Washington University Law Review

Volume 14 | Issue 2

January 1929

Bills and Notes—Trade Acceptances

Follow this and additional works at: http://openscholarship.wustl.edu/law_lawreview

Part of the Commercial Law Commons

Recommended Citation
Bills and Notes—Trade Acceptances, 14 St. Louis L. Rev. 196 (1929).
Available at: http://openscholarship.wustl.edu/law_lawreview/vol14/iss2/11

This Comment on Recent Decisions is brought to you for free and open access by the Law School at Washington University Open Scholarship. It has been accepted for inclusion in Washington University Law Review by an authorized administrator of Washington University Open Scholarship. For more information, please contact digital@wumail.wustl.edu.

BILLS AND NOTES—TRADE ACCEPTANCES.—Trade acceptances, each of which contained the following clause, "the obligation of the acceptor hereof arises out of the purchase of goods from the drawer," were transferred to the plaintiff for a good and valuable consideration. In an action upon these instruments the defendant pleaded fraud. *Held,* the clause appearing on the face of each of the instruments rendered them nonnegotiable so that the purchaser took subject to drawer's defense of fraud, by Vernon's Ann. Civ. St. 1925, Arts. 5932-5948. *Harris v. Wuensche* (Tex. 1928), 7 S. W. (2d) 595.

The statutory reference in the principal case is to the whole of the negotiable instruments law. No specific section of the N. I. L. is cited. But under this law it has been repeatedly held that trade acceptances are negotiable. *American Trust Co. v. McDermott* (Mo. A., 1923), 256 S. W. 105; *Federal Commercial and Savings Bank v. International Clay Machinery Co.* (1925), 230 Mich. 33, 203 N. W. 166, 43 A. L. R. 1245; *International Finance Co. v. Northwestern Drug Co.* (D. C., 1922), 282 F. 920, in which the instrument specified that the acceptor's obligation "arises out of the purchase of goods from the drawer." The reasons for these holdings lie in the very existence of the N. I. L.—the policy of encouraging the negotiability of bills of exchange and promissory notes.

The Federal Reserve Act—Dec. 23, 1913, c. 6, Sec. 13, 38 Stat. 251, 12 U. S. C. Sec. 356 contains a provision that "—any Federal Reserve Bank may discount notes, drafts, and bills of exchange arising out of commercial transactions." The practice under this provision has been to render bills which do not arise out of commercial transactions nonnegotiable. It it, then, incumbent upon the Federal Reserve Bank rediscounting a bill of exchange to determine whether or not it arose out of a commercial transaction. The member bank which when discounting a bill of exchange demands a statement similar to the one found on the trade acceptances in the principal case is relieving the Federal Reserve Bank of the necessity of inquiring into the origin of the bill, because it is then shown on the face of the instrument that the obligation arose out of a commercial transaction. According to this practice, then, the trade acceptances in the principal case are certainly negotiable. See 12 U. S. C. Sec. 343.

In the principal case the court held the trade acceptances nonnegotiable because it regarded them only as evidence of a debt which existed on an open book account—assignable certainly, but not negotiable. *Lane Co. v. Crum* (Tex., 1927), 291 S. W. 1084, which was cited by the court as being in accord with its decision is in fact distinguishable from it in that there was a clause in the acceptances there involved, as follows: "Maturity being in conformity with the original terms of the purchase." "This clause," said the court in that case, "is more than a mere 'statement of the transaction which gives rise to the instrument,' as permitted by Par. 2, Sec. 3, Art. 5932, Tex. Rev. Civ. Stat. 1925 (Sec. 3, Subsec. 2, N. I. L.). So far from being a mere descriptive reference to the transaction which gave rise to the instrument, the clause, in definite terms, points to that transaction as the source of the acceptor's obligation to pay the amount named in the

Washington University Open Scholarship

instrument." However, it seems that the clause in the trade acceptances in the principal case does nothing more than give a "statement of the transaction which gives rise to the instrument." Liability here is on the instrument itself; the instrument needs no support from the transaction, as in the other case, where the very maturity of the instrument depended upon the "terms of the purchase."

In *Trader's Securities Co. v. Green* (Tex., 1927), 4 S. W. (2d) 182, overruled in the principal case, a trade acceptance containing a clause identical with the one found in the trade acceptance in principal case, was held to be a negotiable instrument and the holder was held entitled to recover as a holder in due course, under Art. 5935, Rev. Civ. Stat. Tex. 1925 (section 52, N. I. L.) to which the court made reference. The principal case seems to stand alone in holding that a trade acceptance is not a negotiable instrument.

S. H., '30.

CONFLICT OF LAW—LAW GOVERNING THE CONSTRUCTION AND INTERPRETATION OF CONTRACTS.—The defendant railroad and another, later bankrupt, entered into a joint contract for the purchase of coal. Their common purchasing agent located at St. Louis, Missouri, sent the purchase contract, unsigned, to the plaintiff coal company in Illinois for execution on the latter's part, and requested that the contract be returned to St. Louis "for final handling" and execution. In Missouri joint contracts are treated as joint and several; in Illinois the common law rule prevails. Suit was brought against the defendant alone. *Held,* that the law of the place where the contract is made governs its construction, "absent proof of a contrary intention of the parties," and that, since a contract is made where the last act is done towards its completion, Missouri law governs the situation, and the defendant railroad is liable. *Illinois Fuel Co. v. Mobile & O. R. Co.* (Mo., 1928), 8 S. W. (2d) 834.

The case is the most recent pronouncement of the Missouri Supreme Court on the problem of what law should govern the obligations under contracts made in one state, performable in another. The decision reaffirms the position of other recent Missouri cases, treated hereinafter. There is considerable conflict as to what law should govern contracts made in one state to be performed in another. Three views are prominent: (1) The view that the law of place of contracting (*lex celebrationis*) should govern; (2) the view that the law of the place of performance (*lex solutionis*) should govern; and (3) the view that the law of the place intended by the parties (the autonomy doctrine) should govern.

The Restatement of the Conflict of Laws by the American Law Institute takes the first view, that is, that the law of the place of making the contract should govern. The great advantage of this rule is the convenience of application and facility with which lawyers may advise clients. The case under consideration quotes from Sections 333 and 335 of the Restatement. The former declares that a contract is made in the state where the last act is done towards its completion. Section 335, briefly, declares that

http://openscholarship.wustl.edu/law_lawreview/vol14/iss2/11