Michigan Law Review

Volume 40 | Issue 3

1942

BILLS AND NOTES - EFFECT OF UNREASONABLE DELAY IN PRESENTMENT FOR PAYMENT OF DEMAND NOTES AND BILLS OF EXCHANGE

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Recommended Citation
Lloyd M. Forster, *BILLS AND NOTES - EFFECT OF UNREASONABLE DELAY IN PRESENTMENT FOR PAYMENT OF DEMAND NOTES AND BILLS OF EXCHANGE*, 40 MICH. L. REV. 418 (1942).
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COMMENTS

BILLS AND NOTES — EFFECT OF UNREASONABLE DELAY IN PRESENTMENT FOR PAYMENT OF DEMAND NOTES AND BILLS OF EXCHANGE — The Negotiable Instruments Law, section 71, provides: "Where [the instrument] is payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof." This section raises some extremely complex problems: (1) Can the discharge of the contractual liability of the drawer and all indorsers of a demand bill of exchange be indefinitely postponed by successive negotiations, each

within a reasonable time after the last? (2) Can the liability of the drawer and all indorsers, once discharged by unreasonable delay, be revived by a subsequent negotiation and prompt presentment for payment? (3) What rights does the indorsee of a demand note, which has been outstanding an unreasonable time after its execution, acquire against his indorser upon prompt presentment, dishonor and due notice? These problems will be discussed in the light of other provisions of the Negotiable Instruments Law and similar provisions of the earlier English Bills of Exchange Act, of the decided cases, and of the opinions of writers.

I.

The law merchant, as expressed in the Bills of Exchange Act, states the rules applicable to these problems as follows: "Where the bill is payable on demand . . . presentment must be made within a reasonable time after its issue in order to render the drawer liable, and within a reasonable time after its indorsement, in order to render the indorser liable."[1] "Where a note payable on demand has been indorsed, it must be presented for payment within a reasonable time of the indorsement. If it be not so presented the indorser is discharged."[2] It is extremely doubtful whether the same answers will be reached under the Negotiable Instruments Law and the Bills of Exchange Act. A hypothetical case will illustrate.

A draws a demand bill of exchange on *X* in favor of *B* or order. It is thereafter indorsed successively to *C, D, E,* etc., until finally, when an unreasonable time after issue has passed, it is indorsed to *P*. Each negotiation has been within a reasonable time after the previous negotiation, and *P* promptly presents the bill for payment to *X*, who dishonors it. What are *P's* rights? It is clear under the Bills of Exchange Act that the drawer is discharged, as are those indorsers who negotiated the bill more than a reasonable time prior to *P's* presentment for payment. It is equally clear that *P* may charge with liability those indorsers who indorsed within a reasonable time of such presentment. The comparable provision of the Negotiable Instruments Law, section 61, states: "The drawer by drawing the instrument . . . engages that on due presentment the instrument will be accepted or paid, or both . . . and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder. . . ." It will be noted that "holder" rather than "holder in due course" is the wording. That *P* is a "holder" there can be no question.[3]

[1] 45 & 46 Vict., c. 61, § 45(2) (1882).

[2] Id., § 86(1).

[3] N. I. L., § 191: "'Holder' means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof."

If presentment has been made "within a reasonable time after the last negotiation[4] thereof," there can be no doubt of *A's* liability under the literal wording of the statute. It would seem to do extreme violence to the language of the statute to interpret "last negotiation" to refer to the transaction by which *A* passed title to the bill to *B*, or any transaction other than that of negotiating the bill to *P*. Logically, then, *A* is liable.[5]

P's rights as to *B* depend on the latter's indorsement contract. Section 66 of the Negotiable Instruments Law provides that every indorser "warrants to all subsequent holders in due course" matters of title, genuineness, etc. Then, in a new paragraph, "And, in addition, he engages that on due presentment . . . if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder. . . ." A question of construction arises as to whether "holders in due course" mentioned with reference to warranties are likewise the only class benefited by the additional engagement, or whether a broader class—"the holder"— was meant to be encompassed. If the former construction be adopted, it may well be that indorser *B* will not be liable to *P*, for section 53 of the Negotiable Instruments Law provides: "Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course." Thus it may be that the conditional engagement of *B* to pay upon dishonor does not extend to *P*. But if the construction be that this engagement extends to all holders, as does the drawer's contract, an action against *B* should give the same result as one against *A*.[6]

Although the first construction of section 66 might appear at first glance to give a desirable result, in that an indorser's contractual liability is not thereunder unduly prolonged, several considerations cast doubt upon the correctness of a construction which makes "holder" synonymous with "holder in due course." First, a consistent interpretation in the event of an action against *P's* immediate indorser would

[4] N. I. L., § 30: "An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof."

[5] The above discussion applies to bills of exchange other than checks. For the drawer of the latter, a special rule is laid down. N. I. L., § 186: "A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay."

[6] There is conflict in the decisions concerning the rule of presentment as to the indorsers of checks. They would clearly come within the general rule for bills of exchange (N. I. L., § 71) if § 186 did not expressly provide a different rule for the drawer of a check. Some authorities construe this section as withdrawing indorsers as well as drawers from the general rule. See BIGELOW, BILLS, NOTES, AND CHECKS, 3d ed., § 354 (1928); BRANNAN, NEGOTIABLE INSTRUMENTS LAW ANNOTATED, 6th ed., 1134 (1938).

require a similar result of no liability, for *P* is no more a holder in due course with reference to his immediate indorser than he is with reference to *B*, since by hypothesis *P* has taken the bill after a reasonable time from its issuance. Another difficulty in construing the additional engagement of section 66 to extend only to holders in due course lies in the resulting effect of such interpretation upon section 71. We have seen that this last section distinguishes bills of exchange from other negotiable instruments and lays down separate rules of presentment. But by applying the above construction to section 66, it appears that neither drawers of checks, indorsers of checks, nor indorsers of bills other than checks come within the rules for bills of exchange stated in section 71, with the result that drawers of bills other than checks are the only parties affected thereby. Moreover, the resulting effect would be to subject indorsers of checks and other bills to the same rule of presentment as exists for negotiable instruments other than bills. If this were the intended result, it would seem more reasonable that the framers, rather than reach the result by a circuitous application of sections 53, 61, 66 and 186, would have indicated the rule in some such direct and simple statement as, "presentment must be made within a reasonable time after its issue, *provided that to hold the drawer of a bill other than a check* presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof." Exceptions consume the rule as stated in section 71 if the construction is adopted that an indorser's conditional promise to pay on dishonor extends only to holders in due course. Further, it would appear that under this construction each indorser would be liable on his contract until a reasonable time after issue, at which time all indorsers, including *P's* immediate indorser, would be discharged simultaneously. This would seem an exceedingly strange and difficult rule to apply. No one could know with certainty when an unreasonable time after issue had passed, and during the doubtful period of time, no indorser would know whether or not he was making an indorser's contract and no indorsee would know whether all or none of the indorsers (there could logically be no other alternative) was a surety on the instrument.

At least one other argument against such an interpretation arises from an examination of sections 65 and 66. Section 65 provides, "Every person negotiating an instrument by delivery or by qualified indorsement, warrants" certain matters of genuineness, title, capacity, etc. No conditional engagement to pay upon dishonor by the drawee is made by a qualified indorser. Section 66 provides, "Every indorser who indorses without qualification, warrants to all subsequent holders in due course" approximately the same matters as section 65, followed by the conditional engagement to pay upon dishonor by the drawee. The plain meaning of the words is that the warranties of section 66

extend to holders in due course only. This would indicate that holders not in due course receiving the instrument by unqualified indorsement would derive no protection from warranties, while like parties taking under qualified indorsement would benefit by all warranties of section 65—a grotesque result unless the additional engagement of section 66 be construed to extend to all holders.

In the light of the above analysis, by giving a fair intendment to the wording of the Negotiable Instruments Law, the drawer *A* is liable to *P* to pay the face of the bill; *B*, *C*, etc. (including *P's* immediate indorser), will or will not be liable depending on whether an indorser's contract extends to all holders or only to holders in due course. As to this latter problem, the more reasonable construction, at least in view of arguments thus far advanced, indicates that an indorser's contract extends to all holders. But if we adopt this construction, we have seen that the drawer, *A*, and all indorsers will never be discharged from their contractual liability as long as each negotiation follows within a reasonable time after the previous negotiation.[7]

A further result of applying the construction that an indorser's contract extends to all holders may be illustrated through examination of another hypothetical case. Suppose *A* draws a demand bill on *X* in favor of *B* or order. *B* immediately indorses it to *C*, who holds it for an unreasonable time (both after negotiation to *C* and after issue), and then negotiates it to *P*, who promptly presents it to *X* for payment. *X* dishonors. What are *P's* rights? [8] *A's* liability was certainly once discharged by *C's* holding for an unreasonable time, but we have seen that *A's* contract extends to any holder who presents the bill for payment within a reasonable time after the last negotiation thereof. The reasoning under the first hypothetical case again applies to make *A* liable under the literal wording of the statute. The same must be said of *B* if his indorser's contract is construed to extend to all holders. Thus, the wording of the Negotiable Instruments Law indicates that the drawer's and indorser's liability, once discharged by an unreasonable holding, may be revived by subsequent negotiation and prompt presentment.[9]

In considering the third problem posed at the beginning of this comment, relative to the rights of an indorsee against his indorser on

[7] Subject to the running of the statute of limitations, held by some states to begin upon issuance of a demand instrument. See BRANNAN, NEGOTIABLE INSTUMENTS LAW ANNOTATED, 6th ed., 195-196 (1938).

[8] It is clear under the Bills of Exchange Act that *A* and *B* are both discharged and *C* is liable.

[9] The possibility is immediately suggested that a bill might be renegotiated for the express purpose of recharging parties once discharged by delay in presentment. Would it be necessary that consideration be absent from the inducement of the negotiation for the above result to obtain?

a demand note which has been outstanding an unreasonable time after its issue, it will be noted at the outset that under the Bills of Exchange Act the reasonable time for due presentment for payment of a note in order to charge an indorser is computed from the time of his indorsement. Thus, the indorsee of a note already outstanding an unreasonable time after issue under this rule will at least acquire contractual rights against his immediate indorser. But under the Negotiable Instruments Law, where the reasonable time for presentment (for payment of notes) is computed from the time of issue, it would seem impossible to make due presentment for purposes of charging any indorser once an unreasonable time after issue has passed. Therefore no indorser's conditional indorsement to pay, if the note is dishonored, would extend to the indorsee of a demand note outstanding an unreasonable time after issue. As noted before, this is the same result reached as to indorsers of bills of exchange where their contract is construed to run only to holders in due course, and most of the arguments against such a result apply equally to notes.[10]

2.

Authority on the problems discussed above is rather limited. Only two cases have been found which express views as to bills of exchange. In *Columbian Banking Co. v. Bowen*[11] a draft was sold by a Wisconsin bank to defendant payee on June 10, and he indorsed it and sent it on June 16 to *A* at Spokane, while he was on his way to San Francisco, and *A* upon arrival there on July 14 sold the draft to *P* bank, which sent it at once to a Chicago bank, which in turn presented it July 18 to the drawee bank. The latter refused payment, and due protest was then made. It was held that the delay between the date of *A's* receipt and his negotiation of the draft was immaterial, and that the draft was presented in time to hold the defendant on his indorsement. The court said,

> ". . . Formerly the length of time within which a bill of exchange might circulate without impairing such liability was more or less uncertain, rendering it very difficult to determine any one case by the decision in another. That difficulty was removed, so far as practicable, by the provision that only the time need be considered intervening between the last negotiation and the presentment."[12]

[10] Under both the N. I. L. and B. E. A. due presentment is unnecessary to charge the person primarily liable on the instrument, so that the rights of an indorsee against the maker or accommodated indorser of a note would, at least as to the principal amount, be unaltered by the passage of a reasonable time. B. E. A., § 87 (1); N. I. L., § 70.

[11] 134 Wis. 218, 114 N. W. 451 (1908).

[12] Id., 134 Wis. at 223.

But this language was dictum, since the court affirmed the lower court's finding that the lapse of time between *A's* receipt of the draft and negotiation thereof was not unreasonable in view of the circumstances.

In *Plover Savings Bank v. Moodie*[13] defendant indorsed a check to plaintiff bank, which, instead of mailing the check directly to the drawee, started it on a circuitous route by negotiating it to another bank. The delay resulted in dishonor. There was no unreasonable delay between any of the transfers, and plaintiff, having repaid its indorsee, sued defendant on the latter's contract. Defendant defended on the grounds that plaintiff had negligently started the check on a circuitous collection route. Judgment was entered for the plaintiff in the absence of proof of negligence. The court said further that the reasonable time for presentment is to be reckoned from the last negotiation of the paper.

> "...They [checks] pass from hand to hand, bank to bank, and city to city, and, within reasonable limits, it may be said that no matter how long they remain outstanding, so long as one negotiation properly follows another and the checks are in fact in circulation the statute requires us to hold that the indorser is not legally prejudiced by the consequent delay in their presentation for payment."[14]

No case in point nor text discussion has been found on the problem posed concerning notes. The critical issue in this problem would seem to be whether it is possible that a given length of time after issue could be unreasonable for purposes of holding an early indorser and yet be reasonable for purposes of holding a later indorser. Logically, it would be difficult to sustain an affirmative answer, but practically, it would not be surprising to find a judge or jury taking into consideration in determining the reasonableness of the entire time after issue the time between negotiation by the indorser sought to be charged with liability and presentment for payment by the plaintiff indorsee. In so far as this is done, it will constitute an inclination toward the English rule on this point.

3.

Text writers are in substantial disagreement as to the correct interpretation of the Negotiable Instruments Law relating to the duration of indorsers' and drawers' liability. Norton criticizes the above cases as being opposed to the purpose of the act as gathered from sections other than 71, and reaches the conclusion that:

> ". . . it would seem reasonable to construe section 71 of the act as laying down a rule applicable only to the liability of the indorser

[13] 135 Iowa 685, 110 N. W. 29, 113 N. W. 476 (1907).
[14] Id., 135 Iowa at 689-690.

who is a party to the last negotiation, or as declaring the rule that presentment must be made within a reasonable time after the negotiation of the instrument by the person sought to be charged. . . . So construed, the statute declares the former rule of the law merchant as stated in the English Bills of Exchange Act. . . ."[15]

Professor J. D. Brannan of the Harvard Law School, writing in 1913, labeled the logical results of section 71 as unjust and contrary to business usage in leading to liablity of drawers and indorsers of general bills of exchange and to liability of indorsers of a check, once discharged by an unreasonable delay, as a consequence of a subsequent negotiation and prompt presentment. He recommended that the last paragraph of section 71 be amended as follows: "Where it is payable on demand, presentment must be made within a reasonable time *after its indorsement in order to charge the indorser, and in case of a bill of exchange presentment for payment must be made within a reasonable time after its issue in order to charge the drawer.*" Professor Brannan suggested that, "Probably in the effort at condensation [by the framers of the Negotiable Instruments Law] the effect of the condensed statement was overlooked."[16]

In the latest edition of his *Negotiable Instruments Law*, Professor Brannan has placed another interpretation on section 71. He states that while the dicta of the above two cases cast some doubt on the effect of section 71, "a careful examination of the statute and the facts of the cases will disclose that the proper interpretation of the N. I. L. is similar to the B. E. A. on the point involved. . . ."[17] The author reaches this result by construing the engagement of the second paragraph of section 66 as made only to holders in due course. Thus, when a reasonable time after issue has passed, all indorsers except the holder's immediate indorser are discharged. It is said, without explanation, that due diligence gives rights only against the holder's immediate indorser as provided in sections 71, 66 and 65(4). It is not clear what the author had in mind in this respect, for none of these sections contains language which would distinguish immediate indorsers from other indorsers, and section 65 applies only to holders taking under qualified indorsement. Further, the author seems to have overlooked the fact that there is no room for construing the drawer's contract to extend only to holders in due course. Although the additional engagement of section 66 is construed by him to apply only to holders in due course,[18]

[15] NORTON, BILLS AND NOTES, 4th ed., 500, note 2 (1914).

[16] Brannan, "Some Necessary Amendments of the Negotiable Instruments Law," 26 HARV. L. REV. 493, 588 at 590, 591 (1913).

[17] BRANNAN, NEGOTIABLE INSTRUMENTS LAW ANNOTATED, 6th ed., 854 (1938).

[18] Id. 855.

the writer maintains that the warranties of section 66 apply to any holder[19]—a completely anomalous position.

Bigelow suggests that section 144 of the Negotiable Instruments Law may throw light on the problem.[20] This section deals with presentment for acceptance and provides, "the holder of a bill . . . must either present it for acceptance or negotiate it within a reasonable time. If he fail to do so, the drawer and all indorsers are discharged." It is argued that this section results in liability of the drawer and all indorsers so long as each negotiation follows within a reasonable time of the preceding negotiation,[21] but that once an unreasonable time has elapsed so as to discharge prior parties their liability can never be resumed. It is then further argued here that the framers could not have intended a different rule for presentment of demand bills for payment than for acceptance, and therefore *P*[22] can have no rights against *A* or *B*. It is submitted that this reasoning is doubly vulnerable even though we accept the premise that the same rule for presentment for payment and for acceptance was intended. First, it is by no means clear under this section that liability once discharged cannot thereafter be revived as to subsequent holders. The section does not expressly specify as to whom the drawer and all indorsers are discharged. The reference might be to all subsequent parties or, just as well, only to the party who fails to present the bill for acceptance or to negotiate it within a reasonable time. Secondly, there is no reason for saying that the construction of section 144 shall control or lead to the proper construction of section 71 rather than vice versa. Indeed, if we assume the two rules must be the same, it might be more reasonably argued that section 71, being the more explicit of the two, should control the construction of section 144. The answer to the problem must hence be found elsewhere.

4.

Ultimately we must face the question why the framers of the Negotiable Instruments Law did not adopt the language of the Bills of Exchange Act. It is clear from the many clauses copied verbatim into the Negotiable Instruments Law that the English act received careful consideration in the framing of every section of the American act. A general answer is found in the preface to the fourth edition of Crawford's *Annotated Negotiable Instruments Law*.[23] The author

[19] Id. 815.

[20] BIGELOW, BILLS, NOTES, AND CHECKS, 3d ed., § 355 (1928).

[21] The result heretofore reached as to the first hypothetical case under a literal interpretation of the N. I. L.

[22] In such a case as the second hypothetical.

[23] Mr. Crawford was in charge of drafting the N. I. L.

therein quotes Lyman Brewster, who was for a number of years president of the Conference of Commissioners on Uniform Laws:[24]

> "'The framers of the English Act had followed the form of the Continental Codes . . . that is to say, they dealt primarily with bills of exchange, and then applied those provisions, so far as they were applicable, to promissory notes, adding provisions which were peculiar to the latter class of instruments. The draftsman of the American Act deemed this form unsuitable to American conditions, where the use of bills of exchange is not so extensive as it is in Europe, and where most of the cases related to other kinds of negotiable instruments; and he adopted a form of his own, which grouped together the provisions applicable to all kinds of negotiable instruments, and then collected, under separate articles, the provisions specially affecting the different classes.'"

Thus in the Bills of Exchange Act, the rule for presentment of demand notes is found in one part of the act, while that for presentment of bills is in another, and that for checks in a third. In the Negotiable Instruments Law, however, rules for presentment for payment of all negotiable instruments (with the exception previously noted of the provision as to the drawer of a check) are contained in one section (section 71).

Specifically, however, the only material changes in language are in the starting points from which a reasonable time begins to run in determining due presentment. The parties for whom we are interested in determining this starting point, in order to charge them with liability, are indorsers of notes,[25] drawers and indorsers of bills, and drawers and indorsers of checks. With reference to indorsers of notes, reasonable time is computed from the time of indorsement under the Bills of Exchange Act,[26] and from the time of issue under the Negotiable Instruments Law;[27] drawers of bills, in general, from the time of issue under the B. E. A.,[28] and from the last negotiation under the N. I. L.;[29] indorsement of bills in general, from the time of indorsement under the B. E. A.,[30] and from the time of last negotiation under the N.I.L.;[31] drawers of checks, from the time of issue under both acts;[32] indorsers

[24] CRAWFORD, ANNOTATED NEGOTIABLE INSTRUMENTS LAW, 4th ed., iii-iv (1918). The quotation is stated to be from an address by Mr. Brewster, no other information being given.

[25] Due presentment is not necessary to charge the maker of a note. See note 10, supra.

[26] B. E. A., § 86 (1).

[27] N. I. L., § 71.

[28] B. E. A., § 45(2).

[29] N. I. L., § 71.

[30] B. E. A., § 45(2).

[31] N. I. L., § 71.

[32] B. E. A., § 74(1); N. I. L., § 186.

of checks, from the time of indorsement under the B.E.A.,[33] and from the time of last negotiation under the N. I. L.[34] As was seen previously, the possible explanations for making these changes in respect to bills are: (1) There was no intent to change the substantive law, and the application of section 71 to such problems as are under consideration was the unforeseen result of a condensed statement of the law. (2) The framers intended to state a rule applicable only to liability of an indorser who was a party to the "last negotiation." (3) "Last negotiation" refers to that effected by the person sought to be charged. (4) Although section 71 of the Negotiable Instruments Law selects the last negotiation as the time from which to compute a reasonable time for presentment, other sections limit liability of indorsers to cases where presentment has been within a reasonable time after issue. (5) The wording of section 71 was completely intentional, and the results of a natural construction were anticipated. The arguments upon which the first four explanations are based are largely the same—the unreasonableness of the literal rule as applied to such problems as are under consideration, especially in view of the general intent to limit secondary liability by requiring presentment within a reasonable time; the appealing fairness of the common-law rule as expressed in the Bills of Exchange Act; the fact that, absent very compelling reasons, the framers avoided radical changes in the law as it existed prior to the Negotiable Instruments Law. In discussing the changes made by section 71, Mr. Crawford fails even to mention changes made with regard to the starting point for calculating a reasonable time.[35]

Arguments against the first four explanations and in favor of the fifth are numerous. To counteract the objection that Mr. Crawford makes no mention of the change of starting point of reasonable time, there is the fact that he cites the *Columbian* case,[36] and quotes the lan-

[33] B. E. A., §§ 73, 45(2).

[34] N. I. L., §§ 185, 71. This is true of indorsers of checks unless § 186 is construed to withdraw checks entirely from the operation of § 71.

[35] "Changes made by the statute.—This section changed the law of New York, which prior to the statute was, that a promissory note payable on demand with interest was a continuing security, on which an indorser remained liable until an actual demand, and the holder was not chargeable with neglect for omitting to make such demand within any particular time. . . . The object intended to be accomplished by the statute was to do away with the distinction between notes, or bills, payable on demand, which Merritt v. Todd, [23 N. Y. 28 (1861)], had created [a distinction between interest and non-interest bearing paper], and to leave the question of their reasonable presentment for payment, in order to charge the parties to them, as one for the determination of the court upon the facts." CRAWFORD, ANNOTATED NEGOTIABLE INSTRUMENTS LAW, 4th ed., 141 (1918). It is to be noted that the change desired might have been effected equally as well by adopting the English rule.

[36] Columbian Banking Co. v. Bowen, 134 Wis. 218, 114 N. W. 451 (1908), discussed supra at note 11.

guage of that case above quoted in this comment with no evidence of disapproval. Moreover, the reasoning in that case in favor of the literal rule of section 71 is not without merit, for the position of the indorsee of a bill is clearly more certain and secure when it is only necessary that the indorsee present it promptly in order to charge the drawer and all indorsers as sureties. The rule may be said to increase the potential indorsee's willingness to accept a bill and thereby promote negotiability. The careful preparation made by the framers militates against the conclusion that they were ignorant of the variation from the Bills of Exchange Act or of the logical import of the language. "When completed, the draft, with my notes, was submitted to the sub-committee, who printed it and sent copies to each member of the conference, and also to many prominent lawyers and law professors, and to several English judges and lawyers, with an invitation for suggestions and criticisms. . . . the Commissioners . . . went over it section by section, and made some amendments therein. . . ."[87] Nor does the English rule have the universal acclaim among legislators who disapprove section 71 that it has among text writers. Of six states that have amended section 71, only one (Vermont) has adopted the English rule.[88] Moreover, there seems to be a complete absence of an alternative construction to the natural construction that comes within the interpretative limits of the language of the statute. To say that last negotiation means issue, or defendant's negotiation, or that the rule applies only when the indorser sued was the last indorser, seems clearly to infer an intent that was never in the minds of the framers. To say that they were completely ignorant of any change from the English rule is to discredit unjustly their diligence, well proven by the adoption of their model statute in forty-eight states.

Lloyd M. Forster

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[87] CRAWFORD, ANNOTATED NEGOTIABLE INSTRUMENTS LAW, 4th ed., xi (1918) (preface to first edition).

[88] BRANNAN, NEGOTIABLE INSTRUMENTS LAW ANNOTATED, 6th ed., 42 (1938).