ministered in bankruptcy proceedings is socially undesirable. The chief justification of set off would seem to be that the creditor has relied on the debt owed by him as security for the debt owing to him. See *Hawkins v. Freeman*, 2 Eq. Abr. 10, pl. 10 (1723); *cf.* Glenn, Liquidation § 544 (1935). But the existence of any reliance is questionable and even when it is present, several objections may be advanced against the recognition of set off in insolvency proceedings. It is a secret security device not easily discoverable by other creditors. When it is resorted to by a bank creditor from which a debtor may withdraw his deposits at will, it resembles other security devices which have been stricken down on the ground that the debtor has reserved excessive domination over the security. *Cf. Benedict v. Ratner*, 268 U.S. 353 (1925). These objections may justify a change in the Bankruptcy Act. In the absence of such a change, however, a complete disregard of the right of set off in proceedings under § 77 is justifiable only as an attempt to whittle away at a bad rule.

It is possible that the claims of a creditor with a right to set off will not be completely disregarded even though the trustee is permitted to collect the debtor's chose. The court may stay the enforcement of liens and mortgages. 47 Stat. 1474, 1481 (1933), 11 U.S.C.A. § 205(a), 205(j) (1935); *Continental Illinois National Bank v. Chicago R.I. & P. Ry. Co.*, 294 U.S. 648 (1934). Staying the enforcement of the security, however, does not mean that preferential treatment will not be given to the secured creditors in the reorganization plan. Similarly, here it is possible to treat the debt owed by the creditor as security and to deny set off when the trustee seeks to collect the debt and yet, in effect, to allow it by giving the creditor special protection in the plan. Such an arrangement would give some recognition to the right of set off without reducing the amount of cash immediately available for the use of the reorganized enterprise.

Bills and Notes—Insanity as Defense to Indorser against Holder in Due Course—[Federal].—During a Florida real estate boom, the defendant payee indorsed a note to the plaintiff in payment for real estate bought by the defendant and subsequently sold by him. When the note became due the maker defaulted and the security had become worthless. In this action the defendant alleged that he was afflicted with manic-depressive insanity, and that at the time of the assignment he was in the manic phase, which tended to make his hopes for future profit from the transaction inordinately rosy. *Held*, the defendant can not escape liability. The plaintiff did not know of the insanity. The deal was consummated at what was then a fair valuation of the property. There were no facts—considering the premises—which should have led the plaintiff to question the defendant's sanity. *Beale v. Gibaud*, 15 F. Supp. 1020 (N.Y. 1936).

The decision that an insane person can not avoid liability under a contract, where restoration of the *status quo* is impossible, unless the bargain was unfair or the other party acted in bad faith or with knowledge or notice represents in this case a successful reconciliation between two conflicting policies: the one, that of protecting a holder in due course of commercial paper; the other, that of protecting an insane contractor. These two policies have had an independent development and have frequently been in conflict. The present resolution of the conflict gives as much protection as possible to the holder in due course without depriving the insane assignor of any necessary safeguard.

The policy of protecting the holder in due course is a result of the incorporation of established mercantile customs into the common law. At common law it was originally considered bad policy to permit assignment of a chose in action because of the possibilities of fraud upon the obligor. The law merchant governing the transfer of notes and bills of exchange was consequently refused the recognition it was accorded by the continental law. Co. Litt. 214a; Daniel, Negotiable Instruments § 1 (7th ed. 1933). Since the adoption of the doctrine of negotiability the original position of the holder has been so far changed in England that unless the defendant can show knowledge of the insanity on the part of the person dealing with him the defense is ineffective. *Imperial Loan Co., Ltd. v. Stone*, [1892] 1 Q.B. 599.

The contract policy of protecting the insane contractor is a result of successive modifications of the original entirely contrary common law doctrine that an insane contractor could not stultify himself: that he was estopped to set up his own incapacity as a defense. *Beverly's Case*, 4 Coke 123b (1603); *Thompson v. Leach*, 3 Mod. Rep. 301 (1689); *Yates v. Bowen*, 3 Strange 1104 (1739). The relation of the indorser and indorsee of a note is that of a contract to pay the note at maturity if the maker defaults; so that the indorsee's claim should be subject to the same defenses that are available in any other contract action. Bigelow, Bills, Notes and Checks § 295 (3d ed. 1920). Modifications of the status of the insane contractor continued until some courts held insanity at the time of the contract to be a perfect defense unless the contract was ratified after the defendant regained his sanity. *Musselman v. Cravens*, 47 Ind. 1 (1874). It was held that unless the contractor was able to comprehend his own act there was not the requisite assent to make a binding contract. *Gore v. Gibson*, 13 M. & W. 623, 625 (1845); Brown, Can the Insane Contract?, 11 Can. Bar Rev. 600 (1933). In the United States the protection of the insane was held a higher obligation of the courts than the protection of holders of commercial paper, however innocent they might be. *Dickerson v. Davis*, 111 Ind. 433, 12 N.E. 145 (1887).

The law in its later development in the United States has continued to afford protection to the insane contractor; but conflicts with the interest of the holder in due course have been reduced to a minimum by the requirement of either (1) restoration of the *status quo*, or (2) proof of (a) bad faith or knowledge or notice of the insanity, or (b) unfairness in the bargain. *Molton v. Camroux*, 2 Exch. 487 (1848); *Mutual Life Ins. Co. v. Hunt*, 79 N.Y. 541 (1880); *Ronan v. Bluhm*, 173 Ill. 277, 50 N.E. 694 (1898); *Eldredge v. Palmer*, 185 Ill. 618, 57 N.E. 770 (1900); 1 Williston, Contracts § 254 (rev. ed. 1936). When an insane person makes a fair agreement with a person who deals in good faith, a loss arising from the transaction cannot be said to have been caused by the infirmity, inasmuch as the loss would have occurred even if the insanity had not existed. However, the modern rule does not deprive the insane person of any essential protection. When the person with whom he deals knowingly takes advantage of his weakness, no claim is enforceable against him. *Westerfield v. Jackson*, 41 Hun. (N.Y.) 645 (1886); *Peter v. Englert*, 118 N.J. Eq. 456, 180 Atl. 228 (1935).

The principles applicable to the defense of insanity in contract fit nicely with present notions of negotiability. When sued on his liability as indorser upon default of the maker, the insane person is liable if his indorsee acted in good faith and a fair bargain was consummated. *Merchants National Bank v. Coyle*, 143 Minn. 440, 174 N.W. 309 (1919). He is not liable if his indorsee acted fraudulently or if there was no consideration. *Peter v. Englert*, 118 N.J.Eq. 456, 180 Atl. 228 (1935); *Shipman Banking Co. v.*

Douglas, 206 Ill. App. 586 (1917). In the absence of bad faith or lack of consideration, the insane person must accompany his rescission with a restitution of the *status quo*. *Neale v. Sterling*, 4 P. (2d) 250 (Cal. App. 1931). But see *Smith v. Thornhill*, 12 S.W. (2d) 625 (Tex. Civ. App. 1928) (to be entitled to return of consideration, party must show that insane person still has it or that it was spent for necessaries). See 32 Col. L. Rev. 504, 506 ff. (1932). Thus the holder in due course is safe except where the indorsee of the insane person acted in bad faith; and this result seems justified. It might be argued that the holder in due course could not enforce a forged note against the apparent maker, and that the act of obtaining a note from an insane person is somewhat more like forgery than like ordinary fraud upon a normal person. But where there is no proof of bad faith apart from lack of consideration, this analogy is not available; and the chief justification is the superior claim of the insane person to protection. In England, however, the latter claim of the lunatic is not recognized. All that is necessary to the enforcement of an executory contract is that the person who dealt with the insane person was ignorant of the insanity at the time of the transaction. *York Glass Co. v. Jubb*, 134 L.T.R. 36 (1926); 25 Col. L. Rev. 230 (1925); Brown, Can the Insane Contract?, 11 Can. Bar Rev. 617 ff. (1933). To take away the protection of the insane to that extent too closely approaches the earlier *laissez-faire* attitude, however; and the balance reached by the American courts seems far preferable. The present case illustrates the effectiveness with which unwarranted insanity defenses can be avoided under the present rule.

Constitutional Law—Securities Exchange Act of 1934—Control of Stock Manipulation on National Exchanges—[Federal].—The defendants, Torr & Co., held an option for the purchase, at approximately the market price, of 47,700 shares of a certain stock listed on the New York Curb Exchange, a registered national securities exchange. Torr & Co. then hired the co-defendant brokers in New York and in other financial centers of the country to recommend this stock to their customers, such purchases not necessarily to be made from Torr & Co. These brokers were to be paid a compensation considerably higher than the ordinary Exchange commission rates. In recommending this stock, these brokers made no fraudulent statements but did fail to mention to their customers the source and nature of their compensation. Partly because of these transactions, trading in this stock increased tremendously and the market price rose sufficiently to make it profitable for Torr & Co. to begin to exercise their option and to dispose of these shares. The Securities & Exchange Commission then sought two injunctions: one against Torr & Co. to restrain their dealings with the recommending brokers under § 9a (2) of the Securities Exchange Act of 1934; the other against the recommending brokers to restrain their recommendations to their customers under § 17a of the Securities Act of 1933. Section 9a provides: "It shall be unlawful for any person, directly or indirectly, by the use of the mails or any means or instrumentality of interstate commerce, or of any facility of any national securities exchange. . . . . (2) To effect, alone or with one or more other persons, a series of transactions in any security registered on a national securities exchange creating actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others." 48 Stat. 889 (1934); 15 U.S.C.A. § 78i (1936). Section 17a provides: "It shall be unlawful for any person in the sale of any securities by the use of any means or instruments of transportation or