

The cases appear to have been deliberately selected with this purpose in mind, and this impression is deepened by the "text notes" and footnotes. The student therefore frequently comes to class without having devoted sufficient thought to the problems involved. It is possible for the instructor to spend days opening up the many possibilities of a single case, during which time the student may be said to be "treading water." Emphasis upon the reading of cited authorities may avert this situation to some extent, but, even with relatively small classes, the demand for outside authorities will invariably exceed the library supply.

While the addition of more leading cases would have the disadvantage of increasing the book's size, a few more, if judiciously distributed, might be helpful. A different selection of cases, especially cases which do not state the law so explicitly, might also give the work a more controversial flavor.¹⁰ *McQuade v. Stoneham*, for example, seems preferable to *Clark v. Dodge*, though both are valuable. And why pass up an opportunity to bring the immortal John McGraw, his New York Giants, and Tammany Hall into the class-room all at once? Likewise, *Keller v. Wilson*, already well-nigh a landmark in the law, could take the place of *Consolidated Film Industries, Inc. v. Johnson*; it would, in addition, provide further basis for discussion of the important constitutional question so often involved in charter amendments.

But, as pointed out earlier, the great utility of this casebook lies in its eminent practicality for introductory courses in corporation law. The criticisms above will carry less weight in schools whose objective is chiefly to offer a broad survey of the field. Where, however, more time can be given to corporations the casebook does not furnish quite enough nor the best kind of material for the exhaustive type of study which is desirable.

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CASES ON COMMERCIAL AND INVESTMENT PAPER. By Roscoe T. Steffen. Chicago: The Foundation Press, 1939. Pp. xxxviii, 965.

By *Friedrich Kessler**

WE have recently become very critical of the traditional law school curriculum. We expect the author of a modern casebook not only to give us the cases and materials which make up his field, but also to provide justification for teaching the material covered in his casebook as a separate course. Such justification is supplied if the cases and other materials collected enable the student to understand and interpret sectors of social life in relation to legal institutions. A casebook on negotiable paper has to convince us that

10. The questionnaire revealed some feeling, especially among the best students, that cases might have been chosen which would have afforded a more effective basis for class-room discussion. A majority, however, did feel the cases were adequate in this respect.

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there is a stronger reason than tradition for giving a course on negotiable paper. The only good reason is that the material presents an adequate picture of the financial organization of our society. Measured by this test, the confines of the traditional course on negotiable paper become highly problematical. Since bills, notes and checks are today "used as devices in transactions which create and transfer deposit currency,"¹ a good argument can be made for the plan to incorporate negotiable instruments in a larger course unit devoted to commercial bank credit. Underhill Moore's promise to present us with a new casebook arranged according to this scheme, which stresses the significant fact that today the "manufacture of credit" lies in the hands of commercial banks,² opens up a fascinating prospect.

Mr. Steffen's form of modernization appears equally promising.³ His casebook does not deal exclusively with traditional commercial paper: bills, notes, and checks. It includes investment paper: bills, debentures, and stocks. This fortunate innovation brings out one of the most significant characteristics of our culture — the liquidity of our national wealth. It also invites the student to contrast commercial with investment credit according to their different forms of liquidity, and to study commercial (deposit) as against investment banking. Thus, the casebook leads into very important aspects of our credit economy. This innovation alone would be sufficient to make out a good brief for a course in commercial and investment paper. But Mr. Steffen's reforms do not stop there. Unlike the usual casebook, the first chapter is not devoted to formal requisites of negotiable paper; indeed there is no chapter at all on formal requisites. They are dealt with only incidentally. Instead, the first chapter of the casebook introduces one commercial instrument after another "as each came on the scene." The fascinating story of their evolution is unfolded through the most important cases, with the economic and cultural background supplied by introductory notes to each section. This emphasis on growth has enabled Mr. Steffen to retain most of the famous old cases which succinctly bring out "the controlling reasons of policy and business practice" behind many a theory. Their color and richness form a striking contrast to the intellectual atmosphere of some of the modern cases. In addition, cases like *Raborg v. Payton*, *Wells v. Brigham* and many others cannot fail to impress the student with the ingenuity of the great

1. SMITH AND MOORE, *CASES ON THE LAW OF BILLS AND NOTES* (3d ed. 1932) 1.

2. Commercial banks have not always been the chief creators of credit. An outstanding exception is the practice which prevailed in the Lancashire cotton industry until the middle of the last century. Manufacturers and traders drew bills on each other and used the accepted bills in settlement of debts owing to other manufacturers and traders. See 1 SCHUMPETER, *BUSINESS CYCLES* (1939) 113. Bills of exchange for £10 with 120 endorsements were in circulation. Today the importance of bill and note as payment devices in domestic transactions is negligible. This might change if, for instance, the "neutral" (100%) money proposal were to become law. See HANSEN, *FULL RECOVERY OR STAGNATION* (1938) 115, 116, referring to the practice following the passage of the Peel Act.

3. The reviewer does not feel himself disqualified from making these observations by the generous acknowledgment in the casebook's preface of conversations with the editor.

common-law judges, who were equal to the difficult task of translating the customs of merchants into terms of the common-law forms of action.

The greater part of the opening chapter is devoted to the interesting story of the development of the bill of exchange and its adaptation to changing economic conditions. The first section, with *Martin v. Bourc* as the lead-off case, introduces the bill as a transmission device. A better case for impressing the student with the humble beginnings and amazing career of the bill could not have been chosen. How limited was the bill's usefulness so long as the indorsement was unknown to the business community! Indeed, to protect the drawee who had made a payment to a party subsequent to the payee, it was necessary to use a second bill of exchange. Succeeding sections develop the legal issues that arise out of the functioning of the bill of exchange, the promissory note, and particularly of the check, as a payment. The adventures of the bill and note as instruments of short term credit are detailed in Sections Three, Five and Twelve. Section Three on Trade Acceptances invites the student to consider the relative merits of trade acceptance (two name paper) and promissory note (single name paper) as devices to finance the moving of goods towards a market. Section Five on Note and Account Receivable shows the extent to which the underlying transaction can be incorporated in an instrument without destroying its negotiability. Section Twelve on Long Form Paper (which is particularly good reading) indicates how difficult it was for the courts of the 1860's and 1870's to overcome the barriers created by Chief Justice Gibson's picturesque remark in *Overton v. Tyler*. The courts of a rapidly expanding economy were forced to approve security clauses unfamiliar to an economic system which knew bills and notes only as transmission and payment devices.

Next follow, in logical order, sections on bonds and debentures, registered paper and share certificates. Most exciting is Section Fourteen, which is devoted to bonds and coupons. It deals with a problem which has long harassed lawyers in drafting bonds: how to make a "no action clause" binding on the purchaser of a bond or coupon without destroying its negotiable character. The story of the struggle between bond draftsmen and the courts is particularly illuminating. Here, however, I cannot quite agree with Mr. Steffen's evaluation of the Illinois cases.⁴ He seems to imply that the Illinois courts fail to realize the difference between the two issues presented by the "no action clause": the negotiability issue arising in cases of stolen or lost bonds, and the problem whether the hands of a purchaser can effectively be tied by means of a "no action clause." I concede that the Illinois courts deny the binding effect of the "no action clause" on the theory that it refers only to the enforcement of the rights under the indenture and rely heavily for this construction on cases involving conversion actions against the bona fide purchaser of stolen bonds. But I submit that the courts, notwithstanding their shaky theory, are guided by sound instinct. They want to protect the investor who would otherwise be left with a rather empty right, as the *Rittenhouse* and the *Moline Plow Co.* cases strikingly illustrate. This is all the more true since the individual bondholder has no other means of forcing the hands

4. At 270, 271. To this list should be added *Benson v. Schwerin*, 285 Ill. App. 121, 1 N. E. (2d) 813 (1936).

of the trustee under the indenture without the help of a qualified minority.⁵ Mr. Steffen seems to feel that incorporation of the "no action clause" in the bond would protect the purchaser by putting him on notice. I doubt it. Since an ordinary purchaser cannot be expected to read a voluminous bond,⁶ it would prove to be a fictitious protection.

The arrangement of Chapters II and III, whose subjects are Transfer and Purchase and Payment in Due Course, is not as unconventional as that of Chapter I. But these two chapters are not therefore less interesting. Mr. Steffen's technique of splitting each chapter into the most significant problems and of devoting one section, headed by an introductory note, to each group of issues, makes those problems stand out very clearly. The author's gift for dramatic effect sustains reader interest. Outstanding are the sections on restrictive endorsements and on the *Price v. Neal* situation. Section Nineteen reveals Sections 36, 37 and 47 of the Negotiable Instruments Law as sinister villains who triumph over justice, while Section Twenty-two, with plot and counter-plot skillfully developed, dramatizes the victory of virtue. Contrasts, such as those in the sections concerned with bona fide purchasers and bona fide payers and the two sections on value, are constructed with precise craftsmanship.

Chapter IV, which deals with Discount and Security, is remarkable for its original arrangement. It is an excellent idea to postpone a discussion of the consideration doctrine until the subject of the accommodation party has been reached. The section relating to the problems on accommodation and consideration is highly interesting. Chapter V on Deposit and Collection illustrates strikingly the truth of Mr. Steffen's statement that "depositors live in a banker's world." It is noteworthy that Mr. Steffen has put the *Mount Vernon National Bank* case in the section devoted to direct and circuitous routing. This is far better than discussing it in a section dealing with acceptances. The acceptance device was employed not because the drawee bank's behavior resembled that of a traditional acceptance, but rather to impose a high standard of care upon the bank.

Mr. Steffen's book may well serve as a model for further casebooks. Though each constituent part is a separate entity, interrelation of the parts into a unified structure permits a treatment of each problem both for its intrinsic interest and as a part of the larger problems of our economic society.

By John Hanna†

CASEBOOKS should be reviewed only by those who have tested them on a class — preferably after having tried one or more other books in the same field. It is one of the misfortunes of those who expend so much energy and intelligence in preparing a casebook, and one of the defects of the casebook review

5. The danger to the issuer by a non-enforcement of the "no action clause" envisaged by Mr. Steffen when referring to *Morris Canal and Bank Co. v. Fisher*, 9 N. J. Eq. 667 (1855) does not seem to be typical.

6. See opinion of Learned Hand, J., in *Babbitt v. Read*, 236 Fed. 42 (C. C. A. 2d, 1916).

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