

dent parties are discharged from their liability, whether on the instrument or on the consideration for which it was given. The acceptor or maker, however, continues liable, and indeed presentment is not in general necessary for the purpose of charging him.

*Payment* should be made to the holder and real proprietor of the draft, for payment to any other party is no discharge to the acceptor, unless the money finds its way into the holder's hands. There are, however, some cases in which payment to a wrongful holder is protected; for instance, if a draft or note either made payable to bearer or order, and in the latter case made payable to bearer by endorsement, be lost or stolen, a *bona fide* holder may compel payment. Not only is the *bona fide* holder protected, but payment to the thief or finder himself will discharge the maker or acceptor, provided such payment were not made with the knowledge of the manner in which the note was obtained, or under such circumstances as would awaken suspicion in a prudent man.

If a draft or note be not payable to bearer, but transferable by endorsement only, and be paid to the wrong party, the payer is not discharged.

Where a draft or note on which some person other than the debtor is liable is expressly given and accepted *in full* satisfaction and discharge, the liability of the debtor for the original debt will not revive if the substituted instrument be not paid. But if it be taken generally on account or in renewal, the original liability of the debtor if the draft or note be not paid revives.

With reference to *principal and surety* it is a general rule of law that a discharge of the principal is a discharge of the surety. What parties to a draft or note are principals and what sureties? Suppose a draft to have been accepted for value. The acceptor is the principal debtor, and the other

parties are only sureties for him, liable on his default. For example, suppose a draft to have been accepted, and afterwards endorsed by the drawer and by two subsequent drawers to the holder. As between the holder and the acceptor the acceptor is the principal debtor, the drawers and endorsers his sureties. But as between the holder and the drawer the drawer is the principal debtor, and the endorsers are his sureties. As between the holder and the second endorser, the second endorser is the principal, and the subsequent, or third endorser, is his surety. A discharge, therefore, to the prior parties is a discharge to the subsequent parties, the sureties; but a discharge to the subsequent parties, the sureties, is not a discharge to the prior parties, the principals. It follows, therefore, that a discharge to the acceptor is a discharge to all the parties to the draft. So a discharge to an endorser is no discharge of the prior endorsers, but it is a discharge of the subsequent endorsers. The same principles apply to the endorsers of a note.

If the holder once destroy or suspend, or contract to destroy or suspend his right of action against the acceptor the drawer and endorsers are at once discharged, unless the agreement giving time contain a stipulation that the holder shall, in case of default, have judgment at a period as early as he could have obtained judgment if proceedings had continued. If the holder make a void agreement with the acceptor the sureties are not discharged. The taking of a new draft or note, payable at a future day, discharges the endorsers.

When a draft is refused acceptance or payment, it is necessary by the custom of merchants, in order to charge the drawer and endorsers (if any), that the dishonor should be attested by a protest. The protest should be made by a notary public; it is in form a