

THE
Credit Man's Diary
and Manual of Commercial Laws for
1923

Reference Book and Manual of Com-
mercial Laws and Practices

A Compendium of State and
Federal Statutes Directly
Affecting the Work of the
Credit Man, Together with
Brief Statements in Ex-
planation of Relevant
Points of the Common Law



Memorandum Pages for
the Days of the Year.
(Except Sundays.)

—Issued by—

National Association of Credit Men

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New York, N. Y.

*The Consignment Account

Consignment accounts are used a great deal in the mercantile world and have an important effect upon credits. As the term is ordinarily used in business it means the delivering over of goods, wares, merchandise or other property from one person, called the consignor, to another, called the consignee, for the purpose of selling such property and turning the proceeds of such sale over to the consignor. This relationship is commonly spoken of as factor or broker.

When goods are consigned on a straight consignment contract or agreement, the title to the goods remains in the consignor, and in case of the bankruptcy of the consignee, the consignor can reclaim his goods if he can identify them, but this is frequently difficult and in such case it would be better to file or record the contract as though it were a contract of conditional sale.

Such consignment contracts also, as a rule, contain a clause providing that the proceeds of sale of the consigned goods shall belong to the consignor. In case of bankruptcy, however, it is very seldom that the consignor can reclaim the proceeds of sale of his goods, for the reason that it is practically impossible to identify money, and the consignor not being able to identify the particular proceeds of his goods must come in with the general creditors, unless the consignee keeps a special bank account in which he puts only the proceeds of sale of the consignor's goods, in which case, of course, the consignor could claim all of the moneys in that account. Such a clause is advantageous to the consignor, but generally the consignee will refuse to make such an agreement.

If the consignee mixes the consignor's money with his own, or fails to account for it after it has been received, he is guilty of embezzlement and the consignor may prosecute him criminally.

In determining whether a party is entitled to recover goods in the possession of a bankrupt upon the condition that the title remains in the consignor, the courts have used the following test: Is the transaction whereby the bankrupt becomes possessed of the property a sale or a bailment?

This question enters into the determination of nearly every case. If the property is consigned to be sold under terms and at prices fixed by the consignor the contract is not one of sale, but is a bailment, and the consignor may reclaim. Identity is the sine qua non of the right to regain possession.

* Consignment account and foreign corporation law, page 117.

In making consignment contracts, where the title is to remain in the consignor, it is advantageous that such contract be filed in accordance with the conditional sales laws of the state where the property is located, if such state requires the filing of conditional sales contracts. (See law of conditional sales, this diary, pages 139-152). Such filing can be done at slight expense and assures the protection of a consignor's title, so far as other creditors are concerned.

While the consignment of merchandise under the above arrangement is not a sale, the resulting physical situation is closely analogous to that created by a conditional sale, in that the consignee is in full possession and control of personal property belonging to another whose ownership is concealed, or at least not revealed; and the air of prosperity created by the presence of full stocks of merchandise in the warehouses of the consignee might lead others to extend credit to him not justified by the actual facts. But as the purpose of the consignment account is to facilitate the sale of the consignor's merchandise, the consignee generally has a full power of sale, so that the consignor and the purchaser from the consignee will seldom come into conflict. In this respect the consignment contract is sharply differentiated from the conditional sales contract.

In New York consignments are governed by the Factor's Act, which provides as follows:

Factors' Act. 1. Every factor or other agent, entrusted with the possession of any bill of lading, custom-house permit, or warehouseman's receipt for the delivery of any merchandise, and every such factor or agent not having the documentary evidence of title, who shall be intrusted with the possession of any merchandise for the purpose of sale, or as a security for any advances to be made or obtained thereon, shall be deemed to be the true owner thereof, so far as to give validity to any contract made by such agent with any other person, for the sale or disposition of the whole or any part of such merchandise and any account receivable or other chose in action created by sale or other disposition of such merchandise for any money advanced, or negotiable instrument or other obligation in writing given by such other person upon the faith thereof.

2. Every person who shall hereafter accept or take any such merchandise and any account receivable or other chose in action created by sale or other disposition of such merchandise in deposit from any such agent, as a security for any antecedent debt or demand, shall not acquire thereby, or enforce any right or interest in or to such merchandise and any account receivable or other chose in action created by sale or other disposition of such merchandise or document, other than was possessed or might have been enforced by such agent at the time of such deposit.

3. Nothing contained in the preceding subdivisions of this section shall be construed to prevent the true owner of any merchandise and any account receivable or other chose in action created by sale or other disposition of such merchandise so deposited, from demanding or receiving the same, upon prepayment of the money advanced, or on restoration of the security given, on the deposit of such merchandise and any account receivable or other chose in action created by sale or other disposition of such merchandise, and upon satisfying such lien as may exist thereon in favor of the agent who may have deposited the same; nor from recovering any balance which may remain in the hands of the person with whom such merchandise and any account receivable or other chose in action created by sale or

other disposition of such merchandise shall have been deposited, as the produce of the sale thereof, after satisfying the amount justly due to such person by reason of such deposit.

4. Nothing contained in this section shall authorize a common carrier, warehouseman, or other person to whom merchandise or other property may be committed for transportation or storage only, to sell or hypothecate the same.

Form of Consignment Contract

WE HEREBY consign to you (here specify goods), title to such goods and the proceeds from any sale thereof to the amount of our schedule of prices shall continue and remain in us.

You are to operate a store in the city of....., for the sale of the goods herein consigned, and you are to pursue the business of selling same in a vigorous manner, and you are to maintain and operate this store entirely at your own expense.

It is understood and agreed that all consigned stock in your hands remains our property, for which you are responsible to us as to its merchantable condition and quantity, and you are also responsible to us for the loss of any goods by theft or otherwise, whether or not covered by fire insurance; and that you will promptly return upon our order or demand, all consigned stock on hand, you paying all freight or express charges for the return of same.

Our schedule of prices is set forth on the sheet attached hereto, marked "Exhibit A."

You are to report to us daily all sales of this consigned stock and remit the proceeds of all sales, up to the amount of our schedule prices, to us, immediately upon receipt of same by you.

(Or: On the.....day of each month you are to report to us all sales of this consigned stock and remit the proceeds thereof up to the amount of our schedule prices.)

At your own expense you are to insure at full value the entire stock consigned to you, having all policies issued in our name, and duly delivered to us at.....; and you further agree to assume all liability and expense for the safe keeping of the above consigned stock.

You agree at all times to comply with our requirements in regard to the method of making reports, taking inventory, forwarding remittances, etc.

You further agree at the end of four months to return all of this consigned stock not sold by you, to us, unless this agreement is further extended, you to pay all charges for returning same.

(Signed), (Consignor)

Accepted and the above conditions agreed to.

(Signed), (Consignee)

Dated,