Volume 40
Issue 2 *Dickinson Law Review - Volume 40, 1935-1936*

1-1-1936

Corporate Stock and the Uniform Sales Act

Joseph P. McKeehan

Dickinson Law Review

Published October, January, April and June by Dickinson Law Students

VOLUME XL JANUARY, 1936 NUMBER 2

Subscription Price $2.00 Per Annum 75 Cents Per Number

NOTES

CORPORATE STOCK AND THE UNIFORM SALES ACT

In *Butcher v. Newburger*,[1] Justice Simpson says:

> "Hence, when plaintiff contracted and paid for a given kind of stock, and was told by defendants' manager that they were delivering it to him, in law they warranted the stock to be as stated, and he had the right to implicitly rely thereon. Indeed, 'Where there is a contract to sell or a sale of *goods* by description, there is an implied warranty that the *goods* shall correspond with the description: Section 14, Act of May 19, 1915, P. L. 543, 546. And section 12 of the same statute says that 'Any affirmation of fact . . . . . by the seller relating to the

[1] 318 Pa. 547 at 551 (1935).

> *goods* is an express warranty if the natural tendency of such affirmation . . . . is to induce the buyer to purchase the *goods,* and if the buyer purchases the *goods* relying thereon,' as was the case here. It is true that *the Act of* 1915, *supra, covered only sales of goods which this stock was not, but the act was amended by that of April* 27, *P. L.* 310, *to include sales of choses in action, which the present sale was."*[2]

Is it true that since the amendment of the Sales Act by the Act of 1925, all of its provisions were made applicable to sales of stock?

In *Guppy v. Moltrup,*[3] section 4 of the Act of 1915 was pleaded by a purchaser of stock who had signed no writing or otherwise satisfied the requirements of that section. This section provides: "A contract to sell or a sale of any *goods or choses in action* etc."[4]

After quoting the section Justice Simpson says:

> "In Peoples Bank v. Kurtz, 99 Pa. 344, 349, we held that 'shares of stock in a corporation are choses in action.' It follows that such stock is necessarily within the scope of the section, etc."

The title of the Act of 1915 is: "An Act relating to the sale of goods." Justice Simpson accordingly held that it did not clearly appear from this title that any portion of the act applied to sales of corporate stock and that section 3 of Article III of our state Constitution had not been complied with.

Section 76 of the Act of 1915 is devoted to definitions of the words used in the act. The definition of "Goods" is as follows:

> "Goods include all chattels personal *other than things in action and money."*

Since Section 4 in terms refers to sales of "goods or choses in action," it is apparent that this section was intended to cover choses in action as well as goods and that the other sections of the act, which refer only to "goods", were intended to be confined in their application only to goods as defined in the act.

---

[2]Italics added.

[3]281 Pa. 343 (1924).

[4]Of course the inclusion of "choses in action" in section 4 of the Sales Act was in deference to the many decisions that they were included in the old phrase, "goods, wares, and merchandise." As to shares of stock as falling within the fourth section, see Ill.-Ind. Fair Ass'n v. Phillips, (1927), 328 Ill. 368, 159 N. E. 815; 59 A. L. R. 591, note. Davis Laundry etc. Co. v. Whitmore, (1915), 92 Ohio St. 44, 110 N. E. 518, Ann. Cas. 1917 C. 988, 14 A. L. R. 394.

That sales of stock fall within the scope of the fourth section of the Sales Act because they are choses in action, see De Nungio v. De Nungio, (1916), 90 Conn. 342, 97 Atl. 323; Burwell v. Am. Coke and Chemical Co., (1925), 7 F. (2d) 435; Davis v. Arnold, (1929), 267 Mass. 103, 165 N. E. 885; Farr v. Fratus, (1931), 277 Mass. 346, 178 N. E. 657.

It was accordingly held that section 4 was unconstitutional "in so far as it relates to choses in action." The case was decided November 24th, 1924.

On April 27th, 1925, the amending act referred to by Justice Simpson was passed. Its title is:

> "An act to amend the title and to re-enact section four of the act . . . . entitled 'An act relating to the sale of goods' by inclu ling within the *subject* and section four of the said act 'choses in action' as well as 'goods'."

Does such a title "clearly express" the idea that since 1925 all of the other sections of the original act which purport to deal only with "goods" are now to be read as if they also said "goods or choses in action"? If this was the purpose, why did not the title of the Act of 1925 and its contents amend the definition of goods so as to include choses in action instead of leaving it stand in a form which expressly excludes "things in action and money"?

Can it be that the courts will strike down a portion of an act of assembly because, as Justice Simpson says:

> "It would hardly be contended that the numerous stock brokers, and others buying and selling capital stock in this Commonwealth, would expect to find in 'An Act relating to the sale of goods,' a provision relating to the sale of such stock."

and then extend the operation of the entire act to sales of stock because of a statute whose title very clearly expresses the intention to amend the title only and reenact the only section which purports to cover choses in action as well as goods? It is notorious that the amendment was drawn to meet the criticism of the title in the *Guppy* case and it is hard to see how the draftsman could have more clearly expressed the idea that that was the sole purpose of the amendment.

In *Henderson v. Plymouth Oil Co.*,[5] a bill in equity in the U. S. District Court for the Western District of Pennsylvania was filed to compel the company to transfer 50,000 shares of stock. The seller was permitted to intervene as a defendant and he set up duress in procuring the assignment of the certificates. He was one of the promotors of the company and he was its treasurer, etc. The court found as a fact that he had falsely represented that the outstanding capital stock was only one-third of what it was in fact. The sales were all made prior to 1925. The court held that the misrepresentation did not constitute a warranty and quoted Chief Justice Gibson's famous declaration[6] that, "the naked averment of a fact is neither a warranty itself, nor evidence of it." The point was stressed that an action of trespass for deceit must be brought for representations made with knowledge of their

---

[5]13 F. (2d) 932 (1926).
[6]McFarland v. Newman, 9 Watts 55 (1839).

falsehood and that assumpsit for breach of warranty will not lie. The measure of damages is vastly different. *Guppy v. Moltrup* was cited to exclude the definition of express warranty in the Sales Act from consideration, since the act had no application to sales of stock.

In *Smith v. Lingelbach,*[7] the court held that not only did the definition of "goods" in the Sales Act expressly exclude choses in action, including certificates of stock,[8] but the fact that a separate statute relating specifically to sales of stock (Uniform Stock Transfer Act) had been enacted was enough to take such sales out of the operation of the Sales Act. The provisions of that act were accordingly quoted and applied. The Uniform Stock Transfer Act has been law in Pennsylvania since 1911.[9]

The question as to whether the courts should reverse their settled rules of law in cases of sales of intangibles where the Sales Act has changed them in the case of sales of tangibles, is an interesting one. The Court of Appeals of New York thinks that things in action may have been excluded from the scope of the act because it was thought that the inherent differences might at times require different rules. But whenever a distinction is not so forced, it was held to be public policy for the courts to extend the statutory rule by analogy to avoid senseless complexity in the law.[10] Though Justice Crane dissented, he was in accord with the entire court that the Sales Act did not apply to sales of stock. He accordingly thought that the settled law of New York in such cases should not have been disregarded.[11]

Justice Crane says: "Every rule of construction known to the law directs that the same word shall have the same meaning in one enactment. This Personal Property Law deals with goods and chattels, also with stock, choses in action, and when it intends to cover both goods and choses in action it says so."

In 2 Williston on Sales[12] the draftsman of the Sales Act says:

> "In Davis Laundry, etc., Co. v. Whitmore, 92 Oh. St. 44, 110 N. E. 518, Ann. Cas. 1917 C. 988, there is a dictum that shares of stock fall within the definition of goods. This seems incorrect. The contrary conclusion reached in Millard v. Green, 94 Conn. 597, 110 Atl. 177, 9 A. L. R. 1610, *is sound.* The actual decision in the Ohio case was right, holding as it did that a sale of stock was within the Statute of Frauds of the Sales Act, but this is because in Section 4 of the Act its words, "choses in action" are expressly included. *The statute in general relates to tangible property, but the section is broader in its scope.*"[13]

---

[7]177 Wis. 170, 187 N. W. 1007 (1922).
[8]Citing Millard v. Green, 94 Conn. 597, 110 Atl. 177, 9 A. L. R. 1610, 1617 (1920).
[9]Act of May 5, 1911, P. L. 126, Pa. Stats. Secs. 5700-5723.
[10]Agar v. Orda, 264 N. Y. 248, 190 N. E. 479 (1934).
[11]For discussions of this decision see 34 Col. L. Rev. 1372 and 29 Ill. L. Rev. 534.
[12]2d Ed., 1924, sec. 619, note 13.
[13]Italics added.

One of the radical changes made by the Sales Act in the law of Pennsylvania is in the words required to constitute an express warranty, though our Supreme Court has been slow to recognize this fact.[14]

The present law of England was settled by the House of Lords' decision in *Heilbut v. Buckleton.*[15] As Professor Williston has said, "That good old doctrine for the encouragement of trade, known as caveat emptor, has received no such support for many years."[16] The stock was misrepresented to be that of a "rubber company." This was false but it was held that the representation did not constitute a warranty.

The Sales Act deals with many problems upon which the Uniform Stock Transfer Act is silent. The Sales Act made many changes in the common law rules as found in the Pennsylvania cases. The legislature should decide as to whether the common law rules or those of the Sales Act should be applied to sales of stock when the Uniform Stock Transfer Act is silent on the subject. Such decisions as that in the principal case are an evasion of the issue by a mere judicial declaration of what every student of the law knows to be incorrect.

It might be added that since the relationship of the parties in the principal case was that of broker and customer and the broker appears to have bought the stock from a third party for the plaintiff, the provisions of the Sales Act could not possibly be applied, for the act relates to the buyer-seller relationship and not the principal-agent relationship. Liability arose from disobedience, failure to buy what was ordered— not warranty. Even the one section of the act that includes stocks can not be invoked in controversies between a stock broker and his customer.[17]

Joseph P. McKeehan

RESIDENCE REQUIREMENTS FOR DIVORCE IN PENNSYLVANIA

This note is limited to a discussion of residence requirements for *divorce* and does not discuss the annulment of marriage.

There is no requirement that the parties to a divorce action must have been married within the Commonwealth; that the cause of action must have accrued in Pennsylvania; or that the parties must have been domiciled here when the cause of action accrued. The Pennsylvania Divorce Act provides that the proper courts shall have power to grant divorces "notwithstanding the fact that the marriage of the parties and the cause for divorce accrued outside of this Commonwealth,

---

[14]Penna. Bar Asso. Quarterly, June, 1929, page 17; 77 Univ. of Pa. Law Rev. 1036, (1929).

[15]1913 App. Cas. 30.

[16]27 Harvard Law Rev. 1, 13. (1913).

[17]C. Clothier Jones v. Adams, 98 Pa. Super. 246 (1930).