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Acts to Make Uniform the Acts Relating to the Negotiability of Documents of Title

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NOTES

RECENT LEGISLATION

ACTS TO MAKE UNIFORM THE ACTS RELATING TO THE NEGOTIABILITY OF DOCUMENTS OF TITLE

Pennsylvania adopted the Uniform Warehouse Receipts Act in 1909, the Uniform Bills of Lading Act in 1911, and the Uniform Sales Act in 1915.

The Warehouse Receipts Act, 6 Purdon's 131 et seq., in Section 40, provided that a negotiable receipt could be negotiated by one not the owner, if the one so negotiating had been entrusted by the owner with the possession or the custody of the receipt. This, of course, precluded negotiation by a thief or finder or anyone who had not been entrusted with possession or custody of the receipt. Section 47 confirmed this limitation upon the power to negotiate, by providing that the validity of the negotiation should not be impaired by the fact that it involved a breach of duty on the part of the one negotiating, or by the fact that the owner was induced by improper means to entrust the possession or custody of the receipt

to the person so negotiating. Of course, only bona fide purchasers without notice of such breach of duty or improper inducement were protected.

The Bills of Lading Act, 6 Purdons 51 et seq., went much further, and in Section 31 provided that a negotiable bill might be effectively negotiated by anyone in possession, regardless of how possession might have been acquired, provided, of course, the bill was in such form as to be negotiated by the endorsement of the one in possession or by mere delivery. Section 38 of this Act provided that the validity of the negotiation of a bill of lading should not be impaired by the fact that the negotiation involved a breach of duty by the one negotiating, or by the fact that the owner had been deprived of possession "by fraud, *accident*, mistake, duress or *conversion*". The case of the lost bill would be covered by the word "accident", and the case of the stolen bill would be covered by the word "conversion". It is obvious that this gave the innocent purchaser of a bill of lading the same degree of protection which the Uniform Negotiable Instruments Act gives to such purchaser of negotiable bills and notes.

The Sales Act, 69 Purdons 1 contains fourteen sections relating to documents of title, sections 27 to 40, inclusive, and Section 76 defines a document of title to goods as "a bill of lading, dock warrant, warehouse receipt or order for the delivery of goods, or any other document used in the ordinary course of business in the sale or transfer of goods, as proof of the possession or control of the goods, or authorizing or purporting to authorize the possessor of the document to transfer or receive, either by indorsement or by delivery, goods represented by such document". Section 32 of the Act states who may negotiate a document, and Section 38 defines the circumstances, notwithstanding which, the negotiation is effectual. Instead of following the provisions of the Bills of Lading Act, the language of these sections was made to conform to the provisions of the Warehouse Receipts Act, but a section was added, providing that the Sales Act should not be construed to repeal or limit the provisions of the Bills of Lading Act.

In Volume XX of the Dickinson Law Review, pp. 33 to 76, an article appeared which severely criticized the many differences in the provisions of the uniform acts relating to situations involving apparently the same legal principle, and suggesting that an effort should be made to secure uniformity between the so-called uniform acts. Professor Williston had drafted all of these acts, and when this criticism was brought to his attention he sent a reply to the editor of the Dickinson Law Review, which appears in Volume XX, pp. 263 to 274. With reference to the difference herein referred to, he said:

"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 under-

stood, in protecting the 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 it is easily rectified by a brief amendment to the Warehouse Receipts Act."

Shortly following this, doubtless at the instance of Professor Williston, the commissioners recommended amendment of the appropriate sections of both the Sales Act and the Warehouse Receipts Act. Two states adopted the amendments in 1917, and Massachusetts followed in 1918. Since then, nine other states have done likewise. Repeated efforts have been made to have this done in Pennsylvania, and it has now been accomplished by the Acts of April 29, 1937, and May 28, 1937, the former being Act No. 134, making the language of the corresponding sections of the Warehouse Receipts Act conform to the language of the Bills of Lading Act, and the later Act No. 278, making like changes in the corresponding sections of the Uniform Sales Act. The result, obviously, is that a document of title, as defined in the Uniform Sales Act, may now be negotiated effectively to an innocent purchaser for value, which, of course, includes a mortgagee or a pledgee, as well as a buyer) if the document calls for the delivery of the goods to the order of the person who negotiates it, or it has been endorsed in blank by such person, even though the one negotiating the document stole it from the owner. One of the few available cases in Pennsylvania on this subject is *Kendall Produce Co. v. Terminal Warehouse & Transfer Co.*, 295 Pa. 450, the syllabus of which is distinctly misleading. A comment on this case may be found in Volume 36, Dickinson Law Review, pp. 157 to 165. This comment concludes as follows:

"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."

This has at last been accomplished.

J. P. McKeehan.