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Personal Property

Joseph Kalk

is no authority to confess judgment on a discharged instrument. After the payment by the co-maker, the note became merely evidence in a suit for contribution.

FLETCHER R. ANDREWS

PARTNERSHIPS

Because of the lack of significant opinions rendered on Partnerships during the period covered by this Survey, Mr. Hugh Ross has not submitted an article this year.

THE EDITORS

PERSONAL PROPERTY

GIFTS

In a recent probate court controversy, it developed that the decedent had loaned the litigants the sum of $3,500.00, secured by a note and mortgage, bearing no interest, payable at the rate of $50.00 per month, with the understanding that should the decedent die before the debt had been fully paid, the balance should be "forgotten." Decedent delivered these papers to his attorney and such a notation was made upon them. Nowhere was this condition found in the note or mortgage, and the decedent made no mention of this in the will which he executed a short time thereafter.[1]

The decedent kept the first part of his bargain by dying before the debt had been repaid. The litigants tried to force him to "live up" to the rest of the agreement, *viz.*, cancel the balance of the debt.

After the probate court determined that there was no trust created here, the basic question was whether a valid gift had been made.

The court rejected the "gift" theory on the reasoning that if there were a gift, said gift would be decreased at the rate of $50.00 per month, and, if fate had smiled upon the decedent, he would have lived long enough so that he would have given away nothing. In view of this, the court held that the decedent had not parted with dominion over the note and mortgage, and there was, therefore, no gift.

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1. UNIFORM NEGOTIABLE INSTRUMENTS LAW § 1(2).
2. 162 N.E.2d 237 (Ohio C.P. 1959).
3. There was also a provision releasing the makers from further payments in the event of the payee's death.
4. UNIFORM NEGOTIABLE INSTRUMENTS LAW § 119(5).
5. 155 N.E.2d 521 (Ohio C.P. 1957).

Of some interest in this case is the fact that the arrangements between the litigants and the decedent were handled, or mishandled, by a young law clerk who had not yet taken his bar examination.

Chattel Mortgages

A chattel mortgagee, who levied execution on the mortgaged property as the property of the mortgagor, was held to have waived his mortgage lien, and a repairman who had only a common-law artisan's lien, which was admittedly second to such chattel mortgage, was promoted to the position of first and best lien. Therefore, the repairman was entitled to priority over the mortgagee.[2] This appears to be an overly technical approach. Perhaps it can best be justified on the basis that this decision allowed the "small" repairman to prevail over the "big" finance company, that is, if your sentiments run that way.

Bailments

The "old fur coat" case with a slightly new twist was neatly handled by the Ohio Supreme Court last year.[3] The owner of a coat delivered it to a bailee for storage. In an effort to save storage charges, the coat was valued at the minimum value of $100.00. The bailee delivered it to a sub-bailee, and as the usual pattern goes, it was taken by "persons unknown." The owner was fully indemnified for the actual value of the coat by her own insurer, and the insurer sought to recover this amount, which exceeded $100.00, from the sub-bailee.

The supreme court reasoned that if no privity existed between the owner and the sub-bailee, then such sub-bailee owed no duty to the owner. On the other hand, if privity existed so as to allow recovery, this privity encompassed *all* of the terms of the contract, including the limitations on liability. On this reasoning, the court limited the liability of the sub-bailee to the same extent as it would limit the liability of the bailee, namely, $100.00.

Certificate of Title

Several cases discussing the ramifications of Ohio's certificate of title law were decided last year. They are discussed in another section of this Survey.[4]

Joseph Kalk

1. *In re* Matter of Gardner, 162 N.E.2d 579 (Ohio P. Ct. 1959).
2. Sun Finance Co. v. Hadlock, 162 N.E.2d 131 (Ohio Ct. App. 1959). See also discussion in *Sales* section, p. 417 *infra.*
3. United States Fire Ins. Co. v. Paramount Fur Service, Inc., 168 Ohio St. 431, 156 N.E.2d 121 (1959).
4. See *Sales* section, p. 416 *infra.*