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## INDORSEMENT AFTER MATURITY AND THE "NEW BILL" DOCTRINE

by

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Should subsequent presentment for payment and notice of dishonor be required in order to charge one who indorses a negotiable instrument after maturity? It will be assumed that the instrument by its terms is a time and not a demand instrument, and that the indorsement is by the one holding the instrument at maturity.

When a negotiable instrument is indorsed after maturity, there is an assignment of the chose in action possessed by the one holding the instrument when it became due. It has been felt that under such circumstances the bill or note should continue to be governed by the principles relating to negotiable paper. Such is the view of the N. I. L., which provides, in Section 47, that an instrument negotiable in its origin continues to be such until discharged or restrictively indorsed; and, in Section 7, that an instrument issued, accepted, or indorsed when overdue is payable on demand.

In general the position that negotiability continues after maturity is undoubtedly sound. If the requirement of subsequent presentment and notice, however, is to be made, it is an apt illustration of

a "trap for the unwary". Normally these steps are taken at maturity. As to parties already upon the instrument, such action can have no effect if taken later. It is altogether unlikely that a taker after maturity will have the knowledge, or that it will occur to him, that there is a possibility of producing any legal effect as to any person through such action at a later date.

In striving to overcome the obstacles felt to lie in the way of actions by indorseees of bills and notes, it was reasoned that every indorsement is "as a new bill", and that, therefore, the indorsee should be permitted to proceed upon it. Some felt that the indorser after maturity had assured the indorsee that the money was still to be had upon demand, notwithstanding the inferences to be drawn from passage of the time originally set for payment. *Stockman v. Riley*, 13 S. C. Law 398, 399 (1823). Others stated that the requirement of presentment and notice was justified upon the ground that, as the instrument was already overdue when negotiated, the indorsement amounted to an authority to endeavor to collect through the use

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of reasonable diligence. *Gray v. Bell*, 31 S. C. 67, 44 Am. Dec. 277 (1845), (second appeal) 37 S. C. Law 71 (1846).

Only at the original date of a negotiable instrument, however, should presentment and notice be required. As to any later necessity for such action, resort should be had to the maxim commencing "When the reason for the rule ceases". In view of the want of any sufficient reason for requiring in his behalf subsequent present-

ment and notice, the position of the indorser after maturity should be the same as that of an indorser whose liability has been fixed by such action taken at maturity. As to the indorser after maturity, as in connection with proceedings against secondary parties generally, no steps to collect first from the primary party should be required. In future legislation the requirement of presentment for payment and notice of dishonor in order to charge an indorser after maturity should be eliminated.

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