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COMMENTS

BILLS AND NOTES: THE IMPACT OF THE SETOFF AND ASSIGNMENT STATUTE UPON NEGOTIABLE INSTRUMENTS LAW.

The enactment of a uniform code into law produces new problems of interpretation. What is the impact of the code on the statutory provisions of other areas of the law? Do existing statutes alter the new code itself? The interactions of static, and often obsolete, concepts in the current of legal development can cause a precarious whirlpool of confusion treacherous to lawyers and judges alike.

In the case of *Peoples Trust and Savings Bank v. Standard Printing Company*¹ the Wisconsin Supreme Court had to deal with a problem in the always dynamic area of commercial law. In forming and bolstering its decision in the case, the court gave surprisingly little attention to the Uniform Negotiable Instruments Law. Rather it chose two statutes,² each over a century old, for the basis of its arguments.

One Libman, who owned shares in a defunct baseball club and also in Standard Printing Company, sold said shares to the printing company for \$6,200 and in turn received the negotiable note of the printing company payable to his order. The sale was allegedly induced by a misrepresentation of facts which were determinative of the value of the stocks. Libman, under a written pledge agreement, delivered the unindorsed note to the plaintiff bank to secure a loan of \$2,500. At maturity of the collateral, the bank sought to enforce the note against the printing company. Being denied summary judgment by the trial court, the bank appealed, and obtained an order for summary judgment from the supreme court.³

The court reasoned that since the printing company had affirmed the purchase of the stock after it learned of the alleged fraud,⁴ it had no right to set off damages arising from alleged misrepresentations against the bank which was a "transferee for value" of the note.⁵ Thus the bank was allowed to recover on the note, but, due to the alleged fraud on the part of the payee, which would subject him to an action for damages, the bank's recovery was limited to the amount of Libman's debt to it.⁶

In denying the right to setoff, the court relied on Wisconsin's setoff statute.⁷ According to the statute, a party may set off a demand on a

¹ 19 Wis. 2d 27, 119 N.W. 2d 378 (1963).

² Wis. STAT. §§331.07 (6), 260.14 (1959).

³ *Peoples Trust & Savings Bank v. Standard Printing Company, Inc.*, 19 Wis. 2d 27, 38, 119 N.W. 2d 378, 384 (1963).

⁴ *Id.* at 35, 119 N.W. 2d at 382.

⁵ *Id.* at 36, 119 N.W. 2d at 383.

⁶ *Id.* at 37, 119 N.W. 2d at 383.

⁷ *Set-Offs*. In the following cases a demand by one party may be set off

negotiable promissory note assigned to the plaintiff *after it became due*. Since the statute specifically contemplates an assignment or transfer "after" the note has become due, and since there was no question here but that the transfer was made "before the note was due," the court concluded that suit on the note was not subject to any claim of setoff by the maker.⁸

By way of confirmation of its decision, the court cited the statute⁹ which provides that an assignment of a cause of action does not prejudice the defense of setoff. The statute qualifies itself by providing: "but this section shall not apply to a negotiable promissory note or bill of exchange transferred in good faith and upon good consideration before due."¹⁰ The court concluded that this statute also implies that a setoff is not allowable in cases where a negotiable instrument transferred before due is involved.

The provisions of the Uniform Negotiable Instruments Law which are pertinent to the facts of the *Standard Printing* case suggest results contrary to those reached by the court. "Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferor had therein. . . ."¹¹ "The title of a person who negotiates an instrument is defective . . . when he obtains the instrument . . . by fraud. . . ."¹² Therefore, the transfer of an unindorsed instrument would seem to put the transferee in no better position than that of the transferor. If the transferee's position is no better, the maker should logically be able to raise the same defenses against him as he was able to raise against the transferor. Where the maker of the instrument was induced by fraud to enter the underlying contract, he should be able to raise the defenses arising out of the underlying fraud. If he chooses not to rescind, this should not bar his ability to recoup damages suffered by fraud.

against and as a defense, in whole or in part, to demands by the other: . . .

(6) If the action be upon a negotiable promissory note or bill of exchange which has been assigned to the party after it became due a set-off to the extent of the amount otherwise recoverable thereon may be made of a demand existing against any person who shall have assigned or transferred such note or bill after it became due, if the demand be such as might have been set off against the assignor while the note or bill belonged to him." WIS. STAT. §331.07 (1961).

⁸ Peoples Trust & Savings Bank v. Standard Printing Company, Inc., *supra* note 3, at 35, 119 N.W. 2d at 382.

⁹ "Assignment of Cause of Action Not to Affect Set-Off. In case of an assignment of a thing in action the action of the assignee shall be without prejudice to any setoff or other defense existing at the time or before notice of the assignment; but this section shall not apply to a negotiable promissory note or bill of exchange transferred in good faith and upon good consideration before due." WIS. STAT. §260.14 (1961).

¹⁰ *Ibid.*

¹¹ WIS. STAT. §116.54 (1961), UNIFORM NEGOTIABLE INSTRUMENTS LAW §49.

¹² WIS. STAT. §116.60 (1961), UNIFORM NEGOTIABLE INSTRUMENTS LAW §55.

The Uniform Negotiable Instruments Law provides that "in the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were nonnegotiable."¹³ Since the law merchant has always allowed defenses which arise from the underlying transaction to be asserted against transferees who are not in due course,¹⁴ this statute would seem to be a mere reiteration of the old law. Since the bank in the *Standard Printing* case was not a holder, much less a holder in due course, the note upon which it brought action should have been subject to the same defenses to which it would have been subject had it still been in the hands of Libman.

Under the Uniform Commercial Code, negotiation is a prerequisite to becoming a "holder."¹⁵ "If the instrument is payable to order it is negotiated by delivery with any necessary indorsement."¹⁶ If the Uniform Commercial Code had been the prevailing law of the *Standard Printing* case, the bank, again, would not be a holder, much less a holder in due course. The Uniform Commercial Code provides: "Unless he has the rights of a holder in due course any person takes the instrument subject to . . . (b) all defenses of any party which would be available in an action on a simple contract."¹⁷ On a simple contract assignment, the promissor may recoup the damages which he suffered by reason of fraudulent inducement into the contract.¹⁸

Early common law insisted upon a single issue in any controversy to the exclusion of any sort of cross action by the defendant.¹⁹ Subsequently, common law came to allow the defendant to allege that he suffered damage by reason of the plaintiff's breach of duty in the transaction.²⁰ The defendant was thus allowed to recoup damages. The plaintiff's claim was thereby reduced proportionately, but never would the defendant be able to recover a judgment in his favor.²¹ Common law did not allow setoffs.²² Setoff is distinguished from recoupment in that setoff is a claim arising from an independent transaction whereas re-

¹³ Wis. Stat. §116.63 (1961), UNIFORM NEGOTIABLE INSTRUMENTS LAW §68.

¹⁴ "If a bill is payable to order and transferred without indorsement, its transfer will be subject to defenses existing against the transferor." 2 RANDOLPH, COMMERCIAL PAPER §788, at 444 (1886).

¹⁵ "Negotiation is the transfer of an instrument in such form that the transferee becomes a holder." UNIFORM COMMERCIAL CODE §3-202 (1).

¹⁶ *Ibid.*

¹⁷ UNIFORM COMMERCIAL CODE §3-306.

¹⁸ "The right to damage may be asserted by the defrauded person not only as plaintiff but as defendant. By recoupment or counterclaim, he is allowed to deduct his damages when sued for failure to perform his obligations under the bargain, or his affirmative recovery on a counterclaim may be lessened by the damages resulting from his own fault." 5 WILLISTON, CONTRACTS §1524 (rev. ed. 1937).

¹⁹ 5 POUND, JURISPRUDENCE 528 (1959).

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Id.* at 529.

coupment is a claim to diminish damages arising from the same transaction.²³

The English statutes allowing setoff were first enacted in 1729²⁴ and 1735.²⁵ Their purpose was to prevent multiplicity and circuitry of actions. In 1849, Wisconsin adopted a setoff statute²⁶ which has remained substantially unaltered to this day.²⁷ The statute was undoubtedly an early attempt to liberate pleading from its common law straight jacket. In spite of the periodic liberalization of code pleading down to the present day²⁸ the setoff statute has remained unchanged.²⁹

In formulating the setoff statute,³⁰ the drafters sought both to facilitate pleading and to make clear that its provisions were in no way meant to effect, much less alter, the existing law merchant. In excluding the law merchant, especially with respect to negotiable paper, the drafters speak in the language of their day. The statute says nothing about the rights of holder in due course because that name became common only with the Uniform Negotiable Instruments Law,³¹ which was drafted a half century later. The statute speaks merely of a negotiable promissory note or a bill of exchange and states that setoffs are not generally assertable when the action is upon them.³² It says that setoff can be asserted against a promissory note or bill of exchange if assigned after it became due.³³ It says nothing about the different ways a note may be transferred, and the setoff possibilities involved. But why should it do so,

²³ "In regard to the distinction between recoupment and set-off, it is to be observed that the former is contradistinguished from the latter in these three essential particulars: *First*. In being confined to matters arising out of and connected with the transaction or contract upon which the suit is brought; *Second*. In having no regard to whether or not such matter be liquidated or unliquidated; and *Third*. That the judgment is not subject of statutory regulation, but is controlled by the rules of the common law." 7 WAITS, ACTIONS AND DEFENSES 545 (1879).

²⁴ 2 Geo. 2, ch. 22 §13 (1729).

²⁵ 8 Geo. 2, ch. 24 (1735).

²⁶ WIS. REV. STAT. ch. 94 (1849).

²⁷ WIS. STAT. §331.07 (1961).

²⁸ In 1934 the definition of counterclaim was broadened from "a cause of action arising out of the contract or transaction set forth in the complaint" to "a cause of action arising out of the contract or transaction or occurrence set forth in the complaint." Sup. Ct. Order, 212 Wis. ix. The new rule was obviously meant to do away with the formerly required contractual basis of counterclaim. In 1943 the counterclaim statute was again broadened. The old conditions prerequisite to counterclaim were eliminated. "A defendant may counterclaim any claim which he has against a plaintiff, upon which a judgment may be had in the action. Sup. Ct. Order, 242 Wis. v. Both orders are prefaced with: "For the purpose of simplifying the procedure and promoting the speedy determination of litigation in the courts of the State of Wisconsin."

²⁹ No doubt its immunity from change has been due in a large part to its position in the miscellaneous sections of the statutes.

³⁰ WIS. STAT. §331.07 (1961).

³¹ "In the Negotiable Instruments Act the term 'holder in due course' is used as an equivalent for the old expression 'bona fide holder for value without notice' . . ." 10 C.J.S. *Bills and Notes* §301, at 785 (1938).

³² WIS. STAT. §331.07 (5) (1961).

³³ WIS. STAT. §331.07 (6) (1961).

unless the drafters were intent upon legislating substantively in the field of law merchant? On the other hand, if the drafters' intent was merely to allow for a procedural change, they may well have felt that they adequately expressed their intent of not meaning to change the law merchant prevalent at the time.

Concurrent with the collapse of common law pleading there has been a break down in the precise use of pleading terminology. Today words like counterclaim, recoupment and setoff are often used indiscriminately. Such, no doubt, was not the case when the setoff statute was drafted. Setoff then meant technical setoff.³⁴ Since recoupment was allowed at common law,³⁵ there was no reason to provide legislation allowing recoupment. But little did the drafters know that their well-meant statute would become a trap for men of the bar in the following century who habitually use the word "setoff" when they speak of any type of cross demand. Starting on the fallacious supposition that setoff means any type of cross demand, modern lawyers and judges argue from the statute that a claim by the defendant (which is really in the nature of a recoupment) cannot be asserted because forbidden by implication in the setoff statute. The early attempt to authorize setoff has resulted in a prohibition of recoupment.

In the *Standard Printing* case, the court trapped itself by its failure to define the word "setoff." For the purpose of the case, it is admitted by the court that the underlying transaction was induced by fraud.³⁶ Any claim for damages by the defendant therefore is not in the nature of setoff, but rather in the nature of recoupment. The setoff statute has no pertinence.³⁷ The case is simply one of deciding what damages

³⁴ "It is proper to remark that the right of setoff is given by statute and did not exist at common law. The statute of setoff proceeds upon the equitable principle that, when both debts are justly due by the neglect of each party to perform his agreement, the one debt should compensate the other." *Pierce v. Hoffman*, 4 Wis. 277, 278 (1855). Setoff at the time was viewed as pleading one independent debt against another.

³⁵ "Recoupment is of common law origin and is the act of rebating a part of a claim on which one is sued, by means of a legal or equitable right resulting from a counterclaim arising out of the same transaction." 80 C.J.S. *Setoff and Counterclaim* §2, at 5 (1953).

³⁶ *Peoples Trust & Savings Bank v. Standard Printing Company, Inc.*, *supra* note 3, at 37, 119 N.W. 2d at 382.

³⁷ In saying that the setoff statute was not pertinent in this case the author does not mean to imply that had the statute been applicable the court's interpretation of it would have been correct. Noting a previous case the court said: "The right of set-off is purely statutory, a right which did not exist at common law." Therefore, for *Standard* to claim that it has the right of set-off against the plaintiff, it must show that it comes within the statutory restriction." The obvious implication would seem to be that the court is here applying the rule that any statute in derogation of common law is to be construed strictly. But is not the original setoff statute basically a procedural statute, to the construction of which one applies the principle that statutes designed to prevent circuity and multiplicity of actions are to be liberally construed? Does not the liberal construction of the statute bring it more closely in accord with the present counterclaim statute, which allows the defendant to counterclaim any claim he has against the plaintiff and upon

the defendant can recoup and what prohibitory effect, if any, the law merchant imposes upon his attempts to recoup.

The Uniform Negotiable Instruments Law provides that the same defenses can be raised against one not a holder in due course as if the instrument were nonnegotiable.³⁸ According to the law merchant, the maker of a note can assert his equities against anyone but a holder in due course. In law merchant the term "equities" does not embrace setoff or counterclaims arising from collateral transactions, but only those defenses inherent in or directly connected with the contract giving rise to the instrument itself.³⁹

An "equity" ("recoupment") on the other hand, the moment it arises (equitably) reduces or extinguishes (as between the parties) by operation of law, the amount due to the payee, and may be asserted only as a defense in the action on the instrument, or the contract giving rise to it.⁴⁰

The equities, then, are not only assertable in an action on the note, but they must be asserted to be retained. When the Uniform Negotiable Instruments Law in section 58⁴¹ speaks of "defenses," it is referring to these. Several jurisdictions hold that the Uniform Negotiable Instrument Law includes not only such equities, but also setoffs and counterclaims arising from independent transactions. However, as Britton points out in his treatise, the better view is that section 58 does not affect the prior law of setoff as it existed in the particular jurisdiction prior to the enactment of the Uniform Negotiable Instruments Law.⁴²

Early common law did not allow the assignment of choses in action.⁴³ Later when assignments came to be acknowledged the action for their enforcement had to be brought in the name of the assigner. In 1855, a bill entitled "a bill to enable assignees of choses in action to maintain suits in their own names"⁴⁴ was enacted into law in Wisconsin. It has

which a judgment may be had in the action? In fact it would seem that the counterclaim statute renders the setoff statute obsolete, in that it seems to include all the instances allowed by the setoff statute. Be that as it may, why should modern liberality of pleading be allowed if the cross demand is termed a counterclaim, and the old common law principles of pleading be insisted upon if the cross demand is termed a setoff?

³⁸ WIS. STAT. §116.63 (1961), UNIFORM NEGOTIABLE INSTRUMENTS LAW §58.

³⁹ "Before passing from the nature of equities it should be stated that the term does not embrace *set-offs* or counterclaims held by the defendant against the payee or other transferor of the holder, and arising from collateral transactions; but only those defenses inherent in or directly connected with the contract giving rise to the instrument itself . . ." *Stegal v. Union Bank & Federal Trust Co.*, 163 Va. 417, 176 S.E. 438, 450 (1934).

⁴⁰ *Ibid.*

⁴¹ WIS. STAT. §116.63 (1961).

⁴² BRITTON, *BILLS AND NOTES* §153 (2d ed. 1961).

⁴³ 5 POUND, *JURISPRUDENCE* 262 (1959).

⁴⁴ On Wednesday, March 14, 1855 the Senate passed bill "No. 83S, a bill to enable assignees of choses in action to maintain suits in their own name." *JOURNAL OF THE SENATE OF WISCONSIN* 528 (1855).

remained unchanged to the present day as section 260.14 of Wisconsin statutes.

In the *Standard Printing* case, the court cites this statute⁴⁵ and holds that it forbids the maker of a note the right to setoff against a transferee the damages the maker suffered through fraud in the underlying contract. After the statute states that the action of the assignee shall be without prejudice to any setoff or other defense existing at the time or before notice of assignment it goes on to say: "but this section shall not apply to a negotiable promissory note or bill of exchange transferred in good faith and upon good consideration before due."⁴⁶ It does not say that it does not apply to a holder in due course of negotiable instrument. The statute was born forty years too soon for its drafters to know that one who held a note "transferred in good faith and upon good consideration before due" would become commonly known as a holder in due course.⁴⁷ The name, holder in due course, is so common today that the same concept, expressed in the terms which formerly were used to characterize it, may not be recognized as identical. The tendency is merely to take the words literally. This is apparently what was done in the *Standard Printing* case.⁴⁸ Depending upon what meaning one gives to the phrase used in the statute, the statute is either pertinent or irrelevant as an argument in that case.

If one looks to the literal meaning of the words, the statute would seem to form a good basis for argument against allowing any defenses to be raised. The bank obtained a promissory note, which was negotiable in form. The bank received it in good faith; at least supposedly it did not know of the fraudulent conditions under which it was obtained. The bank gave good consideration for the note; it loaned Libman twenty-five hundred dollars. And the note was transferred to the bank before it was due. The literal meaning of the statute is fulfilled.

But why is the person with these characteristics so sacrosanct as to be immune to any defense or setoff? Unless he is the person whom the law merchant has traditionally protected, his immunity is without origin, reason, or cause. If the drafters of the statute were referring to one protected by the law merchant, then to be protected by the statute one must meet the conditions of protection required by the law merchant.

The law merchant, long before the Uniform Negotiable Instruments Law, required one taking an order instrument to have the indorsement of the payee before seeking to enforce payment of the instrument.⁴⁹ This basic prerequisite is not mentioned in section 260.14. But to argue

⁴⁵ Peoples Trust & Savings Bank v. Standard Printing Company, Inc., *supra* note 3, at 35-36, 119 N.W. 2d at 382-383.

⁴⁶ WIS. STAT. §260.14 (1961).

⁴⁷ Note 20 *supra*.

⁴⁸ Peoples Trust & Savings Bank v. Standard Printing Company, Inc., *supra* note 3.

⁴⁹ 3 RANDOLPH, COMMERCIAL PAPER §1653 (1888).

from its absence in that statute to an abolition of the prerequisite itself is to indulge in a gross *non sequitur*.⁵⁰

The setoff and assignment statutes upon which the court based its argument in the *Standard Printing* case were enacted about the middle of the nineteenth century. Wisconsin adopted the Uniform Negotiable Instruments Law in 1899.⁵¹ It is interesting to note that in adopting it, the legislature specified the statutes which were repealed by it and the statutes which were not affected by its provisions. Then the legislature goes on to say: "All other provisions inconsistent with this chapter are repealed."⁵²

Proper interpretation of the Uniform Negotiable Instruments Law and of the setoff and assignment statutes would seem to demand that if there be a conflict between them the conflict should be settled in favor of the Uniform Negotiable Instrument Law. The rationale is that, although adequate conflict to warrant the implied repeal of a statute as such may not exist, interpretations of the statutes which directly conflict with the Uniform Negotiable Instrument Law should be considered to have been abolished by the enactment of the Uniform Negotiable Instruments Law.⁵³ Since the Uniform Negotiable Instruments Law suggests that defenses can be raised against anyone who is not a holder in due course, the assignment and setoff statutes should be interpreted as also allowing such defenses. Nor should inferences be forceably extracted from the setoff and assignment statutes so as to broaden the rights given to different types of possessors of negotiable paper beyond the rights given by the Uniform Negotiable Instruments Law.

One question remains to be considered. Does the equitable doctrine of estoppel override the provisions of the codes of commercial law? In *Marling v. Fitzgerald* the court said, "Those rules, as we have seen, give way to the supreme rule of *estoppel in pais*."⁵⁵ In that case the court held that the defendant had estopped himself from asserting the defense of lack of consideration against a third party who took an order instrument without the indorsement of the payee. The court held that the maker was estopped from setting up the defense because the payee was a broker in mortgages, and that the maker should have realized that the note would be transferred. Before the payee of the note de-

⁵⁰ From the statute itself an argument can be made that holder in due course is meant. What is the purpose of requiring that the note be taken before due in order to protect a party from defenses and setoffs? The notion that taking a note after due destroys one's good faith is prevalent in the law merchant and specifically pertinent to holder in due course status according to the law merchant. The prerequisite that the note be taken before due would seem to indicate that the exception spelled out in the statute applies to a holder in due course.

⁵¹ Wis. Laws 1899, ch. 375.

⁵² Wis. Laws 1899, ch. 356, §1684.

⁵³ *Kiel Wooden Ware Company v. Lavn*, 233 Wis. 559, 290 N.W. 214 (1940).

⁵⁴ 138 Wis. 93, 120 N.W. 388 (1909).

⁵⁵ *Id.* at 100, 120 N.W. at 391.

faulted on his underlying agreement with the maker, the payee transferred the note to a third party for value but without indorsement. The court upheld the rights of the bona fide purchaser for value over those of the maker.

The rule as enunciated in the *Marling* case "has been much criticized as contrary to sec. 48 & 58 of the Uniform Negotiable Instruments Law, sec. 116.54 and 116.63 Wis. Stats."⁵⁶ Both Brannan⁵⁷ and Britton⁵⁸ in their treatises on negotiable instruments law maintain that the *Marling* case is erroneous. In a note to the case in *Lawyers Reports Annotated*⁵⁹ the writer says the case seems:

. . . to raise the query whether if the holding of the court be correct, the doctrine of estoppel may not be invoked in every case in favor of the holder of commercial paper, whether negotiable in form or not, who has taken it in such manner as not to be protected by the law merchant, although there be no representation by the maker as to its validity, save the existence of the paper alone.⁶⁰

Estoppel undoubtedly can be applicable when a note is involved, but it must be limited.

There are many cases where the doctrine of estoppel has been applicable where there have been some express representations on the part of the maker which influenced the third person to take the note.⁶¹

The presence of some such express representations would seem to be the limit of the applicability of estoppel, because, unless led on by such a representation, the transferee of the note should be required to insist that the note be indorsed before he takes, in order to qualify as a bona fide taker.

Lack of good faith in the commercial sense is not necessarily born of any conduct which is culpable in itself. To take a negotiable instrument without indorsement is in itself an indifferent act. However, law merchant has of necessity established formalities which are to be observed if one is to claim rights under it. Without the use and observance of such formalities the legal status of all commercial transactions would be uncertain. One who fails to comply with the required formalities is not "commercially innocent," regardless of his general good faith in fact. As between a third party assignee, not "commercially innocent" and the maker of a note who was defrauded in the underlying transaction, legal policy should favor the latter.

⁵⁶ *Michalak v. Nowinski*, 220 Wis. 1, 7, 264 N.W. 251 (1936).

⁵⁷ BRANNAN, *NEGOTIABLE INSTRUMENTS LAW* §49 (5th ed. 1932).

⁵⁸ BRITTON, *BILLS AND NOTES* §74 n. 11, at 174 (2d ed. 1961).

⁵⁹ 23 L.R.A. (n.s.) 177.

⁶⁰ *Id.* at n.178.

⁶¹ *Ibid.*

Although the court does not speak of it, could the "supreme rule of *estoppel in pais*" nevertheless justify the decision in the *Standard Printing* case? The bank was a transferee for value. The maker of the note was denied his right to recoup damages as against the transferee. The specific question raised in the *Standard Printing* decision is whether one's choice of remedies might estop him. Should the fact that a victim of fraud chooses not to rescind his contract but to recoup damages estop him from asserting his right to recoupment against a transferee for value of the unindorsed note?

Estoppel implies a good faith reliance by the party claiming the estoppel. But if one claims he relied on an election of remedy, he must have known of the presence of a claim. Knowledge of the presence of a claim ipso facto destroys good faith. Estoppel cannot be present without good faith. The election to recoup damages therefore cannot be a basis for estoppel.

Both the Uniform Negotiable Instruments Law and the Uniform Commercial Code, taken as a code by themselves, suggest that the bank in the *Standard Printing* case should have been subject to the defenses of the maker of the note. The Uniform Negotiable Instruments Law was codified and adopted "to establish a law uniform with such other states as have adopted or shall adopt like provisions."⁶² The purpose of the Uniform Commercial Code is stated in section 1-102 (2): "Underlying purposes and policies of this Act are (a) to simplify, clarify and modernize the law governing commercial transactions." But will this codification withstand material change by interpretations of it drawn from obsolete statutes and unwarranted estoppels? The use of the setoff and assignment statutes in the *Standard Printing* case is an example of how dangerous the survival of legal anachronism can be.

ROBERT H. BICHLER

⁶² Wis. Laws 1899, ch. 356 (Introduction).