

CASES ON BILLS AND NOTES (Third Edition). By Howard L. Smith and Underhill Moore. West Publishing Company, St. Paul, Minnesota, 1932. pp. xiii, 976.

The law of negotiable instruments has the almost unique distinction of being embodied in a statute, to all intents and purposes uniform throughout the forty-eight states. The purpose, of course, of the enactment of the uniform negotiable instrument act was to codify the law in the various states in connection with transactions involving commercial paper and to effect a unanimity of decision and judicial determination in connection therewith. A reading of the recent compilation of Professors Smith and Moore on the subject leaves one with the distinct impression that there is still much to be desired in the way of uniformity. In fact it would almost seem the authors' intention to show that in this subject, as in probably every other, no legislative enactment can be drafted no matter how wisely or with what labor and study, that will cover every exigency which may arise and which will promulgate the rule of law adequately to meet every situation. No doubt the commissioners who drafted the Act realized that every statute having for its purpose the codification and determination of substantive rights can only effectively lay down general principles applicable thereto and that in the final analysis much must be left to judicial interpretation.

This case book is replete with instances of conflict of interpretation among our most eminent courts of last resort. Particularly is this true in that phase of the subject where uniformity is most desired, that is, the determination of what does and what does not constitute a negotiable instrument. Since almost every question affecting the substantive rights of parties to commercial paper, depends in the first instance upon whether or not the particular instrument in controversy is, or is not, negotiable, a determination of this question goes to the very essence of the dispute. Nevertheless, the authors have shown, that despite the simplicity of the wording of the act, there is still much controversy as to the essential requisites of negotiable paper. In fact it would seem that, in this phase of the subject, at least as far as the student is concerned, the matter is carried almost to the point of confusion, perhaps unavoidably because of the nature of the development of the subject matter. The division of the subject matter into chapters is not materially different from that ordinarily found in similar works but in certain instances the cases included under a particular division, or sub-division, are rather surprising, and to the general practitioner using the book as a reference, some difficulty might be experienced in locating cases dealing with a particular point involved.

The book contains many modern decisions interpreting various sections of the act, and also many references to law review articles. To the student who seeks fundamental principles in a subject which frequently causes him consternation, the more modern cases add some additional difficulty because the mercantile transactions out of which the instrument in controversy arises are more intricate and involved than were the early cases on the subject; but a careful study of them will reveal to the student important and interesting developments in this still rapidly expanding subject of the law.

The Court of Errors and Appeals of New Jersey has strongly intimated that the uniform negotiable instruments law is not to be treated as defining within the

express terms of the act the limits which must be placed upon negotiable paper.<sup>1</sup> The statement by that Court that "we are not to be understood, however, as holding that no instrument can hereafter acquire the elements of negotiability unless it answers the requirements of the statute," is the expression of a point of view which is not without support in our sister states.

The most interesting and enlightening cases in the collection are those which ostensibly are interpretations of the act but which, in effect, constitute judicial determinations quite without the pale of the statute. The contrast between the older and the more modern judicial view-point could not better be illustrated than by comparison of an early New Jersey case<sup>2</sup> cited in Smith and Moore's work, with the comparatively recent case from which the above excerpt is taken. The early case, which is probably one of the shortest opinions dealing with a substantive right appearing anywhere in our reports, holds that it is a fatal defect if the holder of a negotiable promissory note has not, before or at the trial, converted a blank indorsement into a special indorsement to himself. Certainly this is a far cry from the later conclusion that an instrument may contain the elements of negotiability though it does not strictly meet the requirements of the Statute.

The further development of the law dealing with commercial paper is both a necessary and proper exercise of the judicial prerogative. Such judicial expansion, however, should be made within the spirit, if not within the letter, of the act, for the ultimate attainment of a uniform body of law on the subject of negotiable instruments was the motivating force behind the adoption of the uniform act.<sup>3</sup>

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SELECTED READINGS ON THE LAW OF CONTRACTS. Compiled and edited by a Committee of the Association of American Law Schools. New York: Macmillan Company. 1931. pp. xcvi, 1320.

Of the books of recent years which have come to my attention, whether of fiction, non-fiction or what the Sunday book services mysteriously term "miscellaneous," this book is the first to understate its merit. Says the jacket:

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<sup>1</sup> *Strickland v. Nat'l Salt Co.*, 79 N.J.Eq. 182, 81 Atl. 828 (E&A 1911).

<sup>2</sup> *Riker v. Corby*, 3 N.J.L. 911 (Sup. Ct. 1811).

<sup>3</sup> "The adoption of the Negotiable Instrument Act by nearly every state of the Union resulted from a belief that a uniform law upon the subject approximated in importance a national currency system, and it was passed for the purpose of harmonizing and making uniform the law upon a subject concerning which there was much disagreement, giving rise to embarrassment and confusion in the commercial world. The end thus attained should not be frittered away by conflicting judicial interpretations of that act. In construing the act, courts should the more readily yield to precedent in order to avoid a conflict of authority as discouraging as the situation existing prior to the adoption of the law." *Fidelity & Cas. Co. of N. Y. v. Planenscheck*, 200 Wis. 304, 227 N.W. 387 (1929).