1-1-1938

Book Review: Cases on the Law of Negotiable Paper and Banking

Friedrich Kessler
Yale Law School

BOOK REVIEWS

Cases on the Law of Negotiable Paper and Banking. Edited by Ralph W. Aigler. St. Paul: West Publishing Co. 1937. Pp. xvi, 1157. $5.50.

In view of the excellent materials on the subject already on the market, a new casebook on negotiable paper needs particular justification. Professor Aigler meets this requirement by presenting a new approach to the field of bills and notes in his casebook on negotiable paper and banking. The intention of the book is certainly commendable. Since bills of exchange and promissory notes are devices to create, and checks devices to transfer, deposit currency, a course in bills and notes inevitably presents problems dealing with the banking law aspects of commercial paper. Many of the rules concerning negotiable paper, moreover, can be fully understood only if projected against the broad background of our banking system. The rules governing the formal aspects of bills of exchange, promissory notes and checks can, for example, be fully appreciated only when it is understood that the practices of banks which handle these instruments call for highly standardized contents. Professor Aigler's combined treatment, therefore, of the law of negotiable paper and banking helps to impress the student with the fact that the field of bills and notes is not, as is commonly believed, a body of hypertechnical and complicated rules which exist in vacuo independent of reality, but is rather a code of business practices reflecting an important part of our economic life.

Professor Aigler deserves our gratitude for having blazed a new trail. His book will certainly stand as a landmark in the history of casebooks in this field. But it is regretted that he has not carried his innovation far enough. His book is divided into two sections, one on the law of banking, the other on the law of negotiable paper, and, apart from a few cross-references mentioned by way of footnote, there is no relation between the two subjects other than the fact that they are confined within the covers of a single casebook. Such an arrangement is of but limited utility. It neglects the more valuable presentation which by an integration of the cases in these fields would establish a clearer picture of the interrrelationsip of bills and notes and banking. The problem of forgery may serve as an example. A forged indorsement, for instance, presents the problem of the rights of the so-called true owner against subsequent parties (particularly the recipient), against the drawee or acceptor, and against prior secondary parties, and, in addition, the rights of these affected parties as among themselves; for instance, the relation of a drawer of a check to the drawee-bank. Professor Aigler discusses the internal relation between the drawer and the drawee-bank and the effect of the drawer's negligence in the banking part of his book, while the negotiable instruments aspects of the problem are taken up at a much later point. An integrated discussion of the aspects of the forgery problem in terms of the two fields would, it seems plain, help to clarify not only the problems of forgery generally but the particular problems of forgery in the law of banking and in the law of bills and notes as well. Another advantage of the integration method is well illustrated by the problem of fictitious payees which, in Professor Aigler's book, is taken up at page

136 in the first part and on page 842 in the negotiable paper section. Such separate discussion of a single subject, in its two aspects, makes for a needless repetition of cases which, while they may seem necessary, under Professor Aigler's scheme, to the particular section, do not add to an understanding of the relationship of the law of bills and notes to banking.

The author's technique shows to particular disadvantage when cases are included in the first section which cannot be fully appreciated, or even understood, without a study of the following section. For instance, I doubt very much whether *Wachtel v. Rosen*, on page 96,[1] which deals with the problem whether presentment for certification is a sufficient presentment to charge the drawer of a check, can be discussed adequately at such an early stage. Such instances make it manifest that a flexibility in the order of presentation is desirable for any adequate study of the connection of banking practices to the law of bills and notes.

The first part of the book, devoted to banking, is itself subdivided into four chapters. Chapter One deals with the "legal relations between customer and banker." Chapter Two with the "Duties of bank and depositor, *inter se* in normal relationship of debtor and creditor," and is subdivided into duties owed by the bank and duties owed by the depositor. Chapter Three deals with "Collections" and contains an appendix on the bank collection code, while Chapter Four presents cases dealing with bankers' liens and set-off. The second part of the book on negotiable paper, as the author tells us in his preface, follows "the traditional method in order of development." However, Part Two does not begin, as is orthodox, with a chapter on formal requisites, but instead with cases on the general characteristics of negotiable paper. Formal requisites are postponed for discussion until Chapter Four, between "Liability of Parties" and "Negotiation." The reviewer would like to see a casebook on bills and notes which has an introductory chapter neither on formal requisites nor on general characteristics of negotiable paper. Such matters, he believes, should be treated only incidentally. Since negotiable paper has both a payment and, what is at present even more important, a security function, introductory sections should present bills of exchange, promissory notes and checks not alone in their formal aspects but in terms of the various uses of of these instruments in business transactions. To be more specific: the field could be opened with cases showing the effect of the "payment" of a debt by negotiable paper which would perhaps best introduce the function of checks, and then continue with the uses of the various other types of bills of exchange and promissory notes: short and long term finance paper, collateral notes and acceptances, distinguishing between those which give an individual creditor a maximum protection and between others which, to guarantee quick liquidity have highly standardized contents. Such a beginning would introduce a student not only to the terms of art used in the negotiable instruments law, but would indicate to him their meaning in actual business practice.

Professor Aigler has disposed of some subject matter, deemed important enough in other casebooks to warrant separate treatment, by text notes. The chapter on consideration is treated in this manner.[2] Collateral questions are briefly discussed or raised in footnotes, a technique which has the great advantage of saving space for

[1] 249 N.Y. 386, 164 N.E. 326 (1928).

[2] I have missed in his survey a reference to Strong v. Sheffield, 144 N.Y. 392 (1895) which is still good law in New York.

major problems. In a few instances however the author does not make clear what is intended by his references. In a note to *James v. Union National Bank*[3] (on page 469), for instance, which allows the payee of an unaccepted check to recover in conversion from the drawee-bank which had paid on an unauthorized indorsement, Professor Aigler raises the question among others whether the payee or drawer of a check has to bear the risk of the drawee-bank's becoming insolvent before the check has been presented. The authorities which he cites in this connection do not throw any light on the subject for in none of them was the drawee-bank insolvent; on the contrary in all these cases a forged check has been paid either to the forger or to a holder subsequent to the forger. Most of the cases discuss the problem whether the payee of a check may recover from the drawer either on the instrument or on the underlying indebtedness where the forger was an agent of the payee who had received the check within the scope of his authority but had no authority to cash checks. Professor Aigler's question is answered by section 186 of the Negotiable Instruments Law as he himself indicates. The creditor who receives the check in payment has to present it to the drawee-bank within a reasonable time. If he fails to do so and the drawee-bank becomes insolvent in the meantime, the drawer-bank is discharged on the instrument as well as on the underlying claim up to the amount of the loss which has been caused by the creditor's laches. In a footnote to the famous *Canal Bank* case[4] (on page 550), Professor Aigler discusses some of the problems presented by a guarantee of the genuineness of prior indorsements and in this connection he raises the question as to the consideration supporting such guarantee. There seems, however, to be ample consideration for the recipient's guarantee which may either be regarded as a unilateral promise supported by the drawee-bank's payment[5] or the binding effect of which may be explained by the theory that the drawee-bank when paying a forged check does more than is called for in its contract with the drawer, or, when paying, is acting in reliance on such promise.[6]

FRIEDERICH KESSLER*

How To Deal with Organized Labor. By Alexander Feller and Jacob E. Hurwitz. New York: Alexander Publishing Co., 1937. Pp. 678. $6.50.

The authors of this book have set out frankly to write a manual of labor relations for employers and their counsel. It is their claim that they have "carefully examined the creation, structure and operation of the labor Unions, diligently studied the powers of the labor Board under the law, impartially observed a large number of its decisions and respectfully listened to the pronouncements of the courts."[1] That would be a large order for anyone, and Messrs. Feller and Hurwitz have not filled it. Rather, they have hastily, and with the unmistakable air of the amateur, looked at a few union organizations; superficially rehearsed the provisions of the National Labor Relations

[3] 238 Ill. App. 359 (1925). The court said by way of dictum that the bank's payment "destroyed all right of action the plaintiff might have had against the maker in case of non-payment."

[4] Canal Bank v. Bank of Albany, 1 Hill (N.Y.) 28 (1841).

[5] Rest., Contracts § 75 (1932). [6] *Id.* at § 90.

* Lecturer of Law, Yale University Law School.

[1] Preface, p. vii–viii.