



1928

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Recommended Citation

Ragland, George Jr. (1928) "The Uniform Sales Act in Kentucky," *Kentucky Law Journal*: Vol. 17 : Iss. 1 , Article 5.
Available at: <https://uknowledge.uky.edu/klj/vol17/iss1/5>

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NOTES

THE UNIFORM SALES ACT IN KENTUCKY

The recent session of the Kentucky legislature witnessed the adoption of the Uniform Sales Act. While Kentucky has been rather hesitant in the adoption of this uniform measure, just as it has been in the adoption of others, there are increasing evidences of a trend toward uniform legislation. This year for the first time a report on the progress of uniform legislation was included in the regular business of the Kentucky Bar Association. This report which was read by Judge Waddell and which will appear shortly in the Kentucky Bar Association Journal outlines the several uniform acts which have already been adopted. Official recognition has been given this move toward uniformity in the appointment by the Governor of two representatives from the Bar of the State to sit with the National Commissioners on Uniform Legislation. In the instant case at least there appears to be little or no room for doubting either the advantage or necessity of the adoption of the Uniform Sales Act. There is no finer epitomy of the commercial benefits to be derived from the adoption of the Sales Act than the statement issued by the National Conference of Commissioners on Uniform State Laws in 1921¹

It is always hazardous to predict changes which such legislation will effect in the pre-existing state law. It is not different in the case at hand. However, the mandatory rule of construction which the Sales Act itself lays down renders the present task a bit less difficult. Profiting from experience with the Negotiable Instruments Law a provision was inserted in the Sales Act which to a greater or lesser extent insures uniformity.² It is worthy of note that it is a mandatory rule of construction rather than merely directory as in the Sales Acts of several states.³

Of course the most important change effectuated by the adoption of the Uniform Act is the change from the metaphysical theory of documents of title to the mercantile view. This

¹4 Texas Law Review 330.

²Sales Act, section 74: "This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it."

³Nine states are cited in Williston on Sales, section 617, note 1. These states add the words "if possible" after the word "construed."

change of basic theory is fundamental to any proper understanding of the exact changes which the various sections of the Act are expected to effect. The obvious purpose behind such a change is to give documents of title fuller and more complete negotiability. Some states had by judicial decision already effected some of these changes toward negotiability. Still others had accomplished the same result by the adoption of the Uniform Bills of Lading Act, or the Uniform Warehouse Receipts Act. Kentucky had done none of these.⁴ Moreover the change is the more noticeable since Kentucky was pronounced in her following of the metaphysical or symbolical theory of documents of title. An earlier case is representative when it says: "Such a transfer of the bill of lading (to a pledgee) is regarded as the equivalent to investing the pledgee with actual possession of the property."⁵ This is equivalent to saying that possession of the document of title is symbolical possession of the goods themselves. Contrast with this the mercantile view which the Sales Act adopts: "A document of title in which it is stated that the goods referred to therein will be delivered to the bearer, or to the order of any person named in such document is a negotiable document of title."⁶ This general change of theory is quite basic to the following discussion of the exact practical changes which are effected by sections 27 to 39 inclusive of the Sales Act.

Sections 27 to 39 inclusive are merely concrete expressions of the results which should be attendant upon this changed viewpoint. All changes are toward negotiability. They follow in rather strict analogy the codified law governing bills of exchange and promissory notes.⁷

Section 28 provides for the negotiation of negotiable documents of title by delivery. The essence of the section is that a bill of lading indorsed in blank passes title to the goods by delivery of the bill of lading. This makes the bill of lading indicia of both ownership and possession of the goods whereas it had formerly been merely a symbol of possession. Apparently the Kentucky court would not previously have recognized negotia-

⁴But Kentucky has a statute declaring warehouse receipts negotiable. *Farmer v. Etheridge*, 24 Ky. Law Rep. 649, 69 S. W. 761 (1902).

⁵*Douglas v. Bank*, 86 Ky. 176, 5 S. W. 420 (1887). Accord *L. & N. Railroad Company v. Mengel Company*, 220 Ky. 289, 295 S. W. 183 (1927).

⁶Sales Act, section 27.

⁷Williston on Sales, section 408.

tion by delivery alone, for an earlier case says flatly: "When it is said that such a bill of lading is negotiable, it is only meant that its true owner may transfer it by *endorsement or assignment* so as to vest the legal title in the endorsee."⁸ That the Sales Act would place such documents of title on a footing with negotiable instruments in so far as negotiation by delivery is concerned may be seen by a comparison of sections 1, 30, and 40 of the Negotiable Instruments Law with the present section.

Section 29 provides for negotiation by indorsement. This is important when taken in connection with the other sections. The contrast between this provision and the common law idea is apparent from the quotation found in the preceding paragraph. It is essentially the difference between negotiation and assignment.⁹

Sections 30 and 31 provide for negotiable documents of title marked "not negotiable" and the transfer of non-negotiable documents respectively. These sections are explicit in their provisions and are of lesser importance in this brief discussion. The former is aimed at a very widespread practice among carriers.¹⁰

Section 32 in the newly adopted Kentucky Sales Act is somewhat changed from that of the uniform law. The uniform law gives merely "limited negotiability" to documents of title, contrasted with the full negotiability given to a bill of exchange, in that neither a thief nor a finder is within the terms of the section.¹¹ The Kentucky Act provides that, "a 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 the negotiation the document is in such form that it may be negotiated by delivery." The Uniform Act is identical, except that it omits the words underscored—"however such possession may have been acquired." It is seen that the Kentucky provision gives full negotiability. This is what the Uniform Bills of Lading Act has done and presumably the provision of that Act has been copied

⁸*Douglas v. Bank*, supra note 5. See the lately decided case of *L. & N. Railroad Company v. Mengel Company*, 220 Ky. 289, 295 S.W. 133 (1927) which re-affirms the earlier adherence to the symbolical theory of documents of title.

⁹*Pollard v. Vinton*, 105 U. S. 7 (1881).

¹⁰Madden's Uniform Sales Act, pages 48, 49.

¹¹Madden's Uniform Sales Act, page 50.

into the Sales Act in Kentucky. At least one other state, Iowa, has done the same thing.¹² This change is highly desirable.¹³ In fact this change was advocated by the Commissioners on Uniform State Laws.

Section 33 enables the purchaser of a document of title to acquire the right of his vendor, just as he did in Kentucky under the assignment theory,¹⁴ and in addition to acquire whatever property the original depositor had. This latter portion is an extension of the common law right.¹⁵ Section 34 and 35 are explicit and require no discussion. Section 36 is interesting in that it carries over almost bodily the like provisions of the Negotiable Instruments Act.¹⁶

Section 38 is an elaboration on section 32.¹⁷ Here again the changed act provides for full negotiability whereas the uniform act provides for more limited negotiability.¹⁸ But in distinction to section 32 this provision goes even further than the Uniform Bills of Lading Act.¹⁹

While we have been unable to find any Kentucky cases exactly in point with the problem involved in this section we may be sure that before the Sales Act the Kentucky court would have reached a different result as to the impairment of the negotiation by the various matters enumerated in section 38. Other states reached a different result under the common-law or symbolical theory.²⁰ Williston²¹ summarizes the process of reasoning in such cases thus: "What has been called the common-law view, which treats delivery of the documents of title as merely

¹²3 Iowa Law Bulletin 67, 98.

¹³Williston on Sales, section 414.

¹⁴*Newcomb v. Cabell*, 10 Bush 460.

¹⁵Madden's Uniform Sales Act, page 51.

¹⁶Negotiable Instruments Act, section 65.

¹⁷Madden's Uniform Sales Act, page 54. "It is said in the draftsman's notes to this section of the act, 'This section merely elaborates for the sake of clearness certain special cases within the terms of section 32.'" 3 Iowa Law Bulletin 100.

¹⁸The model Act said that equities for fraud, mistake or duress were cut off in the hands of a purchaser for value without notice. The changed Kentucky Act goes further and adds loss, theft, accident and conversion to the list.

¹⁹The Uniform Bills of Lading Act adds accident and conversion to the list over the Sales Act but the Sales Act as recently adopted in Kentucky goes even further and adds loss and theft also.

²⁰*Stollenwerck v. Thatcher*, 115 Mass. 224 (1873); *Dows v. National Exchange Bank*, 91 U. S. 618 (1875).

²¹Section 437.

equivalent to the delivery of the goods, leads to a different result. For a mere delivery of the goods themselves does not enable the person to transfer ownership, so it is held that delivery of any document of title can have no greater effect." And we are sure that the Kentucky court has evidenced no inclination to depart from the common-law theory of documents of title for as late as April 22, 1927²² it said: "The latter (consignor) delivered to them a bill of lading which was the symbol of the property named therein."

We may summarize that the Kentucky court may be expected to treat documents of title in the future in practically all respects as it does bills of exchange and promissory notes. Documents of title are to all practical purposes accorded full negotiability. We may also expect the Kentucky court to give such effect as the objectives of the commissioners and the mandates of uniformity dictate, especially since this has been the attitude of the Kentucky court toward other uniform legislation.²³ We have only dealt with the direct changes toward negotiability effected by the adoption of the Sales Act. We have not even dealt with the possible indirect changes such as the effect on the view as to documents of title taken as collateral security, or again as to provisions for risk of loss.²⁴ Nor have we dealt with direct changes outside of the field of negotiability. These changes may be predicted with fair accuracy by a comparison of the notes as to the changes effected in other common-law states which had adopted the act some years before Kentucky.²⁵

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²²*L. & N. Railroad Company v. Mengel*, 220 Ky. 239, 295 S. W. 183.

²³*Finley v. Smith*, 165 Ky. 445, 177 S. W. 262 (1915).

²⁴16 Kentucky Law Journal 235, 240.

²⁵3 Iowa Law Bulletin 67; 9 California Law Review 27; 3 Nebraska Law Bulletin 201; 26 Dickinson Law Review 151.