

THE UNIFORM PARTNERSHIP ACT, WITH SOME REMARKS ON OTHER UNIFORM COMMERCIAL LAWS.*

Though the purpose of the Conference of Commissioners on Uniform State Laws in recommending for enactment a draft Partnership Act, is to secure uniformity in the laws of the several States on that subject, the possible arguments for or against the enactment of this and other legislation on commercial topics, which have been endorsed by the Conference, may take a wider range than a discussion of the desirability of uniformity of State laws. Indeed, presumably no one would be so bold as to deny that such uniformity is in itself a desirable thing, and opponents or doubters must base their opposition or doubts either on the ground that even a good codification of the subject is undesirable or that the Act in question is not a good codification. One who advocates the enactment of this legislation must be prepared, therefore, to consider not simply or indeed chiefly the advisability of uniformity, but also whether there are possible counterbalancing disadvantages in seeking to obtain uniformity by the proposed statute.

In the first place, then, one who advises the enactment of so considerable a law as the Partnership Act, which is itself only one of several codifications of portions of the commercial law which the Conference of Commissioners has proposed for enactment, must be prepared to consider what objection there may be to reducing to the form of a code, or statute, considerable tracts of the law which have been previously controlled only by the common law.

Codification has an ugly sound to most American lawyers. We have been trained to believe that no code can be expressed with sufficient exactness, or can be sufficiently elastic to fulfil adequately the functions of our common law. The iridescent legal utopia proposed by Bentham and his followers, in which every one should readily know the law, or be able quickly to find

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it by turning to a code, and in which the professional lawyer would be abolished, has been proved a dream. We know, today, that law must adapt itself to changing conditions; that what is right in one time and place is not necessarily universal truth; that so long as the skein of human affairs is full of difficult tangles the law controlling those affairs cannot be simple, or understood easily by uninstructed persons; that much of our law is in too vague a form to be written down; that new cases may arise tomorrow for which the common law will find an answer—though neither the question nor the answer could be suggested by one who framed a code today.

The instinctively hostile attitude of American lawyers has been made more pronounced by the inadequacy of the attempts in the United States to draft elaborate codes. Especially the ambitious project of David Dudley Field to codify the law of New York has served as a warning. The crushing arguments and proofs adduced by James C. Carter, and others, showed the inadequacy of Field's proposed draft of a civil code, and prevented its enactment by the legislature of New York—though it was afterwards adopted by California and has been influential in the legislation of other States of the far west.

It must not be forgotten, however, in any criticism of codification, that practically the whole civilized world, except English-speaking countries, is governed by codes; that these codes have been adopted chiefly during the past century after trial of systems of unwritten or customary law; and that foreign expert opinion seems practically unanimous in favor of codification. We are, therefore, driven to believe that there is nothing chimerical in the plan of codification itself, but that if it has serious disadvantages in English-speaking countries they must be due either to

(1) The inferior workmanship of the codes which have actually been produced or,

(2) To the greater vagueness or rapidity of the growth of the law of English-speaking countries which makes adequate codification impracticable.

The first of these evils should be remediable if time, patience, hard work, and learning, can be combined to meet them. The

second objection, if applicable to parts of our law, cannot be true of many other parts, including such parts of the commercial law as the Commissioners on Uniform State Laws have attempted to codify. The law of these subjects is in the main crystalized and, indeed, is so far fixed in its main points by numerous judicial decisions that it is practically impossible to change it without legislation.

It cannot be admitted then that there is any inherent difficulty in codifying these portions of the law, other than the difficulty confessedly great, of clear, concise, and accurate statement. If further proof of this were needed, it may be found in experience. Parts of our law have already been codified. Criminal law had a long development as customary law. Few would deny that it has been advantageous to codify it, as has for the most part been done. Other examples perhaps less striking, but sufficiently convincing, might easily be given of the successful codification of rules of law which had their development as part of the common law.

A difficulty in regard to even partial codification which troubles many is the lack of elasticity which statute law has as compared with the common law. That this objection is wholly without force need not be contended, but it may easily be over-emphasized in regard to such codification of such matters as are here under discussion. The main principles of these subjects have already become inelastic in the common law. They could no more easily be changed than could a statute itself, except by legislation. What may be called the fringe of the subject is doubtless open to possible development and growth at common law, but this possibility still remains for all the uniform statutes provide that as to matters not specifically covered by the Act, the rules of common law and equity are applicable.

As to points specifically covered by the Act, if a change is found desirable, experience shows that it is perhaps not more difficult to get a legislature to amend a statute than to get a court to overrule a previous decision.

But though such rules of law may be fixed both in Pennsylvania and in New York, for instance, it does not follow that the same rule is established in both States.

The advantages of codifying such portions of the law are:

1. To produce uniformity of law;
2. To state the law in a compendious form in which it will be susceptible of easier reference and more exact determination than if sought from decisions;

3. To settle uncertain questions of law without legislation. Even in so old a State as Pennsylvania there are doubtless questions which would be settled by the enactment of the Uniform Partnership Act, or of the Uniform Sales Act, which could now be determined only by litigation. Legislation is cheaper than litigation as a means of fixing the law in these particulars. In the newer States this advantage is entitled to the greatest weight;

4. To harmonize into a more consistent whole a body of doctrines, many of which have grown up, if not at haphazard, at least without particular reference to one another.

In the partial codification of certain subjects attempted by the Commissioners on Uniform Laws the first of these advantages has been the only one directly sought; but in support of their acts the Commissioners may fairly urge whatever incidental advantages may be derived from uniform codification of the subjects in question.

It is not always understood to how great an extent the unification of a variety of customary laws prevailing in a given country has been a dominant motive for codification. The Napoleonic Codes enacted between 1803 and 1810 in France have had the widest influence on modern codification. Indeed, the codes of the whole of Latin Europe and of Central and Southern America are largely based on them, as are the codes of Louisiana, Lower Canada, Belgium and Holland.

Prior to the enactment of these codes in France the law was customary and varied in different portions of the country. These customary rules of law had been digested and compared, and the French lawyers, trained to deal with them, had paved the way for the codification which followed. Especially the writings of

Pothier had furnished the foundation for much which was later enacted in the Code Napoleon. Sir Courtenay Ilbert says:¹

"Of the causes which made for codification in France at the beginning of this century, the most important were probably three. In the first place, a strong sense of the practical evils which arose from diversity of laws, coupled with a passionate desire for national unity. In the next place, the continuous efforts of many successive generations of statesmen and lawyers, all tending in the same direction, all aiming, consciously or unconsciously, at the same ideal. And lastly, the fact that the common law of part of the country was wholly, that of the other part largely, based on law which had already been systematized."

In Germany the same development may be observed, although at a later period. The various German states even after the creation of the Empire had each its own system of law; and of these, Dr. Schuster, writing in 1896, said:²

"There are therefore six general systems of law, but only two out of these, the system of the French and that of the Saxon code, are exclusive systems; the other systems are broken into by local laws and customs. . . . The result is that in every case which arises in Germany, the following questions must be asked: Is there any Imperial statute? Is there any local modern statute? Is the subject affected by older legislation? What local law governs it?"

It was largely to remedy this condition of affairs that the Commercial code was first enacted in Germany, and, later, the Civil code extended generally over the Empire a uniformity of law which previously had been confined to commercial matters.

The evils of diversity of law which have afflicted France and Germany may in some respects have been worse than those which we find in the United States. Whatever our differences of law may be, the main-stream is, with slight exception, the same—the Common law of England, which is the source of all our law, excepting the slight infusion of the Civil law which still persists in the territory obtained by the Louisiana purchase and the Mexican war. Nevertheless, the situation is not pleasant to con-

¹ Legislative Methods and Forms, p. 15.

² 12 Law Quarterly Review, 17-34.

template, for a nation which prides itself upon being a practical people, of the varying rules of law which our system of State and National governments have given us. Nor is the remedy which could be applied in France and Germany of a national codification open to us. We must seek, through State legislation, to obtain such uniformity as is possible.

The second advantage which I have suggested for such partial codification as the Commissioners are attempting may be more clearly understood if we consider for a moment the volume of the present sources of our law; for existing conditions furnish an argument for the passage of uniform laws at once both because of the desirability of preventing further crystalization of differences in State jurisdiction, and also the desirability of stating, so far as may be possible, in brief form rules of law which at present can only be found by searching through many volumes.

For the purpose of showing bulk of the existing sources of the law, I have had a rough count made of existing American Law Reports. In order to show more fully whither we are tending, and the rate at which we are going, I have also had a count made of the volumes which contain the American Case law decided until about the end of 1885. The count has not been minutely careful and is doubtless subject to slight inaccuracies, but it is sufficient for purposes of comparison.

I should add that I have not included duplicate or collateral reports. The Reporter system, the Lawyers Reports Annotated and other collateral series largely increase the number of books which a law library must possess; but it may be said that they do not increase the bulk of the sources of the law.

I find that there are at the present time something over eight thousand six hundred American law reports. In 1885-86 there were a little over three thousand five hundred. This growth, whether stated as one of over five thousand volumes or as one of one hundred and fifty *per cent.* in less than thirty years, is a formidable matter; thirty years is not a long period of time in the life of a state or nation.

When the examination is turned to individual States the situation is even more striking. It might be thought that the

great increase in the number of reports was due chiefly to the admission of new States to the Union, and to the rapid growth of population and accompanying litigation in States which were undeveloped thirty years ago. To some extent this is true.

In the earlier years Washington Territory and the State of Washington had between them five reports, they now have eighty-two; Oregon, which had thirteen volumes, now has thirty-seven; Nebraska, which had eighteen volumes, now has one hundred. But the growth in the Middle States and in the larger Eastern States is quite as noticeable. In Illinois the increase is from one hundred and twenty-six volumes to four hundred and fifty two; in Missouri, from one hundred and two volumes to four hundred and thirty-two; in New York, with its multitude of irregular reports, as well as its large regular series, the number has risen from five hundred and eighty-six to twelve hundred and nine; in Pennsylvania, including the periodical publications, which include decisions of its county courts and other local tribunals, the number has increased from one hundred and forty-eight volumes to seven hundred and thirty-six.

What does this mean? In the first place it means that the sources of the American law are extremely bulky; that the maintenance of a library from which that law can adequately be surveyed has become a matter of vast expense. It is not a great many years since individual lawyers might hope to own a library which contained substantially the whole case law of England and the United States. That time has passed and the time is also passing when most cities and counties can hope to have libraries approximately adequate to ascertain the law even of their own States; for the decisions of other States may on many points be necessary to determine the law of a particular State.

Another consequence of the increasing bulk of our Reports is that each State is developing a jurisprudence of its own which tends to become more and more independent of the law of other States. When the Supreme Court of a State has filled two or three hundred volumes of reports with its decisions, authority of some sort on most questions of law which are likely to arise may

be found in them. It becomes less often necessary to search reports of other States.

It may be thought that this tendency serves to counteract the difficulties arising from the bulk of our sources. Seven hundred volumes of Reports are a good many, but if the Pennsylvania lawyer may discard decisions of lower courts and can find most of his problems answered in the Reports of the higher courts of his own State, why need he be troubled because the courts of other States are producing a multitude of decisions from month to month? To some extent undoubtedly the individual problem is made easier in this way, but the necessity of reference to Reports of other States is not wholly avoided. The possibility which frequently exists that decisions outside of the State may be of vital consequence makes the examination of such decisions necessary much oftener than where the results of the examination actually prove important.

Furthermore, in so far as each jurisdiction becomes a law unto itself, it intensifies the evil of diversity of law. If the whole country could look to the same common law, the probability that New York and Ohio might have the same rule on a given matter as Pennsylvania is far greater than when Pennsylvania, New York and Ohio each looks only to its own decisions to find the governing principle.

It may be urged, however, that the statutes themselves have shown astonishing increase in volume, and that one of the recognized and crying evils of the times is the vast legislative output of statutes each year. This is true, but it is not the number of statutes so much as the kind of statutes which is the real evil. Statutes which create new and unnecessary rules of law are a burden. Statutes which successfully reduce to briefer compass laws already existing are a gain, and it is in the latter class that the uniform commercial acts may fairly be classified.

The final advantage of these partial codifications which I have mentioned—harmonizing and unifying a subject is one upon which stress may justly be laid, but I will not dwell on it at this point, since what I shall say later of the Partnership Act will serve at once as an argument and an illustration.

It has been said³ that the chief motive power leading to codification on the Continent of Europe has been the impulse of national unity and the practical inconveniences of the co-existence of different systems of law in a country under the same political government. This motive power does not exist in England, and does exist in the United States, if in a less degree than in some countries of Continental Europe. Nevertheless, England from a mere desire to improve the form of English law has made some advance in reducing the Common law to the form of statute, especially on commercial subjects. The first important statute of the kind passed by Parliament was the Bill of Exchange Act enacted in 1882; the next was the Partnership Act passed in 1890, and the third, the Sale of Goods Act passed in 1893. The first and the last of these were drawn by Sir M. D. Chalmers; the Partnership Act was drawn by Sir Frederick Pollock. All of these statutes have operated successfully in England, and all have diminished in large measure the labor of determining the law. On most questions it is easier to obtain an answer to a question in the law of negotiable paper, sales or partnership, from the brief annotated statutes prepared by the authors of these Acts, than it previously was to obtain such an answer from the large treatises which have in a great measure been rendered unnecessary. Difficult questions, of course, arise which are not readily answered by examination of the statutes, but, as Sir Frederick Pollock says:

"It is not to be supposed that difficult cases can be abolished, or to any great extent made less difficult, by this or any other codifying measure. But since difficult cases are after all the minority, perhaps it is of some importance for men of business to be enabled to see for themselves the principles applicable to easy ones."

The history of the English Partnership Act is thus stated by Sir Frederick Pollock in the preface of his annotated edition to the Act:

"In 1879 I drafted a Bill intended, first, to codify the general law of partnership; secondly, to authorize and regulate the formation of private partnerships with limited liability,

³ Ilbert: *Legislative Methods and Forms*, p. 160.

corresponding to the *société en commandite* of Continental law; and, thirdly, to establish universal and compulsory registration of firms. The two latter objects were those which my clients at that time were most bent on. Subsequent experience has shown, I think, that there is not much real demand or need for either innovation. The registration part was dropped in 1880 as a condition of the general approval of the Board of Trade. In 1882 the Bill made so much way as to be reported by a Select Committee, which, however, declined to proceed with the limited partnership scheme. After being again introduced several times without reaching the stage of effectual debate, the Bill was, in 1888 and 1889, further considered by the Board of Trade and the Attorney-General with a view to its adoption by Ministers. In 1890 it was introduced by the Lord Chancellor in the House of Lords, and there revised by a Select Committee, which made various changes in the arrangement of the sections and a certain number of amendments. The Bill passed through the House of Commons with a few further amendments, due partly to Sir R. Webster, then Attorney-General, and partly to Sir Horace [now Lord] Davey, became law, and came into operation on January 1, 1891."

In 1907 another act provided for limited partnerships.

The English Partnership Act, like the English codifications of the law of Bills and Notes, and of Sales, is an attempt at an exact restatement of the English case law. No improvement in that law is attempted, the object being apparently to furnish a concise and exact statement which will make the labor of lawyers easier, and will in many cases enable business men to determine, without consulting lawyers, what the law may be. Great as are the evils of the conflict of authority in the United States, due to the numerous independent jurisdictions, this conflict has given to the American Commercial Acts (which have been based on the English models) a distinct superiority to them. In England, whatever is decided becomes the law; and no matter, though the decision may be inharmonious with general principles, the codifier has felt bound to accept the result. In the United States the decisions of no single State are taken as the model. The draftsman is not primarily seeking to reform the law, but in attempting to weld a uniform and coherent whole from decisions of fifty States he necessarily discards local decisions which are inharmonious with the general principles of his subject. He can do

this safely because he is sure to find decisions which support him. If in all the jurisdictions of the country there is none which takes the view which seems to him sound, he is pretty safe in attributing his own view to personal idiosyncrasy.

The American statutes have had another advantage over the English models, because they have been drawn later and the American draftsmen have had the English statutes as models from which they could take whatever seemed helpful, and discard or improve upon the rest. Moreover, the American statutes have probably had a longer and more thorough examination by a great number of competent persons, other than the draftsmen, than has been the case with the English statutes.

Certainly if it be conceded that it is possible and desirable to codify the law of partnership, or any other branch of the law, all will agree that no pains should be spared to secure the most scientific and exact statement of the law, and to this end expert talent, long study, and criticism are essential.

The Commissioners on Uniform Laws may fairly claim that in the framing of all laws which they have recommended for enactment these principles have been carefully observed. Years have been spent in the drafting of all the important Acts, and in most of them numerous tentative drafts have been prepared and submitted for the successive criticism of a Committee of the Commissioners, of the Commissioners as a body, and of the outside public. In none of the recommended Acts, however, has the same degree of time, care, and expert criticism been expended as on the Partnership Act.

The late Dean Ames submitted various draft acts, and on his death in 1910, his work was taken up by Dean Lewis, the draftsman of the present Act. In every year since 1910 at least one revision of the proposed Act has been prepared and carefully examined and criticised. If careful work by able lawyers who have made themselves experts in this subject can produce a satisfactory statute, every confidence should be felt in the final draft recommended by the Commissioners. That every expert will agree on every point with the results reached is of course impossible, but that the Act is a careful and intelligently drawn

codification of the subject, far superior to the English Code, both in substance and expression, is not open to reasonable doubt.

There is perhaps no considerable subject in the law in which a single fundamental but disputed principle makes so marked a difference in the conclusions reached, as is the case in the law of partnership. Very many of the troublesome questions involved in that branch of the law depend for their answer on whether what is called the entity theory of partnership, or the so-called aggregate theory be adopted.

Under the entity theory the partnership is a legal person distinct from the members of the firm. Many of the principles of the law of corporations become applicable and, indeed, the law of partnership would logically become a branch of the law of corporations if this theory were adopted and consistently followed.

Under the aggregate theory, on the other hand, the partners are joint owners of the partnership property, and joint obligors and obligees of claims due from or to the partnership, though some modifications of the ordinary rules of joint ownership may be necessary because of the particular character of partnership business.

The entity theory has commended itself to not a few experts, notably to the late Dean Ames. The simplicity of the principle and the certainty of the results are unquestionable advantages. The common law theory of joint rights and duties, and of joint ownership of property, is at best a technical and difficult subject. It does not become any less so when the special incidents of partnership are introduced into the case; and it may be urged further on behalf of the entity theory that the law of partnership on the Continent of Europe is based on this theory; and that the subject of partnership is a more troublesome one under the English law than under the Continental law where the entity theory prevails.

On the other hand, however, it is to be said that we can not escape from our past legal history satisfactorily by a legislative *fiat*. We may trim and pare excrescences, and may on new subjects create wholly new legal ideas by statute, but in subjects with a long past, experience seems to show that it is difficult to adopt

fundamentally new ideas. That the English and American law has substantially grown up on what has been called the aggregate theory can hardly be doubted by an impartial student. Results doubtless have been reached, not infrequently, which cannot be satisfactorily explained by the aggregate theory; and statements may be found in judicial opinions that a partnership is an entity, but these are the exception, not the rule.

Moreover, there are special difficulties in the United States in declaring a partnership a legal person. Our States have numberless statutory and constitutional provisions in regard to corporations. That some of these provisions would be applicable to partnerships, if partnerships were a legal entity, seems probable. Unexpected and perhaps unfortunate consequences might follow.

Moreover, if a partnership is to be treated as a quasi-corporation, some system of registration of partnership names and of the members of partnerships seems necessary. If the law is to create new legal persons distinct from the individuals which form them, it must in some way keep track of those persons and define them. Actual persons make themselves sufficiently obvious to the public to make it unnecessary to register them, and so long as actual persons are treated as the owners of partnership property, and as the obligors and obligees of partnership rights, registration is unnecessary.

Dean Ames recognized the necessity of registration and provided in substance in the last draft of the Partnership Act which he prepared, that every partnership must file in the office of the Secretary of State a certificate stating the name of the partnership, the nature of its business, and the name and residence of each partner. On every change of partnership a new certificate is required and no partnership was to be allowed to begin or maintain an action on account of partnership transactions until the prescribed certificate had been filed. Such a provision would not be wholly effective or satisfactory. If the record provided for is to be a final statement of the facts contained in it, there cannot be secret or dormant partners. Moreover, it would be

difficult as matter of fact, even with the penal provision suggested, to secure full registration.

But perhaps the most serious objection to the entity theory as a universal principle is its effect upon the rights of creditors. On that theory a creditor's only direct right is against the partnership as such. Any attempt to reach the assets of the individual partner can be made only indirectly by holding him as a contributory to the partnership. The natural means of enforcing such a liability would be by getting judgment first against the partnership, and, on inability to satisfy the judgment from firm assets, to bring a bill in equity or analogous proceeding against the partnership and the individual partner for the purpose of reaching an asset of the firm which could not be reached by ordinary legal process. It seems probable that when persons in England and America deal with a partnership they do not understand that they are dealing with a company or fictitious entity like a corporation, but they understand that they are dealing directly with individuals and in reliance upon individual as well as collective responsibility.

To these reasons for choosing the aggregate theory may be added another practical reason, which is largely based on the reasons already given: Lawyers are distrustful and, as they believe, rightfully distrustful of attempts to change the law root and branch. The mere fact that a proposed act would fundamentally change the legal ideas which have generally been entertained in regard to partnership, would make the law difficult of passage. The Commissioners on Uniform State Laws are seeking as the great reform at which they aim—uniformity—and they cannot sacrifice this object in an attempt to re-write the law in a form which it has never taken in English-speaking countries.

Furthermore, however successful a proposed act may be, as a practical matter the Commissioners on Uniform State Laws must expect, that if it is passed by some States, it will not be passed by others, and they must foresee that for a long period there are likely to be many States which will not adopt the proposed law. If then the law itself is widely different from the common law, the passage of the act in the States which first

enacted it will diminish instead of increase uniformity. It may, under some circumstances, be necessary to advocate legislation which will create a wide variance between the laws of those States which adopt the legislation, and those States which do not. But other things being equal, or anywhere nearly equal, it is certainly better to follow the general current of the common law.

An extreme illustration of the difficulty of introducing wholly new principles in the law of partnership may be found by considering the provisions of the bankruptcy law. Under the bankruptcy law the old rule of distribution—joint assets primarily to joint creditors, and separate assets primarily to separate creditors is enacted. If the entity theory should be consistently followed in the Uniform Act, the provisions would be that joint assets went to joint creditors, and individual creditors acquired no right unless after paying all joint creditors there remained an excess. In that case the excess would be distributed among the partners' estates as the equities between the partners might require, and thus would become part of the separate estates and applicable to the partners' individual debts. But the rights of the partnership creditors would not be confined to the firm assets. The firm as a separate entity would have a right for any deficiency in its assets as compared with its liabilities against the individual partnership estates as contributories and could prove this claim in competition and on an equality with the individual creditor. Whether such a system of distribution is intrinsically better or worse than that provided by the Bankruptcy Act is immaterial. A provision in a State act for distributing partnership assets in a fundamentally different way from that provided in the Federal Act would necessarily and rightly prevent the adoption of the proposed State statute. The substantial rights of the parties could not be made to depend upon whether the partnership was thrown into bankruptcy or the business liquidated without bankruptcy proceedings.

But though the entity theory as a logically consistent theory is not followed in the Uniform Partnership Act, the main advantages of that theory are nevertheless attained; the chief reason for the popularity of the entity view is that it avoids certain

difficulties into which the common law has floundered in dealing with the partnership property, especially with reference to creditors.

The two principal difficulties in the administration of partnership law under existing decisions arise from:

1. The right of a partner as joint owner in specific partnership property; and,
2. The settlement of the claims of different classes of creditors when the business is continued but the personnel of the partnership changes.

In the Uniform Partnership Act the first difficulty is solved, not by asserting that the partnership as an entity owns the specific property, but by treating the partners as holding the property by a special kind of tenancy—tenancy in partnership, and defining the incidents of that tenancy in such a way as to meet the difficulties of the problem. Joint tenancy and its incidents were doubtless created by custom, and by the courts, to meet the practical necessities that were felt in co-ownership of feudal estates. Difficulties have arisen in the law of partnership by trying to fit the incidents of a kind of co-ownership which arose out of different conditions into the situation which arises in partnership. By giving appropriate incidents to tenancy in partnership the draftsman of the act has avoided possibilities of confusion and impractical results, without making a fundamental change in existing law.

Thus the interest of a partner in a specific piece of property belonging to the firm is not subject to attachment in the Uniform Act, nor can a partner assign his interest in such a piece of property except in connection with an assignment of rights of all the partners in that property.

The second difficulty in the administration of partnership law has been met by recognizing the fact that a business may be a single and continuing business though an additional member of the firm may be taken in or one of the original members dropped out. The act provides that when a business is continued without liquidation, though the personnel of the firm conducting the business may change, all the creditors of the different partnerships

are creditors of the partnership which continues the business and all have an equal right in the property embarked in the business. Under the existing law that property belongs to the last firm, which results in extreme hardship to the creditors who have extended credit before the last change in the personnel of the firm. Courts have endeavored to modify this hardship by declaring in many cases that the transfer of the property to the last firm was in fraud of the creditors of the preceding firm. The resulting practical situation has been one of extreme doubt where it has been hitherto and it still is extremely difficult to determine the rights of the various creditors.

Minor difficulties also in the application of the aggregate theory have been met. At common law a partner could not convey land or execute any sealed instrument without authority under seal from the other partners. This is changed by giving a partner implied power to execute any instrument appropriate to the business of the firm.

On a few subjects in the law uniformity, unless complete, accomplishes little. Thus if one State has laws permitting the formation of corporations with any capitalization without regard to the value of the corporate property an injury is wrought to all the States which cannot be remedied by the fact that nearly all the States have adequate laws on the subject.

So in the law of marriage and divorce, a single plague spot is enough to infect the whole country. One Reno is sufficient to accommodate the inhabitants of many States. But in commercial laws every approach to uniformity is a gain, and if a number of adjoining States enact the laws recommended by the Conference of Commissioners on Uniform State Laws, they provide themselves with rules which will cover uniformly most cases which arise. The fact that one or two jurisdictions have not yet passed the Negotiable Instruments Law has practically no effect outside of those States. Business cannot migrate to them for the purposes of avoiding the application of the uniform law. It is therefore no argument against the passage of the proposed uniform laws that it is very difficult and perhaps almost impossible to secure their passage in every State. On the other hand,

as each new State enacts one of these laws, it is a strong argument in favor of its passage by other States. This argument in Pennsylvania is a strong one at the present time for the passage of the Uniform Sales Act. That act has been enacted on every side of Pennsylvania. New Jersey, New York, Ohio and Maryland have all enacted it, and the statute has now been in force in several jurisdictions for seven or eight years, and no difficulties have arisen in its administration or construction.

I venture to read in closing some editorial remarks of the *Central Law Journal* for December 11th which have come to my attention while I was preparing this address. What the writer says in regard to a single disputed question in the law of sales may, it is hoped, be said equally well of many of the provisions of the Uniform Partnership Act, and of the other uniform statutes on commercial law which the Commissioners have recommended for enactment.

“What an excellent thing it would seem to be to have all questions as to which courts are so greatly at variance, in construing the Statute of Frauds, settled by uniform adjudication throughout this land. If the labors of the Commission on Uniform State Laws accomplished nothing more than to do away with conflicting decision regarding the 4th and 17th sections of the Statute of Frauds, it should feel well repaid. Statute-of-Frauds legislation in the various states has generally been regarded as statutory declarations of the old law, and construction thereof have followed old lines. In the Sales Act, however, provisions are unified and simplified, and their clearness seems to leave little room for diversity of application.”⁴

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⁴79 Cent. L. J. 422 (December 11, 1914).