Dear Sir :

The attached letter from the Kittanning Brick & Fire Clay Company to Mr. D. C. Wills, Chairman of the Federal Reserve Bank of Cleveland, raises the question whether a trade acceptance given by the purchaser of goods extinguishes the original debt for goods sold by substituting a new form of obligation and whether if that is so the drawer or seller waives his rights under the various Mechanics Lien Acts of the different States.

Mr. Wills, in his reply under date of March 23rd, states that a trade acceptance is "only a different form of a stated account" and that the drawer does not in any way waive any rights which he would have had by continuing his open account.

The question to be determined is whether the giving of a note or acceptance for a debt is a payment of that debt. The courts and text writers apparently disagree on this point.

In the case of Edgell v. Stanford, 6 Vt. 551, 556, it is said that there is much doubt whether the substitution of one contract for another of the same form extinguishes the first contract, but this statement is made in reference to the substitution of one promissory note for another promissory note and is not strictly applicable to the case of the acceptance of a promissory note in place of a debt for goods sold. The court, however, in that case, goes on to say that :

> "In New York accepting a promissory note for goods sold has been considered usually as not extinguishing the contract but that an action might be brought for goods sold. In Massachusetts a different decision has been had. "

Though I have been unable to locate the Massachusetts case referred to the decision of the Vermont court indicates that there is some difference of opinion on the question under consideration.

It is stated, however, in Frey v. Patterson, 49 N.J. Law, 612, 613 :

> "The giving of a note for a debt is not a payment. It merely extends the credit until the note matures. If the note is not paid, the creditor has his election to sue upon the note or the original cause of action. The rule is too well established to need citation of authorities in support."

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The Supreme Court of the United States in the case of Sheehy v. Mandeville, 6 Cranch, 225, 263, 264, speaking through Justice Marshall, says :

> "That a note, without a special contract, would not, of itself, discharge the original cause of action, is not denied. But it is insisted that if, by express agreement, the note is received as payment it satisfies the original contract, and the party receiving it must take his remedy on it. This principle appears to be well settled. The note of one of the parties , or of a third person may, by agreement, be received in payment. "

It appears from this decision, therefore, that the Supreme Court of the United States considers it to be the general rule that the mere giving of a note does not of itself extinguish the original debt but that the parties to the transaction may, if they so desire, agree that the note is given in payment of the original obligation. If that is done then, of course, the original debt is discharged and the rights of the creditor are limited to an action upon the note. If, however, there is no such express agreement the original debt is not extinguished.

Under this decision the conclusion reached in Mr. Wills' letter would appear to be correct, that is, that there is no necessity for stating on the trade acceptance that the maker reserves his rights to file a lien under the Mechanics Lien Acts. This would seem to be particularly true in the case of a trade acceptance in which it is usually stated, either expressly or impliedly, that the obligation of the acceptor arises out of the purchase of goods from the drawer. Such a statement as that tends to indicate that the acceptance is not payment of the debt and under the ruling of the court in Sheehy v. Mandeville, supra, the taking of a promissory note (and by analogy, a bill of exchange) does not extinguish the original obligation, unless there is an express agreement by the parties to the transaction that such note (or bill of exchange) is to be considered a payment of the original obligation.

In view of this decision of the Supreme Court of the United States, it is probable that the courts of most States would agree that the giving of a promissory note or trade acceptance does not discharge the original debt unless there is an express agreement that it is given in payment of that debt, but it is suggested that in view of the doubts expressed by some courts, no general ruling can be made without a review of the court decisions and laws of the various states in which the question may arise.

Respectfully,
M. C. ELLIOTT

Hon. W. P. G. Harding,
Federal Reserve Board.

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