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The Uniform Commercial Acts*

J.P. McKeehan

The Commissioners on Uniform State Laws have had twenty-five annual conferences. The principal fruit of their labors is represented by the Negotiable Instruments Act, enacted in forty-seven jurisdictions; the Warehouse Receipts Act, enacted in thirty-one jurisdictions; the Sales Act, enacted in fourteen jurisdictions, the Bills of Lading Act enacted in thirteen jurisdictions, and the Stock Transfer Act, enacted in nine jurisdictions. They have also drafted acts relating to divorce, family desertion, probate of wills, marriage evasion, workmen's compensation and partnership but these have not yet been enacted in more than a few states. All of the commercial acts are law in Pennsylvania. The Negotiable Instruments Act may be found in the Acts of 1901, p. 194; the Warehouse Receipts Act in the Acts of 1909, p. 19; the Bills of Lading Act in the Acts of 1911, p. 838; the Stock Transfer Act in the Acts of 1911, p. 126; and the Sales Act in the Acts of 1915, p. 543.

The primary purpose of these acts is to secure uniformity in the laws of the different states, but a secondary purpose in the adoption of the Warehouse Receipts Act, the Bills of Lading Act and the Stock Transfer Act was to increase the negotiability of these instruments and reduce to the minimum the risks run by a purchaser, that they might be used with greater facility to secure credit from bankers. These three acts and the Sales Act all contain many provisions relating to the same questions, but unfortunately and without apparent reason the answers given by the different acts are frequently different. Section 78 of the Sales Act provides that it shall not be construed to repeal any of the provisions of the Warehouse Receipts Act or the Bills of Lading Act. It has been found that this situation is productive of confusion in the minds of students of these acts and to avoid this it is necessary that the points of differ-

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ence in the provisions relating to the same subject matter be made as conspicuous as possible. It is a pity that no publication is available in which the corresponding sections of the commercial acts are placed in juxtaposition, as this would greatly facilitate comparison.

It is the aim of this article to point out these differences in the acts and to explain the risks that a purchaser of documents of title still runs. Incidentally the entire Bills of Lading Act, Warehouse Receipts Act and Stock Transfer Act will be reviewed and those provisions of the Sales Act relating to documents of title. The Negotiable Instruments Act is not included in this discussion.

I. TWO CLASSES OF DOCUMENTS

Prior to these acts, documents of title were not dependent upon their form for such degree of negotiability as they possessed. The new acts divide documents into two classes according to their form. "Order" and "bearer" documents are negotiable. "Straight" documents, i. e. where the goods are deliverable only to the person named therein, are not negotiable. The Bills of Lading Act requires the words "to the order of" to precede the name of the consignee. In the Warehouse Receipts Act, the words "or order" follow the name of him to whom the goods are deliverable. Receipts may also run "to bearer." All certificates of stock are negotiable. Under the acts the rights of a holder of a negotiable document are fixed by the terms of the document, free from any equities the bailee or prior owners may have. The contract of the carrier was not assignable at common law, but the bill of lading was held to represent the goods, so that delivery of it was counted delivery of the goods. Under the acts both the contract and the ownership are transferable, and the law is assimilated to that of bills and notes.

Prior Legislation in Pennsylvania

The Act of Sept. 24, 1866, P. L. 1363, made all bills of lading and warehouse receipts negotiable, if not marked non-negotiable, and required their surrender before delivery of the goods. It was made criminal to issue a receipt without having received the goods; to issue a duplicate not so marked; to sell or ship goods held by a warehouseman before surrender of the receipt.

The Act of June 13, 1874, P. L. 285, protects holders of negotiable documents against attachments, etc. The Act of May 25, 1893, P. L. 133, provided a remedy in case of the loss or destruction of a document.

Construction of Act of 1866

In *Shaw v. R. R.*, 101 U. S. 557, it was held that the Act of '66 did not make these documents as negotiable as bills of exchange and promissory notes but merely entitled the holder to enforce the contract in his own name. The effect of this early legislation is fully reviewed in *Bank v. Shearer*, 225 Pa. 470, and *Bank v. Hartzell Co.*, 55 Pa. Super. 56. The Act of 1866 was important only in that it precluded the bailee from setting up against a purchaser of a document a secret agreement made with the depositor, which would create an incumbrance or condition upon the rights of such purchaser.

Permissible Provisions in Documents

The essential provisions of all bills and receipts are specified in Sec. 2 of each act. But there is no liability for a failure to insert any of these provisions except in the case of negotiable documents, in which case the liability is "for all damage caused by the omission." The only provision specifically prohibited is one seeking to provide against liability for negligence. A warehouseman may insert any other provision not "*contrary to the provisions of the act.*" But a carrier may not insert any provision "*contrary to law or public policy.*"

Duplicate Documents

To issue a duplicate negotiable document not marked duplicate imposes liability in damages to one who buys it as an original.

Marking Documents

To omit to mark a straight receipt "not negotiable" imposes on the warehouseman the same liabilities to a purchaser supposing it negotiable, as would have been imposed had the receipt been negotiable. There is no criminal liability. The rule is reversed as to bills of lading. No civil liability is provided for, but if intent to defraud exists, the omission is a crime. (Sec. 50).

The negotiability of a document drawn to "order" is not impaired by its being marked "not negotiable." It is folly, therefore, to rely on the presence or absence of these words. The omission of these words, in the case of a straight receipt, does not create a liability on the part of the warehouseman which fully protects the holder. The warehouseman would be liable for making a delivery to the depositor or anyone other than the holder of a non-negotiable receipt not so marked but he is not made liable if creditors of the depositor levy on the goods. He incurs the same liabilities as if

the receipt had been negotiable but he is not made a guarantor of its negotiability, nor is the receipt treated as negotiable as between the holder and third parties. These acts assure a recovery if the document turns out to be a *duplicate*, if the person issuing it is financially responsible, but one must still rely on his own reading of the body of the document to determine whether or not it is negotiable. Why should not full liability be imposed for the wrongful omission of the words non-negotiable, as for the omission of the word "duplicate"; or else why not cease to require the insertion of the words at all?

Assent to Terms

The disputed question, as to when the acceptance of a document without objection to its terms is to be taken as assent to its lawful terms, is settled in the affirmative by the act relating to bills of lading but it is not covered by the Warehouse Receipts Act. (Sec. 10 of Bills of Lading Act). See *Healy v. R. R. Co.*, 138 N. Y. S. 287.

Excuses for Non-Delivery

These two acts differ again in the sections defining the lawful excuses for the non-delivery of goods. The warehouseman must find his excuse in the provisions of the act, such as a failure to satisfy his lien, surrender negotiable receipts and sign an acknowledgment of the receipt of the goods. Carriers on the other hand may offer "any lawful excuse," and what these are is left to judicial determination.

Delivery to Agent

Again, while both warehouseman and carrier may deliver to an agent of the consignee, the warehouseman is justified in delivering only when the agent exhibits *written authority*. Any authority, verbal or written, and probably even an apparent authority, will justify delivery by a carrier. So also a carrier may justify delivery when "*compelled by legal process*," while the language of the Warehouse Receipts Act seems to exclude this as a justification, unless the warehouseman can show that the real owner got the goods. (Compare Secs. 14 and 22 of Bills of Lading Act with Secs. 12 and 19 of Warehouse Receipts Act. See *Klein v. Patterson*, 30 Pa. Super. Ct. 495.

Alterations

It is a pity that the provision as to the effect of an alteration of a bill of lading is not found in the Warehouse Receipts Act. Alterations to bills of lading must be authorized by the carrier *in writing* or the *alteration is void* but the bill remains enforceable according to its original tenor. One verbally authorized may justify altering a receipt, but if the authority is not proven and the alteration is material and fraudulent, the receipt is rendered void as to the one who made the alteration or who took with notice of it. An innocent holder may enforce its original provisions and in all cases the goods may be recovered by one entitled to them. The forfeiture extends only to contract obligations and not to the goods. There is no forfeiture at all resulting from the alteration of a bill of lading and this seems the better rule. A certificate of stock is the owner's muniment of title under the Transfer of Stock Act. It is not a contract. That act accordingly provides that even fraudulent alteration shall not work a forfeiture. The alteration only is void.

Lost Documents

In the matter of lost or destroyed documents we find different provisions. Sec. 54 of the Warehouse Receipts Act makes it a criminal offense to deliver goods while a negotiable receipt is known to be outstanding. To avoid this liability, in case a receipt is lost or destroyed, the warehouseman must require an order of court, after proof of the loss, and the depositor must give bond to protect anyone injured by the delivery of the goods. It is not a criminal offense to issue a second stock certificate or bill of lading upon the loss of the original. Accordingly, there is nothing to prevent the corporation and the carrier respectively from making such arrangements as they deem satisfactory, with the holder of a lost or destroyed certificate or bill of lading, without any legal proceedings. Under all the acts legal proceedings may be required by the one issuing the document and the proceedings are the same except that in the case of lost or destroyed stock certificates, the act requires "reasonable notice by publication, *and* in any other way which the court may direct, to all persons interested." If this is important in the case of certificates, why is it not required in the case of receipts and bills of lading? Again, if it is proper to make the legal proceeding optional in the case of stock certificates and bills of lading, why should it not be optional in the case of warehouse receipts?

Use of Duplicates

Bills and receipts marked "duplicate" are useful only as proof that there was an original properly issued, of which the duplicate is an accurate copy. Duplicate stock certificates are not issued. The Warehouse Receipts Act further provides that a warranty is implied that the original was uncanceled at the date of the issue of the duplicate. One buying goods represented by a bill of lading alleged to be lost or destroyed should be enabled to make sure that at least the bill has not been cancelled and to secure written proof of this, but no similar provision appears in the Bills of Lading Act.

Bailee Claiming Title

As to the right of one issuing a document to set up title in himself we find a difference in the acts. The title which may be set up by the warehouseman must have been acquired from the depositor. A carrier may acquire title from either consignor or consignee. Surely a warehouseman may acquire title from one named in the receipt by the depositor's direction as the one to whom the goods are deliverable. And surely he may acquire title from one to whom a negotiable bill or receipt has been negotiated, or from the transferee of a straight bill or receipt. It was probably intended merely to provide that one who has issued a document is estopped to claim a paramount title to the goods represented by it and this is no doubt the effect of the provisions of the acts.

Secret Liens

A corporation may not claim a lien on its own shares unless the right to such lien is stated upon the certificate. The purchaser of a straight receipt or bill is always liable to find a lien on the goods for various charges or advances. But the purchaser of a negotiable bill or receipt is protected against such claims in part. He must always read a bill of lading to see if it enumerates special charges for which a lien is claimed, for unless in violation of the terms of the contract, or illegal, a lien for such enumerated charges is enforceable against any holder. The Warehouse Receipts Act makes it necessary for the warehouseman to state the *amount* of such enumerated charges. The Bills of Lading Act is silent on this point. What special charges may be the subject of a lien when enumerated in a receipt are expressly stated in the Warehouse Receipts Act, in Sec. 27. The Bills of Lading Act requires only that they be not illegal or in conflict with the contract. In case the document enumerates no special charges, the purchaser of a negotiable receipt may only be met by a

lien for storage since the date of the receipt. In a like case the purchaser of a negotiable bill of lading may have to discharge a lien for any "freight, storage, demurrage and terminal charges, and expenses necessary for the preservation of the goods or incident to their transportation subsequent to the date of the bill."

Accommodation Bills and Receipts

A seller of goods sometimes succeeds in inducing a freight agent to issue to him a bill of lading for goods which he promises to ship the next day. The shipper uses the bill to get the money from a bank with which to buy goods he is to ship. If he fails to ship the goods, what are the rights of the holder against the railroad and against the party from whom the bill was purchased? Similarly, fictitious bills, warehouse receipts or stock certificates are sometimes issued fraudulently by the agents entrusted with this duty, as a means of raising money. Such documents are genuine but they have no goods behind them and in the case of stock certificates they often result in the issue of stock certificates exceeding the authorized capital of the corporation. The courts are not agreed as to the liability of the principal for the unauthorized act of its agent in these cases. The Stock Transfer Act is silent on the subject. Under Sec. 20 of the Warehouse Receipts Act, the warehouseman is made liable for any damage caused the holder of a receipt by the non-existence of the goods. No distinction is made between accommodation and fictitious receipts. But the question remains as to whether the fraud of an agent of the warehouseman committed for his own benefit is to be regarded as the act of the warehouseman. It has been held in England and by the Supreme Court of the United States that a carrier is not liable for the fraudulent issue of fictitious bills of lading for his own benefit. The Bills of Lading Act is clear on the subject and reverses the rule. If the agent was one having real or apparent authority to issue bills of lading, the carrier is liable to the holder even upon bills fraudulently issued by the agent for his own benefit. It is a pity that the Stock Transfer Act and the Warehouse Receipts Act are silent on this important question. This is one of the most serious risks incurred by the purchaser of a document of title, for the party acting in collusion with the agent is usually not financially responsible and a seller of such a document does not warrant its validity or worth but only his ignorance of facts impairing its validity or worth. Even in the case of bills of lading there is still this risk as to bills originating in states which have not yet passed the uniform act.

A similar risk arises when the goods behind the bill are not of the quantity, quality or kind that the bill of lading specifies. The boxes may be empty or filled with sawdust, etc. The same result is reached as in the preceding section, if the document specifies the contents of the packages. But the purchaser must read his document carefully, for if it merely states the marks on the packages, or what they are "said to" contain, or states that the contents are unknown, or if a bill of lading is marked "shipper's load and count," such statements, "*if true*," exempt the corporation issuing the document from liability. But since such statements would not be true when the agent is in collusion with the shipper, a carrier would be liable to one who has given value in good faith relying upon the description. The risks described exist regardless of the negotiable or non-negotiable character of the document, since the defect is not one of title to the document but is one inherent in the document itself.

Creditors' Remedies and Recission of Transfers

The Warehouse Receipts Act, (Secs. 25 and 26), the Bills of Lading Act, (Secs. 24 and 25), the Transfer of Stock Act, (Secs. 13 and 14) and the Sales Act, (Secs. 39 and 40), all provide that there may be no attachment or levy upon shares of stock for which a certificate is outstanding or upon goods for which a negotiable document is outstanding, until the certificate or document be actually seized by the officer, or surrendered to the corporation which issued it, or its negotiation be enjoined.¹ This is an important advance upon the common law rule but injunctions are not always obeyed and a purchaser of a certificate or document still runs the risk that the negotiation may be void because in violation of an injunction, of which he had no knowledge. Those who drafted the acts thought it too extreme a position to take to forbid any attachment, garnishment or levy on property for which a negotiable document is outstanding but nothing short of such a provision gives complete protection to a purchaser. Secs. 7 and 8 of the Transfer of Stock Act provides that in case the indorsement or delivery of a stock certificate was procured by fraud, duress, or made by mistake or by one without authority from the owner *or* after the owner's death or legal incapacity, it may be reclaimed and its transfer rescinded while in the hands of the transferee or one who had notice of the defect in title or who gave no value. Recission is accom-

1. Compare the provisions of the Act of June 13, 1874 P. L. 285; and *Roudebush v. Hollis et al*, 21 Pa. C. C. Rep. 324.

plished by impounding or by injunction against further transfer. But it is expressly provided that one in possession of the certificate may make a valid transfer to an innocent purchaser even though such transfer has been prohibited by injunction. An injunction in aid of rescission is thus given less effect than an injunction in aid of creditors. The effect of an injunction in aid of the rescission of the negotiation of a warehouse receipt or bill of lading is not stated in any of the acts and presumably the negotiation would be void. Surely these acts fall short of accomplishing their full purpose when they omit to provide that in no case shall an injunction impair the validity of the negotiation of a negotiable document to an innocent purchaser for value. It should be added that while a levy upon shares of stock becomes valid from the moment the certificate is seized by the officer, a levy on goods represented by a negotiable document only takes effect from the time the document is surrendered to the bailee. The Commissioners on Uniform State Laws, in their report of Aug. 21, 1908, state that this provision in reference to attachments and executions "is peculiarly important in the case of negotiable bills of lading, because negotiable bills of lading are dealt in a long distance from the physical location of the commodity and where the purchaser or bank advancing money thereon has no opportunity of making inquiry as to the existence of attachment or executions. The provision was more frequently, lengthily, thoroughly and exhaustively discussed than any other section of any uniform act ever discussed before the Commissioners. Action upon the Sales Act was finally postponed for a whole year for the sole purpose of obtaining the views of the country generally upon that section. After a delay of a whole year the section as it now stands was finally adopted by the unanimous vote of all states represented in the conference, with but one state declining to vote." It was evidently thought that it would jeopardize the general enactment of these acts to carry the mercantile theory to its logical conclusion and forbid any attachment while a negotiable document is outstanding. The risk of injunctions is therefore one which purchasers still run except in the single case of injunctions in aid of the rescission of transfers of stock.

Destruction of the Goods

Goods may be deposited or shipped by one who owns them and the document may give a correct description of their kind and quantity but the goods may deteriorate or be destroyed while in the hands of the bailee. Whether the bailee is responsible for the particular kind of loss will depend upon circumstances. (See Secs.

21 to 24 of Warehouse Receipts Act). Insurance would protect against loss by fire but the risk of deterioration or destruction by other causes is one that cannot be avoided and the likelihood of deterioration of perishable goods is such that documents representing them should be avoided as security for loans.

Spent Documents

Again, the value of a negotiable document of title may be impaired by the surrender of the goods prior to the surrender of the document. Fraudulent transfer agents sometimes pocket certificates of stock surrendered that new ones may be issued. These spent bills of lading and receipts and uncanceled certificates get into the hands of innocent purchasers. Are they protected? There is nothing about the documents to warn a purchaser, unless it be the date on a bill of lading, which, if old, would suggest a doubt, first, as to whether the goods may not have been delivered and second, as to whether they may not have been sold to satisfy the bailee's lien. Again, bills and receipts may be partially spent, as where some of the goods are given up and no indorsement made on the document. Secs. 11 and 12 of the Warehouse Receipts Act and Secs. 14 and 15 of the Bills of Lading Act impose liability on the bailee to the innocent purchaser in such cases but the disputed question of liability in case an agent commits the fraud for his own benefit is not answered in either act. The Sales Act contains no relevant provisions. Again, the document may have been issued to one who stole the goods and the bailee have been compelled to surrender them to the owner¹ or they may have been taken in execution in a state which has not passed the uniform acts and as the bailee can justify the surrender in such cases, the purchaser runs this risk. The Transfer of Stock Act contains no provision defining the rights of a purchaser of an uncanceled certificate wrongfully reissued by the transfer agent, and it is a pity it does not.

The Method of the Negotiation and Transfer of Documents of Title

The Sales Act defines a negotiable document of title as one "in which it is stated that the goods referred to therein will be delivered to the bearer, or to the order of any person named in such document." The Warehouse Receipts Act provides for receipts in either form, to order or to bearer. The Bills of Lading Act provides only for order bills. Documents running to bearer or in case of those

1. See *Estey Co. v. Dick*, 41 Pa. Super. Ct. 610.

running to order, when indorsed in blank, are negotiable by delivery.² The Sales Act and the Warehouse Receipts Act further provide that any holder of a document, in form to be negotiated by delivery, may convert it into a document negotiable only by indorsement. He does this by indorsing it to himself or to any other specified person. This is what is known as special indorsement. (See Sec. 34 of the Negotiable Instruments Act). The Bills of Lading Act contains no such provision and the Sales Act must be read in the light of it. All the acts provide that one whose indorsement is necessary to the negotiation of the document may indorse it specially, i.e. to a specified person, or in blank, or in the case of a receipt, to bearer. Certificates of stock may be transferred by delivery when indorsed and the indorsement may be in blank or to a specified person. (Secs. 1 and 21). Unlike receipts and bills, the transfer may be made by a separate document containing a written assignment or power of attorney to transfer. Provisions in the charter of the corporation, the by-laws or the certificate itself requiring further formalities are of no effect since this act.

When a straight bill or receipt is delivered to a purchaser or donee or such delivery is made of a document which could have been negotiated by indorsement but such indorsement is omitted, this is called a “transfer” of the document, by way of distinction from the negotiation of a negotiable document. The word “transfer” is always used in referring to certificates of stock but in that use it means negotiation. Acts falling short of a proper transfer of a certificate are referred to as an “attempted transfer” or a “delivery.” (See Secs. 9 and 10 of the Act.) All four acts provide that the omission of an indorsement necessary to a proper negotiation of a document may be remedied by the purchaser with the aid of a court of equity but the negotiation takes effect only as of the time when the indorsement is actually secured. (Sec. 35, Sales Act; Sec. 9, Transfer of Stock Act; Sec. 43 of Warehouse Receipts Act, and Sec. 34 of Bills of Lading Act.) The definition of the transfer of a document of title is the same in the Sales Act and in the Warehouse Receipts Act. It is delivery to a purchaser or donee of a document not in such form as to make the delivery a negotiation. (Sec. 31 of Sales Act and Sec. 39 of Warehouse Receipts Act.) The idea is differently expressed in the Bills of Lading Act and a reader is apt to miss the point. It says in Sec. 30: “A bill may be transferred by the holder by delivery, accompanied with an agreement express or im-

2. Under the Act of 1866, endorsement was never essential to negotiation. *National Union Bank v. Shearer*, 225 Pa. 470, 475, 481; *Sloan v. Johnson*, 20 Pa. Super. Ct. 643.

plied, to transfer the title to the bill *or* to the goods represented thereby." It is not made clear that this applies only to bills not in such form as to make the transaction a negotiation. The act suggests the possible intent to transfer title to the bill while retaining title to the goods and vice versa, but makes the delivery a transfer of the bill in either case. The simpler provision of the other acts is adequate and it is a pity that they are not all uniform. All the acts provide that the indorsement of a straight document is of no effect. It is entirely out of place and meaningless.

Effect of Negotiation and Transfer Compared

"The essence of a negotiable contract, as distinguished from a non-negotiable one, is that a holder in due course of a negotiable contract acquires himself a *direct* right on the instrument, which may be better than the rights of the original holder, and will not be subject to any personal or equitable defences affecting parties who have preceded him." (Williston's Lectures on Commercial Law, p. 133.) Sec. 33 of the Sales Act, Sec. 41 of the Warehouse Receipts Act and Sec. 32 of the Bills of Lading Act all provide that one to whom a document has been negotiated acquires the *direct* obligation of the bailee to hold possession of the goods for him as fully as if such bailee had contracted directly with him. The following sections, (34, 42 and 33 of said acts), define the effect of transfer of a straight document. We find that by notifying the bailee of the transfer, the transferee acquires the *same direct obligation* of the bailee and further we find that after such notice the transferee is protected against the levy of an attachment or execution upon the goods by a creditor of the transferor and also against a subsequent sale of the goods by the transferor. This considerably limits the doctrine that a straight document does not represent the goods, for while the bailee may deliver the goods without the surrender of such a document, a purchaser of the goods represented by such a document must get the document or inquire of the bailee whether notice has been given of a prior sale of the goods, and if not, then give prompt notice of the sale to himself. Of course transfer is as effective as negotiation to transfer title to the goods, as between the immediate parties to the transaction. In addition to the foregoing provisions, the Bills of Lading Act contains a section not in the Sales Act or the Warehouse Receipts Act. It provides that a transferee, in order to acquire the rights that follow notice to the carrier of the transfer, must give the notice "to an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such a notification;" and "no notification shall be effective

until the officer or agent to whom it is given has had time with the exercise of reasonable diligence to communicate with the agent or agents having actual possession or control of the goods." This provision is obviously unnecessary in the case of Warehouse Receipts but it must be read into the Sales Act when bills of lading are involved. It is apparent that proper notice to the bailee is vital to the security of a purchaser of goods represented by a straight document. At common law, as between successive bonafide purchasers of goods in the hands of a bailee, the first purchaser had the better right to the goods. The case of successive sales of goods represented by a negotiable document is covered by Sec. 25 of the Sales Act, Sec. 4 of the Stock Transfer Act, Sec. 48 of the Warehouse Receipts Act and Sec. 39 of the Bills of Lading Act. In such a case it is the delivery of the document that is vital. If the first purchaser omits to get the document, a later buyer who gets the document, properly indorsed, takes a good title. The Sales Act adopts the same rule when a first buyer permits the seller to continue in possession of the goods themselves. The later Pennsylvania cases relaxed this rule in cases in which there was a satisfactory explanation of the failure to take possession and no fraudulent intent. See Williston on Sales, p. 654. The Pennsylvania cases gave as full protection to creditors of the vendor retaining possession as was given to purchasers. Sec. 25 of the Sales Act gives full protection to purchasers, while Sec. 26 requires that the retention be fraudulent under the local law. No uniform rule is attempted when the validity of the sale is questioned by creditors. The Sales Act applies only when the original transaction was a sale but protects subsequent pledges as well as subsequent buyers. The Warehouse Receipts Act and the Bills of Lading Act apply the same rule whether the original or later transaction be a sale, pledge or a mortgage. The word "purchaser" is defined in all the acts as including mortgagee and pledgee but Sec. 25 of the Sales Act does not contain the word purchase or purchaser. It is, however, to be read in the light of the other acts and not as limiting them. The acts contain no sections relating to the effect of retention of a straight document after a sale, mortgage or pledge of the bailed goods. But as delivery and notice are the essentials of an effective transfer as against third parties, it would seem that a second bonafide purchaser of a straight document would get a good title, if he got the document and gave the first notice to the bailee. It is a pity the acts are not explicit on this point.

(To be Continued).

(Continued from the November issue).

We have seen that the first characteristic of negotiability, the right to sue the bailee on the contract in one's own name, is not the real distinction under the acts between negotiation and transfer, the only difference in this regard being that this right follows immediately upon negotiation of a document but only arises after notice to the bailee in case the transaction is a transfer. The second distinction is of much greater importance. The bailor may have defrauded the bailee, as by misrepresenting the character or quantity of the goods bailed. A document may be purchased from one who secured it from a prior owner by fraud, duress or mistake, or the seller of a document may have found or stolen it or the document may have been issued to one who found or stole the goods. In some of these cases the purchaser is protected if the transaction was a negotiation and not if it was merely a transfer. In others the purchaser loses even though the transaction was a negotiation. Let us see what the Acts say as to the effect of negotiation as conferring greater rights than those possessed by the original holder or by later holders. First, negotiation differs from transfer in its effect upon the obligations of the bailee. "The holder in due course of a negotiable contract can rely on the form of the instrument as telling the whole story, provided the form of the instrument has not been altered before it comes to his hands." Williston on Commercial Law, § 247, p. 133. Accordingly, Sec. 83 of the Sales Act, Sec. 41 of the Warehouse Receipts Act and Sec. 32 of the Bills of Lading Act, all provide that one to whom a document has been negotiated can hold the bailee according to the terms of the document. The bailee cannot set up the wrong of the depositor or shipper. The effect of transfer is not the same. Sec. 24 of the Sales Act and Sec. 42 of the Warehouse Receipts Act hold the bailee "according to the terms of the document" after notice from the transferee. But the Bills of Lading Act contains a different provision, (Sec. 33). Notice to the carrier makes the transferee "the direct obligee of whatever obligations the carrier owed to the transferor of the bill immediately before the notification." Therefore, if one consigns goods to himself, and by fraudulently misrepresenting the nature of the goods, secures a bill misdescribing them, the carrier may avoid liability for the failure of the goods to correspond to the description, for such liability, under Sec. 23, arises only when the "*consignee* gave value in good faith relying upon the description" in the bill. As the transferee of a straight bill is given no greater right than the transferor had, the carrier has a good defence even as against him. Surely the provisions of the Sales Act and of the Warehouse Receipts Act are

preferable, for an innocent purchaser should always be able to rely on the representations of the document but the rule as to bills of lading follows the distinction between negotiable and non-negotiable contracts and the Sales Act must be read in the light of this provision of the Bills of Lading Act.

But the most important difference in effect between negotiation and transfer has to do with the title acquired by the one to whom the document is negotiated or transferred. If the document is negotiable, its form is regarded as definitely showing the title. He to whose order the goods are deliverable is taken to have title or at least authority to transfer title. By this we mean authority from the depositor or shipper. If the latter stole the goods, the bona fide purchaser of a document gets nothing, regardless of the form of the document. In *re Dreuil & Co.*, 205 Fed. 568. This is true of all defects of title existing prior to the deposit or shipment of the goods, except such defects as affect only the equitable title. If the shipper or depositor had a good legal title but one voidable for fraud, as this defect would be cured by a sale of the goods to a bona fide purchaser, a sale of a document representing them would have the same effect and this regardless of the negotiable or non-negotiable form of the document. But when the depositor or shipper has a perfect title but someone secures possession of the document by fraud or conversion, all will depend upon the negotiable form of the document, when the question arises as to the rights of an innocent purchaser from the wrongdoer. All the acts agree that the transfer of a straight document passes such title to the goods as the transferor had, but if he in fact was to hold the goods subject to the orders of the depositor or shipper, the transferee would hold subject to this limitation. Though the acts are silent on the subject, it seems that if the transferor was a purchaser of the goods but because of fraud, had only a voidable title, a transferee who bought for value and without notice of the fraud, would take a good title to the goods. The transferor of a straight document is in possession of the goods, in legal contemplation, and the same effect should be given to a sale when the goods are in the hands of a bailee as when they are in the hands of the seller himself. Therefore, if a transferor has a title to the goods which he has ability to convey to a bona fide purchaser for value, the transferee will take a good title.

When we said above that, if the document is negotiable, its form is regarded as definitely showing the title, we said what is true of bills of exchange, promissory notes, and stock certificates and bills of lading. It is only partially true of warehouse receipts. Sec. 32 of the Sales Act provides who may make an effective negotiation

of a document. He must either be the owner or the one to whose order the goods are deliverable or the document must be in form to be negotiated without indorsement and *he must have been "entrusted with the possession or custody of the document."* Sec. 40 of the Warehouse Receipts Act makes exactly the same provision. But the Transfer of Stock Act and the Bills of Lading Act contain very different provisions. Sec. 5 of the Transfer of Stock Act provides that one in possession of a certificate, properly indorsed, may transfer title, though he had no right of possession nor any authority from the owner or the one named in the certificate as owner or any later indorser. A thief or a finder of the certificate can give a good title. Of course conversion by one entrusted with the possession or custody of the certificate does not impair the title of the purchaser.

Sec. 31 of the Bills of Lading Act similarly provides that a bill may be negotiated by any person in possession of it, however such possession may have been acquired, if the one negotiating it was the consignee or it is already properly indorsed by the one to whose order the goods are deliverable. It is to be regretted that warehouse receipts still lack that degree of negotiability possessed by all other negotiable instruments. The Sales Act must of course be read in the light of the Bills of Lading Act and its provision must be applied only to warehouse receipts. If the document is not negotiable, the owner may safely entrust it to anyone and if it is lost or stolen from him, he has only lost his evidence of his contract with the bailee. One who has converted a straight document can pass no better title than that which he himself has and that is none. The same is of course true in the case of negotiable documents when any of the indorsements thereon are forgeries. The document itself and all indorsements must be genuine. This risk that a negotiable document may be forged or altered "has in practice proved the most serious risk of all." (Williston's Lectures on Commercial Law, Sec. 179, p. 98). Forgery is easy because of the carelessness with which receipts and bills of lading are made out. Warehouse receipts are now required to have a serial number but this is not true of bills of lading. Great precautions are usually taken in the case of stock certificates and forgery of a certificate is very difficult. It is stamped, punched and countersigned. See *Trust Co. v. R.R. Co.*, 237 Pa. 519.

The difference in the law relating to receipts and bills in regard to the title that may be given by a thief or a finder is further indicated by a comparison of Sec. 38 of the Sales Act and Sec. 38 of the Warehouse Receipts Act with Sec. 38 of the Bills of Lading Act.

The first two provide that the negotiation shall be effective though it involved a “breach of duty” by the one negotiating it, and though the owner was “induced by fraud, mistake or duress to entrust it” to the wrongdoer. The Bills of Lading Act says all this and adds that the negotiation shall be effective though the owner “was deprived of the possession by accident or conversion.” This clearly covers lost and stolen bills, while the purchaser of a lost or stolen receipt gets nothing. Sec. 6 of the Stock Transfer Act contains provisions not found in any of the other acts. Instead of the fraud, duress or mistake being used to induce the owner to entrust the document to the wrongdoer, they may have been used to secure the indorsement. Does this impair the title of a purchaser? The Transfer of Stock Act provides that the indorsement is effectual though it was induced by fraud, duress or mistake. After indorsement of a document and its delivery to an agent for sale, the owner may revoke the authority to dispose of it, or the law may revoke the power as the result of the death of the owner or his insanity occurring after indorsement. Subsequent disposal by an agent under such circumstances would be a conversion but of the kind described in the acts as a “breach of duty” and the purchaser of any negotiable document is protected. This is left to inference in all the acts except the Transfer of Stock Act. Secs. 6 and 7 of said act expressly so provide. The owner, to be protected, must reclaim his certificate and forestall the wrongful disposal of it and it is further provided that even this right may be lost by laches in seeking to enforce it.

There is still another risk which the purchaser of a document runs. The indorsement may be genuine but the party making it may have lacked legal capacity or authority to make the indorsement. The indorser may have been an infant, a lunatic, an habitual drunkard, or a trustee, executor or administrator or other fiduciary without authority in the instrument creating the trust to convert securities. The uniform acts do not diminish at all this risk. It is so provided in Sec. 2 of the Stock Transfer Act, but is left to inference in the other acts. All the acts provide that in cases not covered by them, “the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent, executors, administrators and trustees, and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy or other invalidating cause, shall govern.” (Sec. 73 of Sales Act, Sec. 18 of Stock Transfer Act, Sec. 56 of Warehouse Receipts Act and Sec. 51 of Bills of Lading Act).

Defects of Title Antedating the Document

We have still to consider the position of one who buys a document perfect in itself but which was issued for goods which were converted by the bailor at or before the time the bailment was created. Or again the deposit or shipment of the goods may constitute a violation of the rights of a mortgagee or lienholder. It is obvious that the law could not enable one who has found or stolen goods to place himself in a position to pass a good title to them merely by resorting to the expedient of placing them in storage or in transit and taking a negotiable receipt or bill for them. Sec. 43 of the Bills of Lading Act covers such cases. Sec. 42 provides that the seller's lien and right to stop in transit shall be lost if the buyer negotiates a bill for the goods. Sec. 43 provides that any other lien which exists on goods prior to their delivery to the carrier may be enforced even against the purchaser of a negotiable bill representing them, provided the lien would not have been lost had the goods themselves been the subject of the transaction, without any document of title being involved. Therefore, one who buys a negotiable document of title runs the risk, not only that the bailor may have found or stolen the goods but also that he may have received them from the owner under a contract of lease with only an option to buy and that he has not yet fully paid for them. Sec. 33 of the Sales Act, Sec. 41 of the Warehouse Receipts Act and Sec. 32 of the Bills of Lading Act are all alike in providing that the negotiation of a document passes only the title which the person negotiating it had or had ability to convey to a bona fide purchaser and the title of the original parties to the document. If none of them had title, the purchaser gets none. All three acts say it is enough if the one to whose order the goods were to be delivered had title or ability to convey title to a bona fide purchaser. The Warehouse Receipts Act adds that negotiation also passes the depositor's title and the Bills of Lading Act says the same of the consignor's title. Curiously the Sales Act makes no reference to the bailor's title but again this act must be read in the light of the other acts. The omission was evidently inadvertent.

Warranties on the Sale of a Document

The existence of the risks just mentioned and the absence of any warranty on the part of the bailee that any party to the document had title to the goods make it important to a purchaser to know what recourse he has against prior indorsers. Sec. 37 of the Sales Act, Sec. 45 of the Warehouse Receipts Act and Sec. 36 of the Bills of Lading Act all provide that indorsement shall not make the

indorser liable for any failure on the part of the bailee who issued the document or previous indorsers thereof to fulfill their respective obligations. Indorsement is simply a necessary incident of negotiation. If the bailee does not honor the document upon presentation, the holder of an indorsed document of title cannot have recourse to the indorser, as could the holder of a draft or a note. Though, as stated, no liability attaches to an indorser as such, anyone who disposes of a document, (whether negotiable or not), to another for value, including one who assigns for value a claim secured by a document, unless a contrary intention appears, does make certain warranties. This is provided by Sec. 36 of the Sales Act, Sec. 11 of the Stock Transfer Act, Sec. 44 of the Warehouse Receipts Act and Sec. 35 of the Bills of Lading Act. Three of the warranties named are found in all of the acts. They are these: First, that the document is genuine; second, that he has a right to dispose of the document; and third, that he is ignorant of any fact which would impair the validity or worth of the document. Therefore, if one only deals with responsible parties, he has a remedy if the document be forged or altered, or if the one from whom he purchased had neither title to the document nor authority to dispose of it. This latter is only important in the case of warehouse receipts or straight documents, for negotiation would cure defects of title in the other cases and the prior owner would have to proceed against the wrongdoer. If the document has no goods behind it, the holder's only remedy is against the bailee, unless he can prove that the seller had knowledge of the facts. The Sales Act, the Warehouse Receipts Act and the Bills of Lading Act all contain a further warranty, namely, that the one disposing of the document had the right to transfer title to the goods and such other warranties as are implied in sales of goods. This gives the purchaser his remedy in case the goods were lost or stolen before they were deposited or shipped. The Stock Transfer Act and the Bills of Lading Act contain a further provision not found in the Sales Act or the Warehouse Receipts Act, though it should be in all the acts. It is this: "In the case of the assignment of a claim secured by a certificate of stock or by a bill of lading, the liability of the assignor shall not exceed the amount of the claim." The omission from the other acts must have been inadvertent and it must be read into the Sales Act from the Bills of Lading Act.

Accepting Payment of a Debt

It is a disputed question as to whether a bank which discounts a draft, taking a bill of lading as security, succeeds to the liability of

the seller of the goods, in case the buyer, after paying the draft, finds the bill of lading to be forged, or the goods not to be of the character described in the bill. The bank is next an assignee of a claim secured by a document and so within the provisions of the sections just referred to, it is merely accepting payment of a debt. See Williston on Sales, p. 745. However, the cases are sufficiently close to have led to a further provision in the Stock Transfer Act, Sec. 12; the Warehouse Receipts Act, Sec. 46 and the Bills of Lading Act, Sec. 87. But, curiously, there is no such provision in the Sales Act. The other acts all provide that, "a mortgagee or pledgee or other holder of a document for security who in good faith demands or receives payment of the debt for which such document is security, whether from a party to a draft drawn for such debt or from any other person, shall not be deemed to represent or to warrant the genuineness of the document or the quantity or quality of the goods therein described or the value of the shares represented by a certificate of stock." Again, it would seem that this omission from the Sales Act was inadvertent and the provisions of the other acts must be read into it. Williston on Sales, § 281.

How to Ship Goods to a Buyer

Sometimes neither party to a sale of goods cares to trust the other. The seller wants to retain his hold on the goods till paid and the buyer does not want to pay till he gets the goods. How can this be done? Secs. 40 of the Bills of Lading Act and 19 and 20 of the Sales Act give the answer. A seller may ship the goods in any of four ways: 1st, by straight bill naming the buyer or his agent as consignee; 2nd, by an order bill to the buyer or his agent; 3d, by straight bill, naming himself as consignee; 4th, by an order bill to himself or his agent. By naming the buyer as consignee, the seller indicates his intent to pass the title to the buyer when the goods are shipped, whether the bill be a straight bill or an order bill. But since the buyer cannot get his goods till he gets an order bill, the seller retains his hold on the goods until he surrenders such a bill. But by naming the buyer as consignee, the seller has put himself in an awkward position. If the buyer refuses to pay on tender of the bill of lading and also refuses to indorse the bill of lading back to the seller, the carrier will hold the goods until it is convinced that the consignee has no interest in the goods.

By naming himself or his agent as consignee the seller indicates his intent to retain title. In order to indicate his intention to appropriate the goods to a definite buyer, he may insert in the bill the words, "Notify A. B.," that is, the buyer. But for the form of the

bill, the title would have passed to the buyer on shipment of the goods, and as this form is used only because it is necessary to compel payment by the buyer, the acts place upon the buyer the risks of ownership, just as if the goods had been consigned to him. Sec. 9 of the Bills of Lading Act provides that the presence in the bill of the words, "Notify A. B." shall not affect the negotiability of the bill nor be notice to a later purchaser of the bill of any rights or equities of the original buyer. Therefore, when the goods are shipped in this way, the buyer has all the burdens of ownership without any of its advantages. The seller can change his mind and sell the goods to another and the buyer has only his action against the seller personally, unless the second buyer knew of the equitable title of the first buyer.

Frequently the seller draws a draft on the buyer for the price and sends the draft with the bill of lading attached either to his own agent or to the buyer direct. He often discounts the draft at his home bank and the bank then forwards the draft, with the bill attached, to its correspondent bank in the buyer's city to present the draft for acceptance or payment. The seller has indorsed the bill in blank, so that, if the buyer does not honor the draft, the bank can sell the bill of lading or fall back on the drawer of the draft and return the bill of lading. But suppose the seller sends the draft and bill, indorsed in blank, to the buyer direct, and the buyer uses the bill but does not honor the draft, is an innocent purchaser of the goods in the same position as if he had bought goods from a thief? Both acts provide that, whether the buyer gets the goods from the carrier and sells them or negotiates the bill of lading, the innocent purchaser shall be protected, though, of course, the buyer has committed a conversion. The case is treated just as a delivery to a buyer under a contract of conditional sale is treated in Pennsylvania. The foregoing rules as to the intention of the seller to be inferred from the form of the bill of lading are absolute as to third parties but as between the seller and the buyer, it may always be shown that the contract of the parties made a different provision as to when title was to pass.

The Warehouse Receipts Act and the Stock Transfer Act contain no provisions similar to the foregoing provisions of the Sales Act and the Bills of Lading Act, but one selling goods to remain in storage or one selling shares of stock may use a draft with the negotiable document attached in the same way and the same rules would be applied.

Duty of Bailee When Converted Goods Are Bailed

When the one entitled to the goods by the terms of a document of title demands the goods, may the bailee decline to deliver the goods on the ground that the title of the bailor was defective and that delivery would expose the bailee to an action for conversion at the suit of the real owner? Sec. 11 of the Bills of Lading Act casts the burden on the carrier of proving the existence of a lawful excuse for non-delivery. Sec. 8 of the Warehouse Receipts Act contains a like provision but adds that the excuse must be one provided by the act itself. Sec. 12 of the Bills of Lading Act and Sec. 9 of the Warehouse Receipts Act both provide that it shall be a good excuse for non-delivery if the bailee has already surrendered the goods to one who was entitled to their possession, that is, the one whose goods were converted by the bailor. On the other hand, the same sections protect the bailee if he has delivered the goods to the one entitled by the document before he learned of the claims of the one whose goods were converted. The act of storing or carrying the goods and redelivering them to the wrongdoer or another at his behest is no longer a tort, if the bailee acted innocently in the matter. But if the bailee has information of the claim of the real owner but is in doubt as to the validity of his alleged rights, what is he to do? Sec. 10 of the Warehouse Receipts Act and Sec. 13 of the Bills of Lading Act make the bailor liable, if it makes a mistaken delivery in such a case. If he delivers to the one appearing to be entitled by the terms of the document, he is liable to the real owner, if the latter had requested him not to make such delivery or if the bailee had information from any source that such person was not entitled to the goods. On the other hand, if he undertakes to deliver to the claimant, he must be able to show that his claim was well founded. But one agent of a carrier may be delivering goods at the very time notice of the prior conversion is being given to another agent. Accordingly the above section protects the carrier unless there has been a reasonable time for the agent knowing the facts to communicate with the agent in actual control of the goods, and unless the notice was received by an agent whose apparent duty it was to act upon it. Sec. 18 of the Warehouse Receipts Act and Sec. 21 of the Bills of Lading Act give the bailee a reasonable time to determine the validity of such claims of which it has notice, and in the meantime it may justify retention of the goods as against both claimants. After the lapse of such a time it must act at its peril or begin legal proceedings to compel the different claimants to interplead. The right of a bailee to call on his bailor to interplead has been denied, hence Sec. 17 of the Warehouse Receipts Act and Sec.

20 of the Bills of Lading Act expressly give this remedy to the bailee, either as a defense to an action or as an original proceeding. The Sales Act casts no light on this question because no sale is involved in it. And as shares of stock are intangible and only the certificate can be converted, the Stock Transfer Act contains no relevant provisions. But a corporation may be met by adverse claims to the ownership of a certificate and it would be justified in retaining dividends till the validity of the claims was decided, and interpleader would be the only appropriate remedy.

Criminal Offenses

The Sales Act and the Stock Transfer Act contain no criminal provisions. The crimes created by the Warehouse Receipts Act and those created by the Bills of Lading Act are not the same, except in part. Both acts make it a crime to issue a document with knowledge that the goods have not actually been received at the time it is issued. If the receiving agent deceives the issuing agent, the former only is guilty. Similarly both acts make it criminal to issue a document known to contain any false statement. Again both acts make it criminal to issue a second *negotiable* document, not marked "duplicate," while knowing the original to be outstanding. The issue of new documents after judicial proceedings upon the loss or destruction of the original is excepted in the Warehouse Receipts Act but not in the Bills of Lading Act. The issue of a receipt by a warehouseman for goods in which he has an interest, which the receipt does not disclose is criminal. This fraud has not arisen in the case of carriers and the Bills of Lading Act has no section covering it. Both acts make it criminal to bail goods, the title to which the bailor knows is defective, if he later negotiates a negotiable document representing them without disclosing his defect of title. As previously stated, the Warehouse Receipts Act makes it a crime to surrender goods for which a negotiable receipt is shown to be outstanding, except in the case of a judicial decree upon proof of the loss of the original. There is no such severe rule in the case of carriers, their civil liability being deemed sufficient. On the other hand, to issue a straight bill of lading and not mark it "not negotiable," is made a crime if done with intent to defraud. There is no similar provision in regard to warehouse receipts. The Bills of Lading Act contains two further provisions not in the Warehouse Receipts Act. It is made criminal to fraudulently dispose of a bill knowing that there are no goods behind it and also to secure the issuance of a fictitious bill by inducing the freight agent to believe that the goods have been received by the carrier.

We have pointed out the many points of difference between these "Uniform Acts," in their provisions dealing with analogous situations. Is it not time for the Commissioners to begin the preparation of an act to unify these acts and put these documents on exactly the same basis? It would greatly reduce the labor of students and practitioners and the writer knows of no objection which could be urged against such a course.