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HANDBOOK OF THE LAW OF BILLS AND NOTES. By William Everett Britton. St. Paul. West Publishing Co., 1943. Pp. xx, 1245.

To attempt to delineate in a single volume the modern American law of a topic as broad in scope as an average size law school course of instruction is a precarious project. It is the best token of the excellence of the book under review, and the sound scholarship of its author, Professor Britton of the University of Illinois Law School, that he has been able to produce such an outstanding short book on such a broad and important subject.

It was high time that there should be published an acceptable book in the field. Until its appearance the only usable short text was Dean Lile's 1928 revision (the first in almost thirty years) of the Bigelow text. To be sure, there has always been available the latest revision of the Brannan's Annotated Uniform Negotiable Instrument Law to present to the reader the relevant cases, once he had ascertained the applicable section of the statute, now universally in force in American jurisdictions these twenty years.

But, despite the excellence of the Brannan notes, there was still need for a good text, one that would, among other things, help the reader to find out just what sections of the statute are applicable to his problem, and discuss them analytically. Without this latter information, of course, the Brannan is not useful. And therein lies an important contribution the Britton book makes, wherein the author's technique stands out. This is in the skillful juggling and discussion of the various separate parts of the statute which may apply to the given problem.

An annoying thing about attempting to solve bills and notes problems is that one may have to apply several different provisions of the statute, scattered throughout its content. Whether it be because of poor draftsmanship of the statute or the inescapable nature of the subject matter, the fact remains that the statute does not give with clarity the answer to many problems which recur with considerable frequency, and much juggling of various sections, and

pursuit of analogies is inevitable in attempted solution. Some of these problems include, whether a payee can be a holder in due course, the negotiability of "acceleration" notes, the negotiability of corporate bonds and mortgage notes, the status of instruments payable in a foreign money, whether post-maturity takers are subject to adverse claims of ownership, and the consequences of a restrictive indorsement.

A fair sampling of the author's technique and of the excellence of its execution can result from a description of his handling the first-named of the above problems, that of whether the payee of an instrument (if in fact he took in good faith, without notice, before maturity, and for value) can be granted the holder in due course's immunity from personal defences to liability. To be sure, the problem cannot arise too frequently, inasmuch as it would be infrequent for the payee neither to be a party to nor aware of the defect which the obligor wishes to assert and can assert against a non-due course holder. But, it is possible for this to be so, where there are three parties to the initial transaction and the defence which the obligor wishes to assert against the payee involves some fraud or abuse of trust by the third one, upon or to the disfavor of the obligor who is being sued. Nowhere does the statute squarely answer the problem, may the payee claim as a holder in due course an immunity from the defence if in fact he took in good faith and without notice of it? Rather, the answer to the problem must be made by juggling competing analogies from and interpretations of divergent sections of the statute which contain phrases suggestive of implications which in turn may furnish the answer.

The author devotes a single section,[1] covering some fifteen pages, to this problem. In the black letter type which summarizes the treatment he points out that the payee usually cannot comply in fact with the requirements for being a holder in due course, unless it be a three party transaction, whereupon by the weight of authority he will be treated as a due course holder, but that the applicable sections of the Act are so worded that some courts have been able to hold against the possibility of his being a holder in due course.

He begins his detailed text treatment (after pointing out that a substantial number of cases at common law allowed the payee to be a due course holder) with a state-

[1] Section 122, pages 508-522.

ment of the statute's sections which bear, pro and con, on the answer to the problem. Those courts which under the statute have held against the payee have tended to put it on those sections which speak of "negotiation" to the holder in order for him to be one in due course, arguing that the delivery to the payee in the first instance is not such a negotiation.

On the other hand, the principal argument in favor of the payee is that the statute admits of his being a "holder" and, therefore, he should be able to qualify as a holder in due course, inasmuch as other phraseology of the statute merely requires that such a person shall "take" the instrument in good faith. Other sections of the statute are then pointed out to imply that a payee can be a holder in due course. Then follows a survey of the periodical literature of the subject, discussing the separate views of several law review writers on the subject, as is similarly done in other parts of the book.

This latter phase of the book is itself an important contribution of the text under review. The reader gets the benefit of the author's distillation of the important periodical literature of the subject. In the approximate half-century since the Act was first drafted and promulgated, much of the energy of the specialists in the field has been devoted to preparation of law review articles on the manifold problems arising under the statute, this perhaps to the exclusion of the earlier preparation of a satisfactory text. Mr. Britton has made much of this writing accessible through this text by citation and discussion of the periodical literature. His own earlier, frequent, and well-known contributions to that literature, of course, form the basis of his treatment in this text of those particular problems. In one instance, by permission and with acknowledgment, he shaped his treatment into a summary of the well known Harvard Law Review essay by Professor Chafee on the problem of post-maturity takers and claims of ownership.

In general outline, the book follows the six-chapter breakdown of Mr. Britton's law school casebook on the subject, the first edition of which appeared two decades earlier. The six chapters are: formal requisites of negotiability, transfer, holder in due course, defenses and equities, liability of parties, and discharge. Certain specific topics are handled in different ones of these chapters than in the casebook but, aside from these occasional deviations, the sequence of problems is the same, making the book

more than otherwise valuable to teachers and to present and former students who have studied his casebook.

From the present reviewer's standpoint, this book should have appeared twelve or more months earlier at a time when, upon a younger colleague's being called to the colors in midstream of teaching the course, the present reviewer "reacquired" the subject after a five-year surcease, and then was enabled to perpetrate the atrocious though relevant pun that he had "become the holder of a new course without value and on short notice."[2]

Having the Britton text at hand will definitely make teaching the course a less unpleasant chore for the rest of the "duration". But, the value of the book to teachers and students, like its presentation of the periodical literature, is but an incidental trait. It is an excellent and well-rounded presentation of the matured law of the field that inevitably should be consulted by every lawyer or judge who has a problem of bills and notes law.

—JOHN S. STRAHORN, JR.*

[2] The making of puns must be a failing of "reactivated" Bills and Notes teachers. Recently, Professor Chafee of the Harvard Law School, who had resumed teaching the subject through the fortunes of war, reprinted his earlier law review essays on the subject, along with some addenda, under the title "Reissued Notes on Bills and Notes" with the sub-title "Reissued Notes Circulated After Maturity and Indorsed for Collection Only. Payable at Langdell Hall, Cambridge, Mass."

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