235 N. W. 871 (1931); Sturgis Nat. Bank v. Harris Bank, 351 Ill. 465, 184 N. E. 589 (1933).

[5] In Davis v. Brown, 94 U. S. 423, 24 L. ed. 204 (1876); and Gallagher v. Tappen State Bank, 60 N. D. 558, 235 N. W. 640 (1931), the rule of integration was applied. It was not applied in Lippman v. Alder, (Del. Super. 1930) 157 Atl. 433; or in Gallice v. Crilly, (C. C. E. D. Pa. 1906) 143 Fed. 178, aff'd sub nom. Crilly v. Gallice, (C. C. A. 3rd, 1906) 148 Fed. 835.

[6] Ruppert v. Singhi, 243 N. Y. 156, 153 N. E. 33 (1926); Anderson v. Engard, 236 Mich. 221, 210 N. W. 237 (1926); Slater v. Chiccarino, 109 Pa. Super. 353, 167 Atl. 247 (1933); Johnson v. Curl, (Ore. 1934) 33 Pac. (2d) 237. Earlier cases are collected in a note in 43 L. R. A. 449.

[7] Davis v. Brown, 94 U. S. 423 at 427, 24 L. ed. 204 at 206 (1876).

[8] 5 WIGMORE, EVIDENCE, 2d ed., sec. 2425 (1923).

[9] See cases cited in note 4, supra.

[10] In Phipps v. Union Stock Yards Nat. Bank, (Kan. 1934) 34 Pac. (2d) 561, it was held that in an action for conversion of collateral given to secure a note the defend-

ant might show oral authority to sell. With respect to integration, the court quoted from the comment of the re-staters of the law of contracts [34 Pac. (2d) 561 at 563]: " '. . . Thus, agreements collateral to a negotiable instrument if incorporated in it might destroy its negotiability, and in any event would deprive it of the simplicity of form characteristic of negotiable paper.' "