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BILLS AND NOTES -ACCELERATION PROVISION AS AFFECTING NEGOTIABILITY

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RECENT DECISIONS

BILLS AND NOTES — ACCELERATION PROVISION AS AFFECTING NEGOTIABILITY — In an action against the maker of a promissory note by an indorsee thereof, claiming to be a holder in due course, the question was the negotiability of the note. It contained a provision that "If the maker or anyone of the makers hereof shall fail to furnish additional security upon the demand of said company, said company is authorized to declare all indebtedness owed to it by the maker or makers hereof immediately due and payable without giving notice of said declaration." *Held*, the quoted language rendered the note nonnegotiable. *American Finance Corp. v. Bourne,* 190 Okla. 332, 123 P. (2d) 671 (1942).

No point seems to have been made of the fact that the language accelerating maturity was not limited to the note itself, but applied in terms to "all indebtedness." The conclusion was based upon the fact that the acceleration was at the uncontrolled option of "the company." Again, it should be observed that no point was made of the fact that acceleration was not at the election of "the holder." The court found support in *Harrison v. Fugatt,*[1] wherein it was declared that a note containing a provision "to the effect that if the holder of the note at any time deemed himself insecure he was privileged to apply other funds to the payment thereof if such funds should be available,"[2] and distinguished *Sommers v. Goulden,*[3] where it was concluded that a note was not made nonnegotiable by a provision that "the maker on demand would deposit additional collateral so that the market value thereof should always be at least 20 per cent more than the amount of the note."[4] This court, like the others making this distinction between acceleration provisions that allow the holder the privilege at his uncontrolled option and those requiring some default by the maker before the option may be exercised, gives no reason for any such differentiation. As has been pointed out,[5] the language of the Negotiable Instruments Law that permits the latter equally permits the former. If the former are objectionable because of supposed hardship upon the debtor, then all demand instruments ought to be stricken. The N. I. L., however, definitely permits them, as was true before the statute. Perhaps so many cases have reiterated the groundless doctrine applied in the principal case that only an amendment of the N. I. L. can overcome them. Authority for what seems to be the sound view, however, is not wholly wanting.[6]

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[1] 179 Okla. 367, 65 P. (2d) 1200 (1937).

[2] Id., 179 Okla. at 368, relying on Oklahoma State Bank v. First Nat. Bank, 108 Okla. 272, 236 P. 581 (1925).

[3] 147 Okla. 51, 294 P. 175 (1930).

[4] Headnote. The court relied on West Point Banking Co. v. Gaunt, 150 Tenn. 74, 262 S. W. 38 (1924).

[5] Aigler, "Time Certainty in Negotiable Paper," 77 UNIV. PA. L. REV. 313 (1929).

[6] See 31 MICH. L. REV. 272 (1932), noting Dart Nat. Bank v. Burton, 258 Mich. 283, 241 N. W. 858 (1932).

The principal case is also noted in 29 VA. L. REV. 227 (1942).