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Commercial Law: Negotiable Instruments

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poration's 'being admitted to do business in the state'; that the amount thereof is determined by the capital employed in the state, but is not to exceed $2,500; and that the required payments on increases of capital stock were merely to prevent a corporation from entering with the minimum tax of $10 and thereafter increasing its capital without paying the additional tax up to the maximum."

NEGOTIABLE INSTRUMENTS

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Payment of a negotiable instrument in due course by or on behalf of the principal debtor is one of the means expressly enumerated in the negotiable instruments law of discharging the instrument.[1] Under the statute payment is made in "due course" when it is made "at or after maturity of the instrument to the holder thereof in good faith and without notice that his title is defective."[2] A payment before maturity to one not the "holder" does not discharge the instrument. Payment even after maturity to one not the holder is at the risk of the party making the payment.[3] In the application of these principles it is clear that the burden of proof rests upon the party who pleads the defense of payment to show by a preponderance of the evidence that payment of the instrument claimed to be discharged has been made to one authorized to receive payment on behalf of the holder.[4] It is not incumbent upon the holder who sues on a note to prove non-payment.

Egert v. Stassi[5] was a case merely involving issues of fact in the application of these principles. Plaintiff sued as the transferee-holder of a note for $5,000.00 executed by defendant payable to a corporation. Defendant pleaded payment on the day before maturity by a check payable to a New Orleans bank. Plaintiff denied that such payment was in satisfaction of the note or that it had any connection with defendant's personal indebted-

1. La. R.S. 7:119(1) (1950).
2. La. R.S. 7:88 (1950).
3. See, for example, Henry Knight & Son, Inc. v. Shall, 9 La. App. 98, 119 So. 80 (1928) applying the well-settled rule that a person paying one not in possession of the note and without requiring its delivery up for cancellation acts at his peril unless the person receiving payment has authority from the holder or owner as his agent to receive payment thereof. Numerous cases applying these principles are collected in BRANNAN, NEGOTIABLE INSTRUMENTS LAW (Beutel's rev. 7th ed. 1948).
4. Orleans Discount Co. v. Derbes, 170 La. 660, 129 So. 121 (1930).
5. 237 La. 1070, 112 So.2d 715 (1959).

ness on the note in suit.

The defendant proved that a check for $5004.86 had in fact been issued to the New Orleans bank but only the defendant's testimony supported the claim that such remittance was for the note in suit. The bank's records were not subpoenaed and there was no other corroborating evidence. The plaintiff's testimony was flatly to the effect that the check was in payment of another obligation. Under these circumstances the court affirmed a judgment for the plaintiff holding that the defendant had not met the burden of proving that the item sued on had been paid. The result reached is unquestionably a correct application of principles applicable to the payment of negotiable instruments under the facts as found by the court.

The close character of factual determinations which must be made in passing upon the plea of payment is well illustrated in *White v. Johness,*[6] also decided during the last term. Plaintiffs sought recovery of a balance of $23,000.00 plus interest and attorneys fees on a note acquired by inheritance from their father. The issue involved was whether the note had been discharged by a transfer of stock to the holder or whether such stock transfer was a pledge of the stock to secure the balance of the note. The maker's letter to the holder had expressly stated that the stock was to be delivered "in liquidation of this indebtedness" and concluded by referring to an option to redeem the stock within two years at $200.00. Ambiguity as to the nature of the transaction was interjected by the holder's letter wherein he referred to the redemptive right and stated he would treat the stock "the same as though it were given to me as collateral to the note in question." Additional memoranda further clouded the exact factual intention of the parties. The Supreme Court upon a review of the evidence concluded that the holder had considered himself the owner of the stock, that it was intended as a payment, and that the right to redeem the stock could not, on the facts, be viewed as establishing only a pledge of the stock. In the court's view, the preponderance of the evidence as well as the logical deductions from the documentary evidence were sufficient to sustain the trial court's conclusion that defendant had in fact paid the note. Reliance was placed on the defendant's testimony, but it is to be noted that the testimony had a completely adequate corroboration from the documents that were in evidence.

6. 237 La. 1074, 112 So.2d 717 (1959).