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Uniform Commercial Acts*

Samuel Williston

In two recent numbers of the *Dickinson Law Review*, Mr. J. P. McKeehan pointed out some points of difference in various provisions of the Uniform Sales Act, the Warehouse Receipts Act, the Uniform Bills of Lading Act, and the Uniform Stock Certificate Act, and suggested that these Acts ought to be uniform with one another, and the documents dealt with in them put "on exactly the same basis." He adds: "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."

Mr. McKeehan has rendered good service in comparing these various statutes, and he might well have included in his comparison the Negotiable Instruments Law. To such a proposed addition he would probably reply that a bill of exchange or promissory note is not a document of title. This is true, but neither is a stock certificate. Like a promissory note it is itself an obligation or the tangible evidence of an intangible obligation, rather than the symbol of tangible property; and if a stock certificate is to be compared with a warehouse receipt, a promissory note which presents a nearer analogy, might well be.

This suggestion is made because it will indicate to the reader at once that there may be some objection to putting the various documents on exactly the same basis. The reader may perceive that perhaps mercantile custom in regard to the use of the several documents is not identical, and because of this difference the questions which in fact arise and press for decision are not identical.

It would have been simpler and easier for students to remember, if it were provided that the endorsement of a bill of lading or warehouse receipt had the same effect as the endorsement of a promissory note. There is perhaps no good reason in theory why it should not have that effect, but law and custom are both otherwise, and the Commissioners did not conceive it to be their duty to

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attempt for the sake of symmetry to reverse existing law and custom.

It is no doubt true that if three at least of the commercial acts of which Mr. McKeehan wrote (for the stock transfer act should be excluded) had been simultaneously prepared, greater similarity of wording in some instances, and of substantive law in one or two matters, might have been achieved. As each successive Act was drawn, the temptation to attempt improvements existed, and to a slight extent was yielded to. The following examination will, however, show that most of the differences in the statutes are not accidental but intentional, and exist for good reasons.

The Commissioners in drawing the statutes observed two principles, which, on the whole, seem wise.

First, to follow existing law unless it conflicted with recognized mercantile custom;

Second, to make special provision for cases which had in fact caused litigation and diversity of judicial decision.

Matters which conceivably might arise, but in fact had not arisen, were not much dealt with, except so far as the general principles laid down in the Act necessarily involved a decision of them. This accounts for certain of the instances where a provision is made in regard to one kind of document but no corresponding provision in regard to other documents, though the same situation is theoretically possible. Drafts with warehouse receipts attached, or with stock certificates attached, may be sent like drafts with bills of lading attached, but while the practice is so common with bills of lading as to make it desirable to state fully the rights of the parties, the same fullness did not seem necessary with warehouse receipts and stock certificates.

With this introduction some comments may be made on a few of the specific points of Mr. McKeehan's articles

Permissible Provisions in Documents

“A warehouseman, as the critic says, 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.*’”

There is a good reason for this distinction. It was found possible to insert in the Warehouse Receipts Act, a sufficient code to cover all that was forbidden. It was not possible to do this in the case of a bill of lading. Interstate bills of lading are governed as to their form by the orders of the Interstate Commerce Commission. It was of vital importance that the State statute should be and

should continue in harmony with the rules laid down in Washington. Moreover some of the provisions in bills of lading may be governed by the *lex loci solutionis*, and a statute in force in the place of the contract cannot dictate what shall be permissible in another state.

Marking Documents

Mr. McKeehan asks why should not failure to mark a document "not negotiable" result in making the document negotiable; or, why require the insertion of the words at all. He points out that it is folly to rely upon the presence or the absence of the words under the present law, since creditors may levy on the goods. The conclusion of the Commissioners on this matter, seems amply justified. Nobody ought to rely on the presence or absence of the words in question, but many foolish persons do. When the public has become as well educated in regard to the importance of the words "order" or "bearer" in bills of lading as it is in regard to those words in promissory notes, marking documents "not negotiable" will probably be unnecessary. At present it is desirable in order to save foolish or ignorant persons from the consequences of their mistakes. The penalties in the Statutes are sufficient to induce warehousemen and carriers to mark the documents as the law requires, and if this result is achieved the object of the Commissioners has been obtained. On the other hand, it did not seem wise to disregard the whole mercantile doctrine as to the presence or absence of the words "order," or "bearer," determining negotiability, and to substitute a marking or failure to mark "not negotiable" as an exclusive test. If a bailee issued a document to order, and marked it "not negotiable," it would then be non-negotiable. This was an especially obnoxious habit by which some carriers sought to limit their obligations on order bills. The reason why criminal liability instead of civil liability is provided for failure properly to mark bills of lading is not due to accident. A bill of lading issued in Pennsylvania where the Bills of Lading Act is in force, may be bought in Mississippi where that Act is not in force. Whether the Pennsylvania law could give the Mississippi buyer by virtue of the purchase of the document a right which the Common law did not give, and make the right enforceable in Mississippi may perhaps be questioned. The desire of the Commissioners was to induce the carrier to mark the document carefully. The criminal penalty in the case of the carrier seemed the only effective way.

Assent to Terms

There has been much litigation upon the question whether the acceptance of a bill of lading without objection indicates assent to its terms. The point therefore is covered in the Bills of Lading Act. There has not been the same litigation, in regard to warehouse receipts, whether because receipts do not ordinarily contain the numerous and frequently harsh provisions of bills of lading, it is unnecessary to inquire. The competition between warehouses in the same city creates a situation where it is impossible for an individual warehouseman to impose severe conditions. As practical conditions seemed to require no legislation concerning warehousemen on the point, it was left to the common law. There is no reason to doubt that acceptance of a warehouse receipt, like the acceptance of a written contract to buy and sell, indicates assent to its terms.

Excuses for Non-Delivery of Goods

Again the critic seems to assume that there is no reason for the Warehouse Receipts Act requiring the warehouse man to find his excuse in the provisions of the Act, while carriers may offer "any lawful excuse." If he will consider that the Pennsylvania Statute cannot determine what excuse should be sufficient for discharging the carrier from liability when he delivers the goods in Virginia, the reason will be plain. Obviously it will not do to hold the carrier liable in Pennsylvania for something which the Virginia law compels him to do. Where goods are to be stored continuously in a State which enacts the Uniform Statute, all excuses may be stated and a more complete dealing with the situation is possible than where they are to be transported to other States which may not enact the Statute.

Delivery To Agent

What has been just said also applies to the justification given the carrier when compelled by legal process. The Pennsylvania statute cannot prevent goods being taken from the carrier by legal process in another State, but it can provide that they shall not be taken from a "Pennsylvania warehouseman except as stated in the statute itself." As to the requirement of written authority in the Warehouse Receipts Act while oral authority suffices under the Bills of Lading Act, it is to be said that these provisions were made after careful consultation with the American Warehousemen's Association on the one side, and representatives of leading railroads

on the other. The different ways in which business is transacted by carriers and warehousemen is the cause of the difference. A warehouseman need do business only at one warehouse, or a few warehouses, all ordinarily in the same city, a carrier must do business at hundreds of stations—many of them small, and in charge of clerks who receive small compensation. Moreover, the carrier far more frequently than the warehouseman is under pressure to make delivery promptly.

Lost Documents

The reason for requiring greater strictness in regard to lost warehouse receipts than in regard to documents issued by carriers and corporations is because many States impose little or no limitation on the right of any person, whether financially responsible or not, to go into the business of warehousing. In consequence of this also it seemed desirable to impose a criminal penalty for issuing a receipt to replace one alleged to be lost, without proceedings establishing the fact of loss.

Use of Duplicates

Once more, the fact that warehouse receipts relate to goods in storage, while bills of lading relate to goods being transported, is the cause of a difference between the Statutes, namely that in regard to implied warranties on the issue of duplicates. If a warehouse receipt is cancelled, it is cancelled where it is issued; but a bill of lading issued in Philadelphia may be cancelled in San Francisco; and the degree of knowledge of the situation which is possible in the case of warehouse receipts to any warehouseman who is not negligent, may not be possible in the case of bills of lading. For this reason too, knowledge on the part of the carrier is made a condition of criminal liability.

Bailee Claiming Title

The Warehouse Receipts Act states that the warehouseman can only set up a title in himself “derived directly or indirectly from the depositor, etc.” The critic says: “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.” Surely he may ordinarily, the act says so, for such a title is derived either directly or indirectly from the depositor. The only difference

between the literal meaning of the provision in the Warehouse Receipts Act, and that in the Bill of Lading Act is that under the latter Statute, a title acquired by the consignee from some other source than a direct or indirect transfer from the consignor, will pass to the purchaser. This is not expressly stated in the Warehouse Receipts Act, and the wording in the later Act was accordingly changed but it seems probable that a court would reach this desirable result even under the Warehouse Receipts Act.

What has already been said in regard to the difference of the nature of the business of storing in one State and transporting to other States, is the reason for the intentional difference of the acts in regard to the particularity with which the amount of liens must be stated.

Accommodation Bills and Receipts

How far Statutes, such as those in question, should codify the law of agency is a practical rather than a theoretical question. The law is a seamless garment, and it is impossible to find a fixed boundary for a given subject. In general it was not deemed wise to codify the law of agency as applied to all the situations where an agent might act in connection with documents of title. The issue of fictitious or accommodation bills by railroad agents was, however, of such common occurrence and had been the subject of so much litigation that a provision in regard to it was inserted.

The critic comments on the risk of which the purchaser runs in regard to the quality of the goods; he does not, however, suggest that the rule of the Statutes is improper. The provisions in question were elaborately discussed by warehousemen, carriers and lawyers, and the final result was not reached carelessly or without thorough inquiry as to its practical applications.

Creditors' Remedies

The same may be said in regard to the remedies provided by the Acts for attachment and levy. If these provisions do not go to the full extent of the mercantile theory that the negotiable document is the sole representative of the property, and while outstanding precludes seizure of the goods as was suggested in the original drafts of the earlier Acts, the advance upon the existing law is striking; and though it is theoretically possible that an injunction will be violated and a transfer made in spite of it, this will not often happen.

The Form of Negotiable Documents

The Warehouse Receipts Act provides for negotiable receipts either to order or to bearer. Under the Bills of Lading Act, the only negotiable bills are order bills. After conferences with Warehousemen's Association, it appeared that warehouse receipts were sometimes issued to bearer. Bills of Lading have not been issued in this form generally, if they have been at all, in recent years. The uniform forms of bills of lading framed by the Interstate Commerce Commission do not provide for bills to bearer. The Commissioners on Uniform State Laws took these mercantile customs as they found them, especially as they seemed unobjectionable. Then, as bills of lading are not allowed under the Uniform Act to be issued to bearer, there was no occasion to provide that a holder of a bill, in form negotiable by delivery, might restrict the negotiability by endorsement to himself or to a specified person. The bill of lading will not be negotiable by delivery except when endorsed in blank. By filling in his own name or that of another over the blank endorsement, the negotiability of the bill, without the necessity of a new restrictive endorsement.

The Bills of Lading Act requires that the words "to the order of" precede the name of the consignee. This requirement is in conformity with that of the uniform order bill of the Interstate Commerce Commission. One of the easiest ways to commit fraud with bills of lading formerly was to take a spent straight bill of lading, which the carrier had not taken up, (as it need not) add the words "or order" to the name of the consignee, and negotiate the document as an order bill. This possibility is entirely removed by the requirement that the words of negotiability shall precede the name of the consignee. Indeed in the uniform order bill of lading, the words of negotiability are printed in the bill. Mr. McKeehan I think misinterprets the Warehouse Receipts Act if he thinks that under that Act the words of negotiability must follow the name of the person to whom the goods are deliverable. Words of negotiability in warehouse receipts, as in Bills and Notes, may precede or follow the name of the consignee. In the law of Bills and Notes and in common mercantile and legal speech, an instrument payable to the order of A, and payable to A or order, is equally designated as an instrument payable to A or order; though in strictly logical speech, an instrument in the first form is not payable to A directly, if he remains the holder.

The provision, which is so necessary in the case of bills of lading that the words of negotiability shall precede the consignee's

name, was not equally necessary in the case of warehouse receipts. Mr. McKeehan quotes as a statement from my "Lectures on Commercial Law" (Sec. 179, page 98) that the risk that a negotiable document may be forged or altered "has in practice proved the most serious risk of all." He adds: "Forgery is easy because of the carelessness with which receipts and bills of lading are made out." The statement in my lectures was made explicitly in regard to Bills of Lading; the application to Warehouse Receipts Acts is not mine. I do not think it true that warehouse receipts are carelessly made out; they are ordinarily made out carefully and can easily be so made out. Before the enactment of the Warehouse Receipts Act, the practice was usual as it now is to issue such receipts from a book with serial numbers. Warehouse receipts are issued from the principal office of the warehouseman and it is not difficult in most cases to surround their issue with the care usual in the issue of bills and notes if not with quite the same care as is used in regard to stock certificates. Bills of Lading, on the other hand, are issued from all stations on large railroad systems. Instead of emanating from one central office, they emanate from hundreds and with some railroads from thousands of different points. Large shippers, especially manufacturers frequently, if not usually, write their own bills of lading, and the railroad agent merely signs the bill presented to him, checking over the shipment hastily unless it is a "shippers load and count" shipment. Under these circumstances, there is great difficulty in surrounding the issue of an order bill with the precautions which are desirable in case of a valuable negotiable document. It is not necessary here to discuss the attempts which have been made to meet the difficulty. It is enough to point out here that these difficulties do not exist in the case of Warehouse Receipts, and that therefore it was unnecessary to put the same restriction on their form as is put on the form of bills of lading. The greatest risk in warehouse receipts is their issue by warehousemen who are not financially responsible, and especially the possibility of the issue of receipts against the warehouseman's own goods and a subsequent dealing with both receipts and the goods. This risk which is serious in the case of warehouse receipts is negligible in the case of bills of lading.

Purchase from a Thief or Finder

The opinion of the Commissioners on Uniform State Laws undoubtedly underwent a change after the preparation of the Sales Act and Warehouse Receipts Act, and before the promulgation of the Bills of Lading Act and the Stock Certificates Act. Even the

earlier statutes go somewhat beyond the common law, as previously understood, in protecting a purchaser of a document. The later statutes give the same negotiability to Bills of Lading as Bills of Exchange possess. The difference between the statutes is doubtless undesirable, but if considered a serious matter is easily rectified by a brief amendment to the Warehouse Receipts Act.

Summary

Enough has been said perhaps to indicate the undesirability, if not impossibility, of having identical provisions in regard to bills of lading and warehouse receipts. A student who will carefully examine Mr. McKeehan's article and the comments here made, will, I think be disposed to agree that for most of the differences between the statutes, there is a valid reason. I have not discussed in detail all the reasons, but only the most striking ones. Such small residuum of the points made by Mr. McKeehan as are well taken, I hope will not seem to most students of the subject of sufficient consequence to justify the somewhat drastic remedy that he proposes.

