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The Status of an Accommodation Indorser Under Section 29 of the Uniform Negotiable Instruments Law

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reasonably worth $2,000, petitioner's conduct is such that the court was justified in doubting her motives. Out of 1,650,000 outstanding shares, she alone, with a mere 50 shares, objected to the corporate action and asked for an appraisal. She could have received a very handsome sum by selling on the open market, which sum, while not ten times the value of her stock, would nevertheless have given her more than a reasonable return on her investment. And, while it is settled that the number of shares held or the good faith of the shareholder is irrelevant, still ". . . the court is not required to blind itself to reality and permit the proceeding to go beyond what is necessary to award petitioner fair value for her stock and become a device for obtaining more than fair value." [33]

While the *Marcus* case was decided in a very practical and realistic manner, it could just as well have gone the other way, there being no set channels to guide or limit the appraisers and judges. Though market value has been emphasized continuously throughout the cases, a problem arises when there is no listing on an exchange or any transactions on the open market. A question also arises whether the courts might not take a contrary view to that taken in the *Marcus* case if the dissenting stockholder owned, instead of 50 shares, 500,000 shares, or some other figure. While the controversies arising on the subject are not many, still it appears that the legislature should set forth certain general standards which would aid immeasurably in clarifying the situation, and it is submitted that Stock Corporation Law, Section 21, be amended to accomplish this result.

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THE STATUS OF AN ACCOMMODATION INDORSER UNDER SECTION 29 OF THE UNIFORM NEGOTIABLE INSTRUMENTS LAW

Since the adoption of the Uniform Negotiable Instruments Law in 1896 by the Commissioners on Uniform State Laws in National Conference and its subsequent enactment by all the states, one of its provisions, Section 29,[1] has been the subject of much criticism;[2] and the source of litigation, much of which is concentrated upon the

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[33] *Id.* at 729, 79 N. Y. S. 2d at 80.

[1] N. Y. NEGOTIABLE INSTRUMENTS LAW § 55. "An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party."

[2] Ames, *The Negotiable Instruments Law,* 14 HARV. L. REV. 241, 242 (1900); Brannon, *Some Necessary Amendments of the Negotiable Instruments Law,* 26 HARV. L. REV. 493, 494 (1913); Brewster, *Proposed Amend-*

accommodation indorser. This litigation concerning the accommodation indorser will be examined in this article from the following viewpoints: What constitutes an accommodation indorser; his liability to the accommodated party; his liability to a holder other than the accommodated party; and his rights after payment of the instrument. No attempt will be made to limit this to the law of any particular jurisdiction for this is a uniform law. Wherever possible, however, the New York cases in point will be cited.

What Constitutes an Accommodation Indorser. The purpose of an accommodation indorsement is the loan of one person's name, the indorser, to another, the accommodated party, so that the latter may transfer the instrument on the strength of the reputation of the former.[3] Yet the signature in and of itself is of no legal significance. It is its later sale for value that attaches legal consequences to the act.[4]

Section 29 of the U. N. I. L. states: "An accommodation party is one that has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person." The wording of this section has been vigorously attacked as inaccurate and misleading.[5] One naturally thinks of an accommodation party as one who has signed for the accommodation of another, without receiving any consideration for so signing. But the courts have construed the words "without receiving value therefor" as applying to the word "instrument" rather than to the word "signed" or to the clause following, "and for the purpose of lending his name to some other person." A comma shuts off the words "without receiving value therefor" from the clause which follows it, and as a matter of English grammar the word "therefor" must refer to the nearest appropriate word preceding it, which is "instrument." Thus it has been held that one may be an accommodation party even if he received value for signing as long as he has not received value from the instrument itself.[6] Specifically,

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ments to the Uniform Negotiable Instruments Law, 22 ILL. L. REV. 815, 824 (1928); Greeley, *The Uniform Negotiable Instruments Law,* 2 ILL. L. REV. 146, 150 (1907); Hening, *The Uniform Negotiable Instruments Law,* 29 U. OF PA. L. REV. 470, 486 (1911); Mack, *Some Suggestions on the Proposal to Enact the "Uniform Negotiable Instruments Law" in Illinois,* 1 ILL. L. REV. 592, 597 (1907); Turner, *A Factual Analysis of Certain Proposed Amendments to the Negotiable Instruments Law,* 24 ILL. L. REV. 150, 159 (1929).

[3] Morrison v. Painter, 170 S. W. 2d 965 (Mo. App. 1943).

[4] Runciman v. Brown, 223 Mich. 298, 193 N. W. 880 (1923); Dean v. Lyde, 223 Ala. 394, 136 So. 857 (1931); Sabine v. Paine, 166 App. Div. 9, 151 N. Y. Supp. 735 (2d Dep't 1915).

[5] Ames, *supra* note 2.

[6] Carr v. Wainwright, 43 F. 2d 507 (C. C. A. 3d 1940); McGhee Inv. Co. v. Kirsker, 71 Colo. 137, 204 Pac. 891 (1922); Morris County Brick Co. v. Austin, 79 N. J. L. 273, 75 Atl. 550 (1910). *Contra:* Stauffer v. Ti Hang Lung and Co., 29 Cal. App. 2d 121, 84 P. 2d 209 (1938).

it has been held that one who indorsed a note without consideration "to make it look better," [7] one who indorsed a note before delivery to give credit,[8] the president and directors of a bank who indorsed a note so that the bank might secure cash,[9] a principal who indorsed a note of a customer taken by his agent who was responsible to the principal for the cash price,[10] a wife that indorsed a note given to her husband by another as salary,[11] and a payee of a note that indorsed it only so that the maker could raise funds [12] are all accommodation indorsers. On the other hand, one that indorsed the note of his debtor so as to get the proceeds,[13] a corporation that indorsed a note in the adjustment of claims against it and was thereby released from existing liabilities,[14] and a corporate indorser engaged in the same business as the maker with stockholders and officers in common [15] are not accommodation indorsers.

A manufacturing corporation has no power to make or indorse notes for the accommodation of others,[16] nevertheless, a corporation is bound if it makes or indorses commercial paper for the accommodation of another in respect to a bona fide holder who discounts it before maturity on the faith of its being business paper.[17]

In determining whether or not one is an accommodation indorser, the courts have uniformly held that parol evidence is admissible.[18] It is likewise admissible in determining which party was accommodated.[19]

In view of the foregoing, it can be seen that the critical point and the only point to be established in deciding if one is an accommodation party is whether or not consideration was received by the indorser *from the instrument;* the fact that consideration might have been received for the signature is not relevant.

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[7] Pirtle v. Johnson, 145 Kan. 8, 64 P. 2d 2 (1937).
[8] Myrtilles, Inc. v. Johnson, 124 Conn. 177, 199 Atl. 115 (1938).
[9] Davis v. Holt, 154 S. W. 2d 595 (Mo. App. 1942).
[10] Ford v. Moreland, 96 W. Va. 225, 122 S. E. 652 (1924).
[11] Middleborough Nat. Bank v. Cole, 191 Mass. 168, 77 N. E. 781 (1906).
[12] Mechanics and Farmers Savings Bank v. Katterjohn, 137 Ky. 427, 125 S. W. 1071 (1910).
[13] Commercial Nat. Bank v. Ashley Corp., 133 S. C. 304, 130 S. E. 890 (1925).
[14] *In re* Prospect Leasing Co., 250 Fed. 707 (C. C. A. 2d 1918).
[15] Port Washington v. Polonia Phonograph Co., 180 Wis. 71, 192 N. W. 472 (1923).
[16] Nat. Park Bank v. Ger. Am. M. W. S. Co., 116 N. Y. 281, 22 N. E. 567 (1889).
[17] Mechanic's Banking Assoc. v. N. Y. & S. White Lead Co., 35 N. Y. 525 (1866).
[18] Palmer v. Oscar Dowling Food Products Co., 174 La. 923, 142 So. 127 (1932); Lee v. Hildebrand, 119 Neb. 717, 230 N. W. 673 (1930); Luikart v. Meierjurgen, 124 Neb. 816, 248 N. W. 379 (1933); Goldberg v. Albert, 161 Misc. 281, 291 N. Y. Supp. 855 (Mun. Ct. 1936).
[19] Goodman v. Gaul, 244 Mass. 528, 138 N. E. 910 (1923).

Liability to Accommodated Party. The accommodated party is he to whom the credit is lent, and the fact that another benefits thereby does not make it accommodation paper as to him.[20] Invariably an accommodation indorser is *not* liable to the party accommodated.[21] Nor does he owe the accommodated party any duty to pay the debt for both the accommodating and the accommodated parties are severally as well as jointly bound to pay the instrument.[22] Nevertheless, at times public policy will estop the accommodation indorser from asserting his status in a suit by the accommodated party.[23] The usual case where this estoppel is permitted is one in which a bank is the accommodated party. The note is an apparent asset of the bank, and permitting the defense of no liability to the accommodated party would work a fraud on the depositors of the bank.

Liability to Holder Other Than Accommodated Party. Much of the litigation under this section is a direct result of the use of the phrase in Section 29, "Such a person is liable on the instrument *to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party.*" The Indiana court in a well reasoned decision interpreted it as follows:

> There is a conflict in the decisions on this point but we believe that . . . section 29 of the act, properly construed, merely means that absence of consideration between the accommodated and accommodating parties does not in itself constitute a defense against a holder even though he knew of it when he became a holder. Want of consideration is an infirmity within the meaning of section 52, cl. 4 of the Negotiable Instruments Act . . . , and one who becomes a holder with knowledge of this infirmity cannot be a holder in due course. The effect of section 29 is to make an exception to the foregoing when the want of consideration of which the holder has knowledge is between the accommodated and accommodating party. Stated another way, one who is in other respects a holder in due course does not lose his rights as a holder in due course against a party to the instrument even though he knew that such party was an accommodation party. But we do not think that section 29 can, in the light of other sections of the Uniform Negotiable Instruments Act, be construed to allow a holder for value, not otherwise a holder in due course, to recover against an accommodation party.[24]

The consideration that supports the liability of the accommodation indorser is the consideration that moves to the accommodated party[25] unless the indorsement is placed there after completion and

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[20] Brundage v. Proctor, 304 Ill. App. 253, 26 N. E. 2d 156 (1940).
[21] 5 U. L. A. § 29, n. 81.
[22] First and Citizens Nat. Bank v. Hinton, 216 N. C. 159, 4 S. E. 2d 332 (1939).
[23] Tarrytown Nat. Bank and Trust Co. v. McMahon, 250 App. Div. 739, 293 N. Y. Supp. 513 (2d Dep't 1937); Brand v. Kortle, 128 Tex. 488, 99 S. W. 2d 285 (1937).
[24] National City Bank v. Parr, 205 Ind. 108, —, 185 N. E. 904, 906 (1933).
[25] Chase v. Du Pont National Bank, 277 Fed. 235 (C. C. A. 3d 1922).

delivery between the original parties, in which event it must have the support of a new and independent consideration or be further negotiated.[26]

The holder can sue the accommodation indorser without first suing the accommodated party.[27] Nor is it necessary that he first exhaust any collateral security before proceeding against the accommodation indorser.[28] But where the security for the instrument is released by a holder to the disadvantage of the accommodation indorser, he is not thereby totally exempted from liability but is merely discharged *pro tanto*.[29]

An indorser of a note who signs for the accommodation of the payee is not liable to the payee's transferee after maturity.[30] He is liable, however, to a holder after maturity who takes from a holder for value.[31] This is for the reason that transfer after maturity operates as an assignment, the assignee obtaining the rights that the assignor had and conversely being subjected to the same defenses. The payee, being the accommodated party, could not collect from the accommodation indorser, consequently his assignee cannot. The holder for value could collect from the accommodation indorser, therefore his assignee can.[32]

Generally speaking then, a holder has the same rights against an accommodation indorser as he would have against a regular indorser. He is also subject to the same defenses.

Rights of Accommodation Indorser After Payment. The accommodation party, having made payment, may sue the accommodated party for reimbursement since the relation between them is in effect that of surety and principal.[33] This is true even if the accommodated party signed "without recourse" [34] provided that the accommodated party gave his assent to the accommodation.[35]

Generally successive accommodation indorsers have no right to contribution since they are not treated as co-sureties.[36] Prima facie they are liable to one another in the order of their signatures; but if they indorse under an agreement to be equally liable, contribution will lie.[37] This agreement may be shown by parol evidence and it

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[26] McAfee v. Jeter & Townsend, 147 S. W. 2d 884 (Tex. Civ. App. 1941).
[27] Dexter Bank v. Simmons, 204 S. W. 837 (Mo. App. 1918) (however, he must make demand, give notice and, at times, protest in conformity with §§ 70, 89, and 152 of the Negotiable Instruments Law).
[28] Miller v. Leavitt, 226 Mass. 330, 115 N. E. 431 (1917).
[29] Marine Trust Co. v. Willis, 240 App. Div. 176, 269 N. Y. Supp. 204 (4th Dep't 1934).
[30] Robinson v. Linn, 155 Ore. 591, 65 P. 2d 669 (1937).
[31] Miles v. Dodson, 102 Ark. 422, 144 S. W. 908 (1912).
[32] BRITTON, BILLS AND NOTES § 236 (1943).
[33] 5 U. L. A. § 29, n. 171.
[34] Davis v. Holt, 154 S. W. 2d 595 (Mo. App. 1942).
[35] Nolan v. H. E. Wilcox Motor Co., 137 Tenn. 667, 195 S. W. 581 (1917).
[36] Egbert v. Hanson, 34 Misc. 596, 70 N. Y. Supp. 383 (1901).
[37] Plumley v. Hinton, 76 W. Va. 635, 87 S. E. 94 (1915).

may be implied from the circumstances.[38] Under the rule of *Pain v. Packard*[39] the accommodation indorser can put the risk of any subsequent insolvency on the holder by giving him notice to sue the principal debtor who is then solvent.

Conclusion. In view of the foregoing it can be seen that the problems that stem from an accommodation indorsement are primarily problems that are a direct result of vague or misleading terms and phrases in the section. For this reason many suggestions have been offered that would attempt to make the meaning clearer;[40] of these, probably the best is that proposed in the *Code of Commercial Law* which was jointly drafted by the American Law Institute and the National Conference of Commissioners on Uniform State Laws. The suggestion is that the present Section 29 be replaced by the following:

(1) An accommodation party is one who signs the instrument as maker, drawer, acceptor or indorser but as surety for another party thereto. His obligation is supported by any consideration or value for which it is taken.
(2) An accommodation party is not liable to the party accommodated, and if he pays the instrument has a right of recourse thereon against such party. He is otherwise liable even though the holder knows of the accommodation.[41]

Its main attributes are that it concisely includes the pertinent material in Section 29 along with much of the decisional law applicable to it and at the same time resolves most of the ambiguities of the existing section.

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[38] Gambell v. McKean, 28 Ariz. 427, 237 Pac. 196 (1925).
[39] 13 Johns. 174, 7 Am. Dec. 369 (N. Y. 1816).
[40] See note 2 *supra*.
[41] CODE OF COMMERCIAL LAW Art. III, § 517 (proposed final draft 1948). (Article III is a complete revision of the Negotiable Instruments Law.)