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BILLS AND NOTES--IRREGULAR INDORSERS--PAROL EVIDENCE

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RECENT DECISIONS

BILLS AND NOTES—IRREGULAR INDORSERS—PAROL EVIDENCE—Defendant signed a note otherwise than as maker. *Held*, error to exclude evidence that he was a co-maker. *Glick v. Lieb*, (App. Div. N.Y., 1944) 53 N.Y. Supp. (2d) 80.

This is merely a memorandum decision and the precise facts are, therefore, not wholly clear. The court says: "Assuming that respondent Lieb may be deemed to have signed the note on its face otherwise than as maker, within the meaning of Section 113 of the Negotiable Instruments Law (Sec. 63 in the original version), that provision of the statute does not conclusively establish that he is in fact an indorser; and it is error to exclude evidence to show he was a co-maker."¹ This language preceding the semicolon is no doubt accurate; if, however, the remaining part means that parol evidence is admissible, then the court's position is surely unfortunate and out of line with the current of authority.² The applicable section of the N.I.L. declares that "A person placing his signature upon an instrument otherwise than as maker, drawer or acceptor, is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity." This and the succeeding section were obviously designed to put an end to the deplorable confusion and conflict in the doctrines of the various courts, and generally the decisions under the N.I.L. have applied the sections with a spirit in keeping with that design. The decision in the principal case seems to be out of line and it is to be hoped that the Court of Appeals may have a chance to review the case.

R.W.A.

¹ *Glick v. Lieb*, (App. Div. N.Y., 1944) 53 N.Y. Supp. (2d) 80.

² "The purpose of the statute (the N.I.L.) is to exclude parol evidence and to make the written instrument control the rights of the parties. The statute fixing the legal effect of the instrument, parol evidence may not be received to give it a different effect." *Overland Auto Co. v. Winters*, 277 Mo. 425 at 433, 210 S.W. 1 (1919). See also *Murray v. Third Nat. Bank*, (C.C.A. 6th, 1916) 234 F. 481; *First Nat. Bank v. Bickel*, 143 Ky. 754, 137 S.W. 790 (1911); *Cooper v. Sonk*, 201 Mich. 655, 167 N.W. 842 (1918) (Cf. *City Nat. Bank v. Price's Estate*, 225 Mich. 200, 196 N.W. 429 (1923)). But see *Mercantile Bank v. Busby*, 120 Tenn. 652, 113 S.W. 390 (1908). Many cases are referred to in 37 A.L.R. 1222 (1925).