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The Title Acquired By a Purchaser of a Negotiable Bill of Lading

The fourth paragraph of the syllabus in *Kendall Produce Co. v. Terminal Warehouse & Transfer Co.*, 295 Pa. 450, (1929) is as follows:

“Under section 32 of the Bill of Lading Act of June 9, 1911, P.L. 838, a person to whom a negotiable document of title, *such as a bill of lading*, has been duly negotiated, acquired thereby *only* such title to the goods as the person negotiating the bill to him had, or had ability to convey to a purchaser in good faith for value.”

The writer of the syllabus inserted therein the word, “only”, which does not appear in that sentence of the opinion which was supposed to justify it.

The actual provision contained in section 32 of the act is as follows:

“A person to whom a negotiable bill has been duly negotiated acquires thereby—

Such title to the goods as the person negotiating the bill to him had, or had ability to convey to a purchaser in good faith for value, *and also such title to the goods as the consignee and consignor had, or had power to convey to a purchaser in good faith for value.*”¹

Section 31 of the act is as follows:

“A negotiable bill may be negotiated by any person in possession of the same, *however such possession may have been acquired*, if, by the terms of the bill, the carrier undertakes to deliver the goods to the order of such person, or if at the time of negotiation the bill is in such form that it may be negotiated by delivery.”

Section 38 of the act is as follows:

“The validity of the negotiation of a bill is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the bill was de-

¹Purdon's Penna. Statutes Anno., Permanent Ed., Title 6, Sec. 82.

prived of the possession of the same by fraud, *accident*, mistake, duress or *conversion*, if the person to whom the bill was negotiated, or a person to whom the bill was subsequently negotiated, gave value therefor, in good faith, without notice of the breach of duty, or fraud, *accident*, mistake, or *conversion*."

The words "accident and conversion" were inserted in the statute for the express purpose of extending to bills of lading the rule previously applicable only to bills and notes, that a finder or a thief could convey a good title to a negotiable document to a holder in due course.

Section 32 of the Uniform Sales Act of 1915,² P.L. 543 is as follows:

"A negotiable document of title may be negotiated
 (a.) By the owner thereof; or
 (b.) By any person to whom the possession or custody of the document has been *entrusted* by the owner, if by the terms of the document, the bailee issuing the document undertakes to deliver the goods to the order of the person to whom the possession or custody of the document has been entrusted, or if at the time of such *entrusting* the document is in such form that it may be negotiated by delivery."

The provisions of the Warehouse Receipts Act of 1909, P.L. 19 sec. 40,³ as to who may negotiate a receipt, are the same as those above quoted from the Uniform Sales Act, and the provisions of sections 38⁴ of the Sales Act, and 47⁵ of the Warehouse Receipts Act are the same as those of section 38 of the Bills of Lading Act (*supra*), except that the words, "accident and conversion" are not contained therein.

The provisions in all the foregoing acts that the person to whom a document has been duly negotiated acquires not

²Purdon's Penna. Statutes Anno., Permanent Ed., Title 69, Sec. 226.

³Purdon's Penna. Statutes Anno., Permanent Ed., Title 6, Sec. 160.

⁴Purdon's Penna. Statutes Anno., Permanent Ed., Title 69, Sec. 232.

⁵Purdon's Penna. Statutes Anno., Permanent Ed., Title 6, Sec. 167.

only the title to the goods which the person negotiating the document had, and the title which the consignee and consignor had, but also such title as any one of these had power to convey to a purchaser in good faith for value, is intended to cover the situations provided for by sections 23 and 24 of The Sales Act.⁶

The former provides:

"First. Subject to the provisions of this act, where goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, *unless the owner* of the goods is by his conduct *precluded* from denying the seller's authority to sell."

"Second. Nothing in this act, however, shall affect:

(a) The provisions of any factor's acts, recording acts, or any enactment enabling the *apparent owner* of the goods to dispose of them as if he were the true owner thereof."

The latter provides:

"Where the seller of goods has a *voidable title* thereto, but his title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith, for value, and without notice of the seller's defect of title."

Two of the commonest cases where one, having not even a voidable title, is enabled to give a good title because the owner is precluded from denying the seller's authority to sell, he having enabled him to appear to be the owner of the goods, are those in which the buyer of goods, who may have made full payment therefor, permits the seller to continue in possession of them, or of negotiable documents of title representing the goods, and where a seller of goods, who has not been paid therefor, delivers them to the buyer and reserves title as security for payment. The former situation is covered by section 25 of The Sales Act.⁷

⁶Purdon's Penna. Statutes Anno., Permanent Ed., Title 69, Sec. 201-202.

⁷Purdon's Penna. Statutes Anno., Permanent Ed., Title 69, Sec. 203.

The latter situation is covered by section 5 of the Uniform Conditional Sales Act of May 12, 1925,⁸ P.L. 603, which is as follows:

"Every provision in a conditional sale reserving property in the seller shall be void as to any purchaser from or creditor of the buyer who, without notice of such provision, purchases the goods or acquires by attachment or levy a lien upon them before the contract or a copy thereof shall be filed, as hereinafter provided, unless such contract or copy is so filed within ten days after the making of the conditional sale."

Section 20 of The Sales Act⁹ provides in part as follows:

"Second. Where goods are shipped, and by the bill of lading the goods are deliverable to the seller or his agent, or to the order of the seller or his agent, the seller thereby reserves the property in the goods. But if, except for the form of the bill of lading, the property would have passed to the buyer on shipment of the goods, the seller's property in the goods so shipped and deliverable shall be deemed to be only for the purpose of securing performance by the buyer of his obligations under the contract."

Section 40 of the Bills of Lading Act¹⁰ is to the same effect. Where the seller of goods makes it possible for the buyer to get possession of the goods by sending to him an order bill of lading endorsed in blank, he has in effect made a conditional sale, and the above quoted provisions of the Uniform Conditional Sales Act become applicable.

There are, of course, many other situations in which the owner of goods is estopped, or, as the statute express-

⁸Purdon's Penna. Statutes Anno., Permanent Ed., Title 69, Sec. 402.

See: *Anchor Concrete Machinery Co. v. Pennsylvania Brick & Tile Co.*, 140 A. 766, 292 Pa. 86 (1928), which construes and applies this section.

⁹Purdon's Penna. Statutes Anno., Permanent Ed., Title 69, Sec. 144.

¹⁰Purdon's Penna. Statutes Anno., Permanent Ed., Title 6, Sec. 90.

es it, "precluded", from showing his title as against an innocent purchaser for value.¹¹

While the Sales Act was enacted in 1915, four years after the Bills of Lading Act, bills of lading still have the full negotiability given them by the Bills of Lading Act, for section 78 of the Sales Act provides:¹²

"This act shall not be construed to repeal or limit any of the provisions of the act, entitled "An act relating to warehouse receipts", approved March eleventh, Anno Domini one thousand nine hundred and nine (Pamphlet Laws, page nineteen), nor the act approved June ninth, Anno Domini one thousand nine hundred and eleven (Pamphlet Laws, eight hundred and thirty-eight) entitled "An Act to make uniform the law of Bills of Lading, and providing penalties for the violation thereof."

In 1915 the present writer suggested the desirability of harmonizing the numerous provisions of the Warehouse Receipts Act and the Bills of Lading Act which deal with the rules of law applicable to the same situation.¹³

Professor Williston, the draftsman of these acts as well as the Sales Act made a reply in June of the following year.¹⁴

He says in part:

"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.

¹¹See for instance—O'Connor v. Clark, 170 Pa. 318, 32 A. 1029, 29 L.R.A. 607 (1895).

¹²Purdon's Penna. Statutes Anno., Permanent Ed., Title 69, Sec. 338.

¹³See 20 Dickinson Law Review pages 33 & 63.

¹⁴See 20 Dickinson Law Review page 263.

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.*"

When the Warehouse Receipts Act was enacted in Idaho in 1915, the provision of the Bills of Lading Act as to who may negotiate, was substituted for the provision contained in the Commissioners' draft.

The act was amended in Wisconsin in 1917 and in Massachusetts in 1918 by making the same change, but it was not until August of 1922 that the National Conference of Commissioners recommended an amendment of section 40 of the Warehouse Receipts Act, so that it should read as follows:

"A negotiable receipt may be negotiated by *any person in possession of the same, however such possession may have been acquired*, if by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of such person or if at the time of negotiation the receipt is in such form that it may be negotiated by delivery."

California, Colorado and Vermont adopted the amendment in 1923, New York in 1924, Ohio and Wisconsin in 1925, Nevada in 1927, Utah in 1929 and New Jersey in 1930, but it has not yet been adopted in Pennsylvania. The commissioners recommended the amendment of section 47 to make it conform to section 40 as amended. The section is amended not only by adding the words, "accident and conversion" but by inserting the words, "loss and theft."

The suggested amendment is as follows:

"The validity of the negotiation of a receipt is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the receipt was deprived of the possession of the same by *loss, theft, fraud, accident, mistake, duress, or conversion*, if the person to whom the receipt was negotiated, or the person to whom the receipt was subsequently negotiated, paid value therefor, in good faith, without notice of the breach of duty, or *loss, theft, fraud, accident, mistake, duress, or conversion.*"

The commissioners at the same time recommended that sections 32 and 38 of The Sales Act be amended to read as follows:

"Who may Negotiate a Document. A negotiable document of title may be negotiated by any person in possession of the same, however such possession may have been acquired, if, by the terms of the document, the bailee issuing it undertakes to deliver the goods to the order of such person, or if at the time of negotiation the document is in such form that it may be negotiated by delivery."

"When Negotiation Not Impaired by Fraud, Mistake or Duress. The validity of the negotiation of a negotiable document of title is not impaired by the fact that the negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the document was deprived of the possession of the same by *loss, theft, fraud, accident, mistake, duress, or conversion*, if the person to whom the document was negotiated or a person to whom the document was subsequently negotiated paid value therefor in good faith without notice of the breach of duty, or *loss, theft, fraud, accident, mistake, duress or conversion.*"

These amendments were adopted in Tennessee and Vermont in 1923, Ohio, Washington and Wisconsin in 1925, Kentucky in 1928, and New Jersey in 1930, but they have not yet been adopted in Pennsylvania.

It is important to note that the conversion which may have occurred without impairing the title of an innocent purchaser is a conversion of the document, and not of the goods themselves. If the goods shipped were converted before shipment, and the negotiable document is thus issued to one who had no title, not even a voidable one, then of course an innocent purchaser of a negotiable document acquired no title unless for other reasons the owner is estopped to claim title.¹⁵

In the case of *The Kendall Produce Co.*, which provoked this comment, the consignor was a mere bailee without authority to sell or even to make the shipment, and it is

¹⁵Vol. 2, Williston on Sales, 2d. ed., p. 1038, Sec. 421.

this fact which justified the decision. It is unfortunate, however, that the case should have been summarily disposed of with a startling misstatement of the law. The case is the only one discussing the subject since the enactment of the Uniform Bills of Lading Act, and it presented an opportunity for an adequate discussion of the radical change in the law made by the Act of 1911.

Prior to the enactment of the Uniform Bills of Lading Act in Pennsylvania in 1911, the Act of September 24, 1866, P.L. 1363 was in force. This act made all bills of lading negotiable, if not marked non-negotiable, but in *Shaw v. Pennsylvania Railroad Co.*, 101 U. S. 557, 25 L. Ed. 892,¹⁶ this statute was so construed that it could have been correctly stated that a purchaser of a negotiable bill acquired only such title as the seller had or had ability to convey to a purchaser in good faith for value, but it is surprising, to say the least, that this rule should be reiterated in a decision which refers to the Uniform Bills of Lading Act and purports to be stating the law as therein provided.

In Vold on Sales, sec. 110, page 340 (1931), it is said:

"In recognition of these commercial considerations and the growing commercial usage based thereon, a movement has in recent years been under way to give legal recognition for such increased negotiability of these documents of title. The aim is to protect the good-faith purchaser as against the original holder even though he acquired the documents from or through a mere possessor to whom they had never been intrusted by the original holder. For the protection of good-faith purchasers, the burden is to be imposed on the prior holders of such documents to see to it at their peril that such documents do not get into the hands of mere strangers. This viewpoint prevailed in the drafting of the Uniform Bills of Lading Act, which thus recognizes complete negotiability in order bills of lading and similar documents if in such form as to be transferable by delivery."

¹⁶For a description of the rights of the bona fide purchasers of bills of lading prior to the uniform act, see: 10 C. J. Sec. 272 and Sec. 278.

Whether as suggested by Professor Ralph S. Bauer in an article in Vol. 77, *University of Pennsylvania Law Review*, page 467, it is desirable that the uniform commercial statutes be consolidated as a whole, may be doubted, but it is certainly desirable that the Legislature of Pennsylvania bring the provisions of the Sales Act relating to the negotiable documents of title, and the provisions of the Warehouse Receipts Act into harmony with the provisions of the Uniform Bills of Lading Act.¹⁷

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¹⁷For one of Judge Sulzberger's inimitable charges to a jury involving the transfer of what he terms a "flat" bill of lading, see: *Marine Nat. Bank v. Baringer*, 46 Pa. Super. Ct. 510.