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WHO MAY NEGOTIATE A WAREHOUSE RECEIPT IN MARYLAND

A surprising conflict exists in the Maryland statute law with regard to the negotiability of a warehouse receipt. Sections 40 and 47 of the Uniform Warehouse Receipts Act¹ provide that a negotiable warehouse receipt may be negotiated by the owner thereof, or by any person to whom the possession or custody of the receipt has been entrusted by the owner.

Sections 32 and 38 of the Uniform Sales Act,² as originally drawn by the Commissioners on Uniform State Laws, are practically identical with the two sections of the Uniform Warehouse Receipts Act cited above. These sections deal with the negotiability of documents of title and by section 76³ of the act, the definition of "document of title to goods" includes as such, warehouse receipts and bills of lading. Under the provisions of the above two statutes negotiation of warehouse receipts and documents of title was limited to an owner or person entrusted by the owner with possession or custody. Thus, neither type of document was given the full negotiability of a promissory note or a bill of exchange as neither a thief nor a finder was included within the terms of the sections.

The provisions of the Sales Act referred to have been strengthened by a suggested substitute⁴ proposed by the Commissioners on Uniform State Laws for the purpose of

¹ Uniform Laws Annotated, vol. 3. Corresponding citation, Md. Code, Art. 14A, Secs. 40 and 47. Section 47 of that Act merely elaborates for the sake of clearness certain cases within the terms of Section 40 and adds nothing to the effect of the prior section. In 1922 the National Conference of Commissioners on Uniform State Laws amended Sections 40 and 47 so as to give full negotiability to negotiable warehouse receipts, see U.L.A., vol. 3 (1936) accumulative pocket part p. 52. Maryland has not adopted either of these amendments.

² Uniform Laws Annotated, vol. 1. Corresponding citation, Md. Code, Art. 83, Secs. 53 and 59. Section 32 of the Uniform Laws Annotated, vol. 1, limits negotiability of documents of title. The Commissioners' Note to this section suggests, however, that in jurisdictions where it is desired that the Sales Act and the Bills of Lading Act should both be passed and should be in harmony, a substitute is proposed, identical with Section 31 of the Uniform Bills of Lading Act, U.L.A., vol. 4, corresponding citation, Md. Code, Art. 14, Sec. 31, which provision gives full negotiability to documents of title. Maryland adopted the suggested substitute, see Md. Code, Art. 83, Sec. 53. Section 38 of U.L.A., vol. 1, merely elaborates for the sake of clearness certain special cases within the terms of Section 32. Md. Code, Art. 83, Sec. 59, codifies this provision. In 1922 the National Conference of Commissioners approved an amendment to this section which the Maryland legislature has not adopted.

³ U.L.A., vol. 1. Corresponding citation, Md. Code, Art. 83, Sec. 97.

⁴ U.L.A., vol. 1. See Commissioners' Note to Sec. 32.

harmonizing with the Bills of Lading Act⁵ so as to give full negotiability to documents of title. The purpose of this substitute seems entirely plain on its face. When the Uniform Bills of Lading Act was drawn the Commissioners on Uniform State Laws adopted the analogy of bills of exchange and promissory notes to its full extent, giving to the bona fide purchaser for value without notice of an order bill of lading, even from a thief or finder, a valid title. As hereinbefore stated,⁶ the corresponding provisions of the Uniform Sales Act, as originally drawn, and the Uniform Warehouse Receipts Act did not go so far. The apparent purpose of the Commissioners was to propose a substitute for those States adopting the Uniform Bills of Lading Act so as to harmonize all the statutes herein mentioned by giving to purchasers for value of both order bills of lading and order warehouse receipts full negotiability.

In Maryland there is a conflict in the matter. The Maryland legislature adopted all three of these uniform acts at the same legislative session in the year 1910.⁷ The Sales Act was enacted, embodying the suggested substitute proposed by the Commissioners on Uniform State Laws. This was done to harmonize that act with the Bills of Lading Act by giving to documents of title full negotiability so that purchasers for value without notice would be protected when taking title through a thief or finder.⁸ The Warehouse Receipts Act passed at the same legislative session contained all the provisions embodied in the draft originally proposed by the Commissioners on Uniform State Laws and therefore contained those provisions which limited negotiability of negotiable receipts to negotiation by an owner or person entrusted by the owner with possession.⁹ All three of these uniform acts contained provisions that they should take effect on the first day of June, 1910.¹⁰ It is

⁵ U.L.A., vol. 4, Secs. 31 and 38. Corresponding citation, Md. Code, Art. 14, Secs. 31 and 38.

⁶ *Supra*, notes 1 and 2.

⁷ Md. Laws of 1910, Chs. 363 (Sales Act); 406 (Warehouse Receipts Act); 336 (Bills of Lading Act).

⁸ See Md. Code, Art. 83, Sec. 53.

⁹ See Md. Code, Art. 14A, Sec. 40.

¹⁰ *Supra*, note 7. See also Md. Const., Art. III, Sec. 31, which provides that "No law passed by the General Assembly shall take effect until the first day of June next after the session at which it may be passed, unless it be otherwise expressly declared therein." It was specifically provided in every one of these uniform acts that it was to become effective as of June 1st. By Art. XVI, which was added to the Constitution by the Act of 1914, Ch. 673, Art. III, Sec. 31, above quoted, was qualified to the extent that it makes all laws passed effective as of the first day of June and abolishes the effect of the phrase "unless it be otherwise expressly declared therein," limiting such to cases where the law is declared to be enacted as an

interesting to observe, however, that the Sales Act and the Bills of Lading Act were approved and signed by the Governor of the State on the 11th day of April, 1910, while the Warehouse Receipts Act was not approved and signed until April 13th, 1910.¹¹ Therefore, as of June 1st, 1910, there existed in the statute law of Maryland an inconsistency between the Sales Act as enacted in Maryland and the Warehouse Receipts Act passed at the same legislative session because the latter act limits negotiability of negotiable receipts, while the former act, in so far as it relates to warehouse receipts, gives to such negotiable documents of title full negotiability.

The problem is: Which statute is to prevail where statutes passed at the same legislative session are necessarily inconsistent and each became effective the same day?

It is submitted that, under the circumstances surrounding the passing and signing of these acts in Maryland, the ordinary rules of statutory construction would prefer the Warehouse Receipts Act for the following reasons:

1. A statute which deals with the common subject matter in a minute and particular way will prevail over one of a mere general nature.¹² Under the facts presented here the Warehouse Receipts Act is the more particular statute.

2. Where statutes passed at the same legislative session are inconsistent the latest in point of time will prevail.¹³ As hereinbefore stated the Warehouse Receipts Act was approved and signed two days after the approval and signing of the Sales Act.

It is suggested that it would be more desirable for the existing inconsistency to be resolved by specific legislative declaration rather than by the ordinary rules of statutory construction which would prefer the Warehouse Receipts Act as against the Sales Act. In doing this the legislature could choose the desirable rule of full negotiability¹⁴ for all these instruments whose essential characteristics are alike, which it was the apparent purpose of the Sales Act to achieve. The application of the ordinary rules of construction would get the opposite result, a result which is not a desirable one in view of the fact that modern mercantile practice requires and demands that full negotiability be afforded documents of title.

emergency measure. Neither of these constitutional provisions affect the problem raised by the facts stated in the text.

¹¹ *Supra*, note 7.

¹² 59 C. J. 1055 et seq.

¹³ *Ibid*.

¹⁴ See *Supra*, note 1, regarding the action of the commissioners of Uniform State laws to this effect.